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Patent Pending

IRS Releases New Guidance on Health Care Reform Legislation

The IRS priority guidance plan serves as a blueprint for its guidance projects. The plan prioritizes tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.

Recent legislation

The IRS intends to issue several guidance items under the *Patient Protection and Affordable Care Act of 2010 (PPACA)*. This includes guidance on Code Section 45R, small employer health insurance credit, over-the-counter medicines, and interim relief with respect to Form W-2 reporting of health insurance coverage for employees. Many of the tax-related incentives in the *PPACA* carried immediate effective dates. Others are scheduled to take affect after 2012 and beyond.

A part of the new guidance modifies previous guidance relating to over-the counter medications. Effective after Jan. 15, 2011, in accordance with the new guidance, the funds in health care FSAs and HRAs can no longer be used to pay for over-the-counter medicines and drugs, unless prescribed by a physician. In accordance with the Affordable Care Act, the cost of over-the-counter medicines or drugs can be reimbursed from a health FSA or HRA if a prescription has been obtained. The requirement to obtain a prescription does not apply to insulin.

The prescription requirement applies to purchases made on or after Jan. 15, 2011, and not to purchases made in 2010 even if reimbursed after Dec. 31, 2010. The new requirement does not apply to other health care expenses such as medical devices, eye glasses or contact lenses. Medical supplies like crutches, blood sugar test kits and even bandages are also excluded.

Employee benefits

A number of planned guidance projects also relate to employee retirement benefits and others related to executive compensation and health and welfare benefits.

Projects impacting employee benefits include guidance on:

- Notice requirements required of underfunded single-employer plans that become subject to benefit restrictions;
- In-plan rollovers to designated Roth accounts;
- Requests for extensions of multiemployer plan amortization schedules; and
- Guidance on distributions from Section 457(b) eligible deferred compensation plans for unforeseeable emergencies.