



IRS Issues Form W-2 Guidance Under The Affordable Care Act

March 30, 2011

The Internal Revenue Service ("IRS") has issued interim guidance to employers on the Form W-2 informational reporting requirements under the Patient Protection and Affordable Care Act ("Affordable Care Act"). Under the Affordable Care Act, employers are generally required to report the cost of employer-provided health care coverage on the Form W-2 that they issue to employees and file with the IRS. However, as discussed below, the requirement is not effective for most employers until the 2012 Form W-2 is issued in January 2013.

GUIDANCE

In Notice 2011-28, the IRS has provided guidance for employers on how to report, what coverage to include, and how to determine the cost of the coverage. According to the guidance, the aggregate reportable cost will be reported on the Form W-2 in Box 12 using code DD, but it will not be reported on the related Form W-3 transmittal form. The guidance describes the type of employer-sponsored coverage that is subject to the reporting requirement.

Generally, the reporting requirement applies with respect to any "group health plan." However, certain coverage is expressly excluded (for example, long-term care coverage, coverage for on-site medical clinics, and separate dental and vision care). Furthermore, certain amounts are not included in the aggregate reportable cost such as contributions to a health savings account (or Archer medical savings account), flexible spending arrangement (with respect to salary reduction contributions only), or health reimbursement arrangement. The reportable cost is generally determined using COBRA rates. However, the guidance sets forth certain alternate methods that may be used for insured plans (with respect to employees), subsidized coverage, and employers that use composite rates.

The IRS has emphasized that the new reporting to employees is for their information only--to inform them of the cost of their health coverage. It does not cause otherwise excludable employer-provided health coverage to become taxable. Employer-provided health coverage continues to be excludable from an employee's gross income for Federal income tax purposes as provided under the Internal Revenue Code.

TRANSITION RELIEF

It is important to note that under Notice 2010-69, which was issued last fall, the reporting requirement was made optional for *all* employers for the 2011 Forms W-2 (generally to be furnished to employees in January 2012). The new guidance does not change the delayed effective date for the requirement. As a result, no employer has to provide this information on the 2011 Form W-2, although an employer may voluntarily choose to do

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so. In Notice 2011-28, the IRS has also provided additional relief for smaller employers (those filing fewer than 250 W-2 forms). For such employers, the requirement is optional for 2012 (that is, for 2012 Forms W-2 that generally would be furnished to employees in January 2013). Moreover, the optional treatment continues for such smaller employers until further guidance is issued.

If you have any questions about the interim guidance, please contact David Joffe or one of the other attorneys in the **Employee Benefits & Executive Compensation Group** at Bradley Arant Boulton Cummings LLP.

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