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## CLIENT ALERT

March 4, 2015

### THE IRS GIVES CERTAIN EMPLOYER PREMIUM REIMBURSEMENT ARRANGEMENTS A TEMPORARY PASS

Much to the disappointment of many small employers, the Internal Revenue Service (“IRS”) has continued to reiterate its view that reimbursing or paying employee premiums for individual health coverage, on either a pre-tax or after-tax basis, generally violates the Patient Protection and Affordable Care Act (“PPACA”) mandates on annual dollar limits. See IRS Notice 2013-54 at [http://www.irs.gov/irb/2013-40\\_IRB/ar11.html](http://www.irs.gov/irb/2013-40_IRB/ar11.html).

However, the IRS has issued a bit of good news – it will not impose excise taxes under section 4980H of the Internal Revenue Code for these types of premium reimbursement arrangements maintained in 2014 or the first six months of 2015 for employers that are not applicable large employers (“ALEs”) (i.e., those that do not employ 50 or more full-time or full-time equivalent employees). In the absence of this temporary relief, penalties of \$100 per day could be imposed by the IRS for this time period. In addition, these employers are not required to self-report violations related to premium reimbursement arrangements on Form 8928, Return of Certain Excise Taxes under Chapter 43 of the Internal Revenue Code. See IRS Notice 2015-17 at <http://www.irs.gov/pub/irs-drop/n-15-17.pdf>.

- ▶ **Action Item: Non-ALEs who maintained a prohibited premium reimbursement arrangement in 2014 must terminate such arrangement before July 1, 2015 in order to avoid penalties under section 4980H.**
- ▶ **Action Item: ALEs who maintained a prohibited premium reimbursement arrangement in 2014 will be required to self-report this violation on Form 8928, but depending on the circumstances no penalty may be owed. Such reporting will also be required in 2015 unless the employer terminated the arrangement effective December 31, 2014.**

Although employers may not reimburse employees for individual health insurance premiums, the IRS has indicated it is permissible to increase employees’ taxable wages, so long as they do not require substantiation of individual insurance premiums paid, without violating the rules on premium reimbursement arrangements. In addition, employers may adopt premium reimbursement arrangements that are integrated with

another group health plan offered by the employer if certain conditions are met. Employers with active employees (or covered dependents) who are eligible to participate in TRICARE or Medicare should take caution to ensure that, a premium reimbursement arrangement that is permitted under IRS rules does not violate other Federal regulations that generally prohibit the offering of incentives to individuals enrolled in such programs in exchange for their election to decline participation in the employer's group health plan.

- ▶ **Action Item: Given the complexity in this area, employers who desire to compensate employees for health coverage expenses should seek expert assistance to ensure they adopt a compliant approach.**

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