



And Another Thing. . . Latest Two Cents From the IRS on HSAs

Many questions concerning Health Savings Accounts (HSAs) have been posed to the Internal Revenue Service (IRS) from the general public. The IRS' response has been a seemingly endless stream of revenue rulings, notices, and regulations published since HSA legislation was enacted in 2003. In yet another bit of clarification, the IRS recently made available an addendum to the regulations finalized last year.

Background

A part of the IRS Code Section 223 on the subject of HSAs contained general rules for employers who make contributions to their employees' accounts. Final regulations published last year further clarified the comparability requirements of employer contributions to HSAs. Some of these amplifications included an exclusion for collectively bargained employees, rules for contributions made through a cafeteria plan, and the inclusion of reasonable interest rates added to "late" employer contributions.

This latest set of proposed regulations provides guidance on employer comparable contributions to HSAs. Two issues are clarified: 1) How an employer makes comparable contributions for an employee who does not establish an HSA, and 2) How an employer may accelerate contributions to participant accounts.

These regulations impact IRS Code Section 4980G and basically only affect those employers who make contributions to their employees' HSAs.

Employee has not established an HSA

In order to be deemed as making comparable contributions to all eligible employees' HSAs, an employer must deposit contributions into all eligible employees' accounts. The problem arises when a participant does not establish an account or they don't notify their employer that an account has been established. Under these circumstances, how is an employer suppose to satisfy the comparable contribution rule?

We can assume that the employer is making comparable contributions during the plan year to all employees where they have knowledge of existing HSAs. This extra step must be taken by employers who contribute to employee HSAs to ensure they have not missed making contributions to an otherwise eligible participant.

First, the employer has a notice requirement. In order to comply with this requirement the employer must provide all eligible employees with a notice no earlier than 90 days prior to any employer contribution for the calendar year and no later than January 15 in regard to the previous year's contributions.

The notice must contain information stating that any eligible employee who establishes an HSA and notifies their employer of the account is entitled to a comparable contribution for their individual HSA. In order to receive the available employer contributions, the employee must establish their HSA and give notice of this fact to their employer by the end of February.

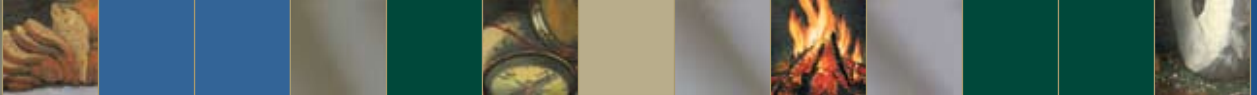
If any employee missed their employer's contributions and establishes and/or notifies their employer, the employer must then make comparable contributions to those employees' accounts. The applicable contributions must be made before April 15th of that year and include "reasonable interest."

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Acceleration of Employer Contributions

Let's say that an employee incurs a large amount of medical expenses and that the expenses exceed the employer's cumulative HSA contributions to date. The employer can help this employee out by adding more contributions to this employee's HSA.

The employer may accelerate the contributions they were going to place into this participant's HSA during the calendar year. However, if the employer accelerates contributions for one employee, similar contributions must be available on an equal and uniform basis to all eligible employees throughout the calendar year.

The employer must establish reasonable, uniform methods and requirements for accelerated contributions and the determination of medical expenses. Additionally, an employer is not required to contribute interest on either accelerated or non-accelerated HSA contributions.

Making contributions to employee HSAs that pass the comparability rules are important to employers from both the employee and IRS standpoint. There are penalties involved when employers do not make comparable contributions to all of their employees' accounts. The penalty imposed on employers is an excise tax in the amount of 35% of the aggregate dollars contributed to all employees' HSAs.

If you have an employer that is making contributions to their employees' HSAs, have them contact their benefits administrator or attorney to make sure they are complying with all the rules. ■

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