

CLIENT ALERT

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THE IRS HAS RELEASED UPDATED GUIDANCE FOR REPORTING THE COST OF EMPLOYER SPONSORED GROUP HEALTH PLAN COVERAGE ON FORM W-2....

Newly issued guidance from the IRS both modifies and clarifies the interim guidance Notice 2011-28. The new Notice, 2012-9 was released on January 6, 2012.

Employers who produced 250 or more W-2 forms in 2011 must comply in 2012. (for W-2 Forms provided in 2013)

Below is an excerpt from the Q&A Section from Notice 2012-9. The entire notice can be found at http://www.irs.gov/irb/2012-04_IRB/ar10.html

Q-1: What does § 6051(a)(14) require?

A-1: Section 6051(a)(14) generally requires the aggregate cost of applicable employer-sponsored coverage to be reported on Form W-2.

Q-2: Does the requirement under § 6051(a)(14) to report the aggregate cost of employer-sponsored coverage on Form W-2, or compliance with this requirement, have any impact on whether such coverage is taxable?

A-2: No. The requirement is informational only. **[Additional information provided in Notice]**

Employers Subject to the Reporting Requirement (Q&A-3)

Q-3: What employers are subject to the reporting requirement under § 6051(a)(14)?

A-3: Except as provided in this Q&A-3, all employers that provide applicable employer-sponsored coverage (see Q&A-12) during a calendar year are subject to the reporting requirement under § 6051(a)(14).

Also, in the case of the 2012 Forms W-2 (and Forms W-2 for later years unless and until further guidance is issued), an employer is not subject to the reporting requirement for any calendar year if the employer was required to file fewer than 250 Forms W-2 for the preceding calendar year. **[Additional information provided in Notice]**

Method of Reporting on the Form W-2 (Q&A-4 through Q&A-10)

Q-5: How is the aggregate reportable cost reported on Form W-2?

A-5: The aggregate reportable cost is reported on Form W-2 in box 12, using code DD.

Q-7: In the case of an individual who is an employee of multiple employers within a calendar year, must each employer provide a Form W-2 reporting the aggregate reportable cost that such employer provided?

A-7: Each employer providing employer-sponsored coverage must report the aggregate reportable cost of coverage it provides. **[Additional information provided in Notice]** For employers participating in a multiemployer healthcare plan, see Q&A-17.

Q-9: Must an employer issue a Form W-2 including the aggregate reportable cost to an individual to whom the employer is not otherwise required to issue a Form W-2, such as a retiree or other former employee receiving no compensation required to be reported on a Form W-2?

A-9: No. An employer is not required to issue a Form W-2 reporting the aggregate reportable cost to an individual to whom the employer is not otherwise required to issue a Form W-2.

Aggregate Cost of Applicable Employer-Sponsored Coverage (Q&A-11 through Q&A-15)

Q-11: What is the aggregate cost of applicable employer-sponsored coverage and how is the aggregate cost of applicable employer-sponsored coverage referred to in this notice?

A-11: The aggregate cost of applicable employer-sponsored coverage is the total cost of coverage under all applicable employer-sponsored coverage (as defined in Q&A-12) provided to the employee. In this notice, the cost of coverage under a group health plan is referred to as the reportable cost and the aggregate cost of applicable employer-sponsored coverage is referred to as the aggregate reportable cost.

Q-12: What is applicable employer-sponsored coverage?

A-12: Applicable employer-sponsored coverage means, with respect to any employee, coverage under any group health plan (see Q&A-13) made available to the employee by an employer that is excludable from the employee's gross income under § 106, or would be so excludable if it were employer-provided coverage (within the meaning of such § 106), except that applicable employer-sponsored coverage does not include:

(1) any coverage for long-term care,

(2) any coverage (whether through insurance or otherwise) described in § 9832(c)(1) (other than subparagraph (G) thereof (coverage for on-site medical clinics)),

(3) any coverage under a separate policy, certificate, or contract of insurance which provides benefits substantially all of which are for treatment of the mouth (including any organ or structure within the mouth) or for treatment of the eye, and

(4) any coverage described in § 9832(c)(3) the payment for which is not excludable from gross income and for which a deduction under § 162(l) is not allowable.

See Q&A-16 through Q&A-23 for guidance on applicable employer-sponsored coverage that is not required to be included in the aggregate reportable cost.

Q-13: What is a group health plan?

A-13: A group health plan is a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. **[Additional information provided in Notice]**

Q-14: Does the aggregate reportable cost include both the portion of the cost paid by the employer and the portion of the cost paid by the employee?

A-14: Yes. **[Additional information provided in Notice]**

Cost of Coverage Required to be Included in the Aggregate Reportable Cost (Q&A-16 through Q&A-23)

Q-16: Is the cost of coverage under all applicable employer-sponsored coverage required to be included in the aggregate reportable cost?

A-16: Except as provided in this Q&A and in Q&A-17 through Q&A-23, the cost of coverage under all applicable employer-sponsored coverage must be included in the aggregate reportable cost. However, the following amounts are not included in the aggregate reportable cost and are not reported under § 6051(a)(14)¹:

- (1) the amount contributed to any Archer MSA (as defined in § 220(d)),
- (2) the amount contributed to any Health Savings Account (as defined in § 223(d)), and
- (3) the amount of any salary reduction election to a health Flexible Spending Arrangement (FSA)(within the meaning of §§ 106(c)(2) and 125).

Q-18: Is the cost of coverage under a Health Reimbursement Arrangement (HRA) required to be included in the aggregate reportable cost reported on Form W-2?

A-18: No. **[Additional information provided in Notice]**

Q-19: If an employer offers a health FSA through a § 125 cafeteria plan, is the amount of the health FSA required to be included in the aggregate reportable cost reported on Form W-2?

A-19: Yes, the amount of the health FSA is required to be included in the aggregate reportable cost reported on Form W-2, but only if the amount of the health FSA for the plan year exceeds the salary reduction elected by the employee for the plan year. **[Additional information provided in Notice]**

Q-20: Is the cost of coverage under a dental plan or a vision plan included in the aggregate reportable cost if that plan satisfies the requirements for being excepted benefits for purposes of HIPAA under §54.9831-1(c)(3)?

A-20: No. **[Additional information provided in Notice]**

Methods of Calculating the Cost of Coverage (Q&A-24 through Q&A-27)

Q-24: How may an employer calculate the reportable cost under a plan?

A-24: An employer may calculate the reportable cost under a plan using the COBRA applicable premium method (Q&A-25). Alternatively, (1) an employer that is determining the cost of coverage for an employee covered by the employer's insured plan may calculate the reportable cost using the premium charged method (Q&A-26); and (2) an employer that subsidizes the cost of coverage or that determines the cost of coverage for a year by applying the cost of coverage in a prior year may calculate the reportable cost using the modified COBRA premium method (Q&A-27). For employers that charge employees a composite rate (the same premium for different types of coverage under a plan, for example, a premium for self-only coverage versus family coverage), see Q&A-28.

The reportable cost for an employee receiving coverage under the plan is the sum of the reportable costs for each period (such as a month) during the year as determined under the method used by the employer. An employer is not required to use the same method for every plan, but must use the same method with respect to a plan for every employee receiving coverage under that plan.

Q-25: How does an employer calculate the reportable cost for a period under the COBRA applicable premium method?

A- 25: **[Additional information provided in Notice]**

Q-26: How does an employer calculate the reportable cost for a period under the premium charged method?

A-26: **[Additional information provided in Notice]**

Q-27: How does an employer calculate the reportable cost for a period under the modified COBRA premium method?

A-27: **[Additional information provided in Notice]**

Other Issues Relating to Calculating the Cost of Coverage (Q&A-28 through Q&A-31)

Q-30: How is the reportable cost under a plan calculated if an employee commences, changes or terminates coverage during the year?

A-30: If an employee changes coverage during the year, the reportable cost under the plan for the employee for the year must take into account the change in coverage by reflecting the different reportable costs for the coverage elected by the employee for the periods for which such coverage is elected. If the change in coverage occurs during a period (for example, in the middle of a month where costs are determined on a monthly basis), an employer may use any reasonable method to determine the reportable cost for such period, such as using the reportable cost at the beginning of the period or at the end of the period, or averaging or prorating the reportable costs, provided that the same method is used for all employees with coverage under that plan. Similarly, if an employee commences coverage or terminates coverage during a period, an employer may use any reasonable method to calculate the reportable cost for that period, provided that the same method is used for all employees with coverage under the plan.

Additional Issues

Q-32: Is the cost of coverage provided under an employee assistance program (EAP), wellness program, or on-site medical clinic required to be included in the aggregate reportable cost reported on Form W-2?

A-32: Coverage provided under an EAP, wellness program, or on-site medical clinic is only includible in the aggregate reportable cost to the extent that the coverage is provided under a program that is a group health plan for purposes of § 5000(b)(1). **[Additional information provided in Notice]**

Q-35: Must the aggregate reportable cost reported on Form W-2 for a calendar year be adjusted for any elections or notifications in the subsequent year that may have an effect on the cost of coverage in the earlier year, such as notice of a divorce in the earlier year?

A-35: No. The aggregate reportable cost for a calendar year reported on Form W-2 may be based on the information available to the employer as of December 31 of the calendar year. **[Additional information provided in Notice]**

DISCLAIMER – *This Client Alert is not meant as a comprehensive summary of Notice 2012-9. We chose excerpts from Notice 2012-9 that we feel pertain to the majority of our clients. We encourage all employers to read the Notice in its entirety and discuss it with your payroll service and/or accountant.*

This information is provided as an informational service and is not considered insurance, legal or tax advice.