

Reminder for large employers: health insurance coverage information reporting due in Jan., 2013- Dec. 12, 2012

January, 2013, will usher in a new paperwork requirement for large employers, generally those filing 250 or more Forms W-2. They'll have to report the aggregate cost of employer-sponsored health insurance coverage provided to employees during 2012. Small employers are exempt from the new information reporting requirement, for another year at least.

Background. Code Sec. 6051(a)(14), which was added by PPACA §9002, generally provides that for tax years beginning on or after Jan. 1, 2011, the aggregate cost of the applicable employer-sponsored health insurance coverage (as defined in Code Sec. 4980I(d)(1)) must be reported on Form W-2, Wage and Tax Statement. However, Notice 2010-69, 2010-44 IRB 576, made this new reporting requirement optional for all employers for the 2011 Forms W-2. (See Weekly Alert ¶ 19 10/14/2010)

And in Notice 2011-28, 2011-16 IRB 656, IRS provided further relief for small employers (i.e., those required to file fewer than 250 Forms W-2 for the preceding calendar year) by making Code Sec. 6051(a)(14) reporting optional for health coverage provided through at least 2012, or until further guidance is issued by IRS. Thus, these employers wouldn't have to report the cost of health care coverage on any forms required to be furnished to employees before January 2014, at the earliest. (See Weekly Alert ¶ 26 03/31/2011)

No deferral for larger employers. Those employers filing 250 or more Forms W-2 for 2011, must report the aggregate cost of the applicable employer-sponsored health insurance coverage (as defined in Code Sec. 4980I(d)(1)) provided to employees during 2012 on the Form W-2, Wage and Tax Statement, filed before the end of January, 2013, and then filed with the Social Security Administration (SSA).

The reporting to employees is for their information only. It is intended to inform them of the cost of their health care coverage, and doesn't cause excludable employer-provided health care coverage to become taxable. (Notice 2012-9, 2012-4 IRB, Q&A 2)

Types of employers required to file. Unless exempted by the small-employer rule, all employers that provide applicable employer-sponsored coverage during a calendar year are subject to the reporting requirement. This includes employers that are Federal, state and local government entities, churches and other religious organizations, and employers that are not subject to the COBRA continuation coverage requirements under Code Sec. 4980B, to the extent such employers provide applicable employer-sponsored coverage under a group health plan. Employers that are Federally recognized Indian tribal governments are not subject to the new reporting requirement,

and neither are employers that are tribally chartered corporations wholly-owned by a Federally recognized Indian tribal government. (Notice 2012-9, Q&A 12)

What must be reported. Applicable employer-sponsored coverage means, with respect to any employee, coverage under any group health plan made available to the employee by an employer that is excludable from the employee's gross income under Code Sec. 106 , or would be so excludable if it were employer-provided coverage. However applicable employer-sponsored coverage does not include:

1. Any coverage for long-term care.
2. Any coverage (whether through insurance or otherwise) described in Code Sec. 9832(c)(1) (other than Code Sec. 9832(c)(1)(g), relating to coverage for on-site medical clinics). Thus, the information reporting requirement doesn't apply to coverage such as accident or disability insurance, worker's comp, or automobile medical payment insurance.
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.
4. Any coverage described in Code Sec. 9832(c)(3) (for only a specified disease or illness, and hospital indemnity or other fixed indemnity insurance), the payment for which is not excludable from gross income and for which a deduction under Code Sec. 162(l) is not allowable. (Notice 2012-9, Q&A 12)

The aggregate reportable cost generally includes both the portion of the cost paid by the employer and the portion of the cost paid by the employee, regardless of whether the employee paid for that cost through pre-tax or after-tax contributions. (Notice 2012-9, Q&A 14)

Health Flexible Spending Arrangements (FSAs). The amount of a health FSA must 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. The amount of a health FSA for a cafeteria plan year equals the amount of salary reduction elected by the employee for the plan year, plus the amount of any optional employer flex credits that the employee elects to apply to the health FSA. In determining the aggregate reportable cost, the amount of the health FSA is reduced (but not below zero) by the employee's salary reduction election.

If the amount of salary reduction (for all qualified benefits) elected by an employee equals or exceeds the amount of the health FSA for the plan year, the employer does not include the amount of the health FSA for that employee in the aggregate reportable cost. But if the amount of the health FSA for the plan year exceeds the salary reduction elected by the employee for the plan year, then the amount of that employee's health

FSA minus the employee's salary reduction election for the health FSA must be included in the aggregate reportable cost and reported under Code Sec. 6051(a)(14). (Notice 2012-9, Q&A 19)

What is excluded. Amounts contributed to Archer MSAs, Health Savings Accounts, as well as salary reduction elections to a health FSA are not included in the aggregate reportable cost and are not reported under Code Sec. 6051(a)(14). (Notice 2012-9, Q&A 16) The cost of coverage under a Health Reimbursement Arrangement (HRA) is not required to be included in determining the aggregate reportable cost. (Notice 2012-9, Q&A 18) Also, employers aren't required to include the cost of coverage under an employee assistance program (EAP), wellness program, or on-site medical clinic in the reportable amount if the employer doesn't charge a premium for that type of coverage provided under COBRA to a qualifying beneficiary. (Notice 2012-9, Q&A 32)