

From the Desk of

Larry Grudzien
ATTORNEY-AT-LAW

IRS Releases Q&As on Reimbursing Individual Health Premiums

May 30, 2014

On May 13, 2014, the IRS issued Q&A guidance restating the conclusion in Notice 2013-54, that an employer is considered to establish a type of group health plan-called an "employer payment plan"-if it reimburses employees' premiums for individual health insurance policies.

In Notice 2013-54, the IRS states that because employer payment plans cannot integrate with individual insurance policies, they will violate the prohibition on annual dollar limits for essential health benefits (EHB) and the requirement to cover certain preventive services without cost-sharing.

Q/A-1 provides that the employer's exposure to excise taxes of \$36,500 per year (i.e., \$100 per day) for each employee affected by the failures. This excise tax liability requires self-reporting on IRS Form 8928. Adverse consequences are also possible under ERISA and the PHSA.

Q/A-2 indicates that the DOL issued substantially identical guidance in Technical Release 2013-03, and HHS is expected to announce soon that it concurs.

A copy of the IRS Q/As is provided below:

Q1. What are the consequences to the employer if the employer does not establish a health insurance plan for its own employees, but reimburses those employees for premiums they pay for health insurance (either through a qualified health plan in the Marketplace or outside the Marketplace)?

Under IRS Notice 2013-54, such arrangements are described as employer payment plans. An employer payment plan, as the term is used in this notice, generally does not include an arrangement under which an employee may have an after-tax amount applied toward health coverage or take that amount in cash compensation. As explained in Notice 2013-54, these employer payment plans are considered to be group health plans subject to the market reforms, including the prohibition on annual limits for essential health benefits and the requirement to provide certain preventive care without cost sharing. Notice 2013-54 clarifies that such arrangements cannot be integrated with individual policies to satisfy the market reforms. Consequently, such an arrangement fails to satisfy the market reforms and may be subject to a \$100/day excise tax per applicable employee (which is \$36,500 per year, per employee) under section 4980D of the Internal Revenue Code.

Q2. Where can I get more information?

On Sept. 13, 2013, the IRS issued Notice 2013-54, which explains how the Affordable Care Act's market reforms apply to certain types of group health plans, including health reimbursement arrangements (HRAs), health flexible spending arrangements (health FSAs) and certain other employer healthcare arrangements, including arrangements under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy.

DOL has issued a notice in substantially identical form to Notice 2013-54, DOL Technical Release 2013-03, and HHS will shortly issue guidance to reflect that it concurs with Notice 2013-54. On Jan. 24, 2013, DOL and HHS issued FAQs that addressed the application of the Affordable Care Act to HRAs.