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SUBJECT

TRANSITION RELIEF ALLOWS SMALL EMPLOYERS TO CONTINUE PREMIUM REIMBURSEMENT ARRANGEMENTS THROUGH JUNE 2015

IRS Notice 2015-17 allows certain “small” employers¹ that fail to comply with Affordable Care Act (“ACA”) market reforms because of reimbursement of individual health insurance premiums or Medicare Part B or Part D premiums to avoid the \$100 per-day, per-employee penalty under section 4980D. The protection under the transition rules applies to calendar year 2014 and the first six months of 2015.

The Notice also makes it clear that S corporation 2-percent shareholder-employee healthcare arrangements will not cause the \$100 per-day, per-employee penalty to be imposed for failing to comply with ACA market reforms for 2014 or 2015 pending additional guidance. Taxpayers may continue to rely on IRS Notice 2008-1 with regard to the tax treatment of 2-percent shareholder-employee healthcare arrangements.

Form 8928, Return of Certain Excise Taxes under Chapter 43 of the Internal Revenue Code, is not required for employers eligible for this transitional relief.

Discussion

Notice 2015-17 provides substantial relief to employers that are not applicable large employers (“ALEs”) and that are providing a premium reimbursement arrangement or stand-alone health reimbursement arrangement (“HRA”) as described in Notice 2013-54.

¹ A “small” employer is one that is not an applicable large employer under the ACA provisions and therefore averages less than 50 full-time equivalent employees during the required measurement period.

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Four previous issuances on the topic addressed by Notice 2015-17 warned that stand-alone HRAs and other employer premium reimbursement arrangements would be considered an employer-provided healthcare arrangement that failed the ACA market reforms regarding annual plan benefit limitations. Such a failure would expose the employer to an excise tax under section 4978D of \$100 per day per employee.

IRS Notice 2015-17 confirms that the excise tax applies to employer payment plans as described in the earlier guidance, but waives the penalty for 2014 and for January 1 through June 30, 2015, for employers that are not ALEs. The waiver applies to the reimbursement of individual health policy premiums and Medicare Part B or Part D premiums. Some small employers that want to take advantage of this relief may need to amend their employee Forms W-2 and related employment tax filings for 2014.

The relief does not extend to stand-alone HRAs or other arrangements to reimburse employees for medical expenses other than insurance premiums.

The Notice also provides transitional relief for S corporation 2-percent shareholder-employee healthcare arrangements that fail the market reforms and thus are subject to the excise tax under section 4980D. Such arrangements are provided relief from the excise tax through December 31, 2015. Taxpayers may continue to rely on Notice 2008-1 with regard to the tax treatment of 2-percent shareholder-employee healthcare arrangements until the Service issues further guidance, and will not be assessed the excise tax on payments for healthcare coverage for 2-percent shareholder-employees.

Finally, Notice 2015-17 makes it clear that a reimbursement of healthcare premiums on an after-tax basis does not cure any violation of the ACA market reforms. However, there will be no penalty for employers that provide taxable compensation to employees to assist with payments for health insurance as long as the arrangement does not stipulate that the employee must purchase health insurance.

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