

## **The Affordable Care Act Modifies the Treatment of Employer Payment Plans**

The Affordable Care Act (health care reform) has brought with it many changes in the health care realm. The purpose of this memo is to alert our clients to an important change which may have a significant negative impact if an employer has been reimbursing employees for health insurance costs. This change does not apply to plans that have only one participating employee, nor does it apply to insurance purchased through a plan provided by the employer. As of December 13, 2016, it also does not affect certain small businesses.

For many years, Employer Payment Plans (EPPs) have allowed employers to reimburse employees for health insurance premiums that they purchased individually. The employer could either pay the insurance premiums directly or reimburse the employees. The reimbursements were not included in the employees' gross wages. These plans have also been used by S Corporations for covering health insurance costs of shareholders, although legislation required the cost be included in the shareholder's gross wages, not subject to FICA tax.

Beginning January 1, 2014, employers who reimburse employees for health insurance plans the employees have purchased individually are in violation of the market reforms and are at risk for penalties. This also applies to S Corporations who reimburse shareholders owning more than 2% of the S Corporation for individually purchased health insurance plans. The penalty for violation is severe: \$100 per day per employee (\$36,500 per employee for the entire year). Fortunately, the IRS recently issued relief from this penalty for small employers. Please read on for more information.

### **For Employers Reimbursing Employees for the Cost of Insurance Purchased Individually**

- On December 13, 2016, the President signed into law the 21<sup>st</sup> Century Cures Act (HR 34). This law retroactively eliminates the \$100 per day per employee penalty for these types of plans for certain small businesses. For plan years starting after 2016, these types of payments will only be allowed from "Qualified Small Employer Health Reimbursement Arrangements," which must follow specific rules, including a maximum reimbursement amount, equitable availability to all eligible employees, and employer only funding, to name a few. Receipt of reimbursements will reduce the employee's Premium Tax Credit and may be taxable income if the employee does not have minimum essential coverage.
- Applicable Large Employers (those with 50 or more full-time equivalent employees) should establish a group health plan if they have not already done so.

### **For S Corporations Reimbursing Shareholders for the Cost of Insurance Purchased Individually**

- Penalty relief for S Corporation Shareholders has been issued until further notice, so S Corporations do not need to change their plans at this time.
- S Corporation shareholders will be able to deduct the cost of premiums for individually purchased health insurance plans as self-employed health insurance on page 1 of their 1040, until further guidance is issued. In the future, they may be required to claim it as an itemized deduction subject to the 10% of AGI floor.
- Depending on future guidance, it may be necessary for S Corporations to cease making reimbursements for health insurance. At that time, any payments made must have no mention of health insurance costs or be linked to health insurance in any way. Establishing a group policy is a great way to ensure your employees are covered while avoiding potential reimbursement issues.

As the Affordable Care Act implementation continues, there will be changes to practices used in the past. We recommend that you stay informed on the latest developments and consult with your insurance agent to discuss the appropriate course of action for your company. Should you have questions or wish to discuss reform further, please contact Denise Coyle at our office at 607-272-5550.

For more information please feel free to contact our office or visit our website's Resources page ([www.swcllp.com/resources](http://www.swcllp.com/resources)) to view articles on this topic.

Sincerely,

*Sciarabba Walker & Co., LLP*