

# Premium Reimbursement Relief under ACA for Small Employers

February 20, 2015

The IRS on February 18, 2015, released Notice 2015-17 addressing additional questions on employer payment plans and providing limited transitional relief for small employers who are currently reimbursing employees for individual health insurance premiums.

The IRS offered answers to five questions, adding to an ever-growing body of regulatory guidance on this topic. Beginning with Revenue Ruling 61-146 through the most recent guidance issued in 2013 and 2014, they continue to emphasize that any reimbursement of individual premiums by an employer, whether on a pre-tax or after-tax basis, is an employer payment plan (EPP). These EPPs are considered group health plans when there is more than one eligible employee entitled to reimbursement. This connection between EPPs and group health plans is critical because the three agencies (IRS, HHS and DOL) view the Affordable Care Act's market reforms to apply to all group health plans.

The key points covered in this notice include:

- **Transitional relief is offered** to employers who are not applicable large employers for 2014 and 2015 **until June 30, 2015**. This will allow these employers to have time to end their EPPs and move to group health plans that meet the ACA's market reforms.
- No similar relief was given for applicable large employers (those with 50 or more FTEs) for the \$100 per day per employee penalties that were first raised in last May's IRS Q&A. They are required to self-report their violation on the IRS's excise tax form (8928) quarterly.
- The notice also highlights that shareholders who own 2% or more of an "S" corporation may be reimbursed for their individual health insurance premiums, since the tax law already treats that as imputed income for the shareholder, who also has the authority to deduct 100% of those costs from their income taxes.
- Employers may increase an employee's compensation but cannot condition the higher income or additional compensation on the requirement that the employee purchase health coverage.

One of the more interesting topics included in this notice concerns reimbursement of Medicare-related or TRICARE supplemental premiums. These are permissible as long as (a) the employer offers a group health plan (not an employer payment plan) to the employee that does not consist solely of excepted benefits and meets minimum value; (b) Medicare/TRICARE reimbursement is offered only to employees who are enrolled in Part A and Part B or D (or TRICARE) and employee who is being reimbursed is actually enrolled Part A and Part B (or TRICARE); and (c) the employer payment plan is limited to reimbursement of Medicare Part B or Part D premiums and excepted benefits, including Medigap premiums (or TRICARE supplemental plans).

It is very important to remember that the outline of what would be permitted under ACA and IRS rules does not allow an employer to reimburse for these costs if they are already prohibited under the Medicare and TRICARE secondary payer rules.