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## IRS Releases Interim Guidance on W-2 Health Cost Reporting

*IRS Notice 2011-28 provides interim guidance for reporting the cost of employer-sponsored health coverage on Form W-2. Notice 2011-28 generally delays reporting of health costs on any W-2 Form until 2012. The Notice also provides transitional relief that exempts specific types of plans and coverages from reporting until further guidance is issued. Employers will not be required to report on those for whom they have no obligation to issue a Form W-2, such as retirees or COBRA continuants.*

### Background

The Patient Protection and Affordable Care Act (PPACA) amended the Internal Revenue Code (Code) to require employers to report the aggregate cost of “applicable employer-sponsored” group health plan coverage on Form W-2 for taxable years beginning on or after January 1, 2011.

***BUCK COMMENT.*** *The reporting is meant solely for informational purposes (to provide employees with the cost of their health care coverage) and does not cause these amounts to become subject to taxation.*

The Code requires the employer to determine the aggregate cost under rules similar to those for determining the “applicable premium” for purposes of COBRA continuation coverage. Internal Revenue Service (IRS) [Notice 2010-69](#) provided that the informational reporting requirement is not mandatory for Forms W-2 issued for 2011. (See our October 12, 2010 [For Your Information](#).)

### Notice 2011-28

Generally, IRS [Notice 2011-28](#) provides interim guidance for the Form W-2 informational reporting requirement starting with Forms W-2 issued for calendar year 2012. Employers who chose to voluntarily report on earlier Forms W-2 may look to Notice 2011-28 for guidance. Notice 2011-28 is applicable until the IRS issues further guidance. Future guidance will apply only to calendar years beginning six months or more after the IRS issues the new guidance. Shortly after issuing Notice 2011-28, the IRS added to its webpage [Frequently Asked Questions](#) on Form W-2 reporting.

## Employers Required to Comply

Nearly all types of employers must comply – private companies, public sector entities, and church organizations. Indian Tribal Governments are not required to comply. Notice 2011-28 exempts employers that filed fewer than 250 Forms W-2 for 2011. Unless changed by future guidance, those who file fewer than 250 Forms W-2 for one calendar year will be exempted for the next calendar year.

## Applicable Employer-Sponsored Coverage

Employers must report the cost of applicable employer-sponsored coverage on Form W-2. Applicable employer-sponsored coverage is generally any coverage under a group health plan provided to an employee that is excludable from the employee's gross income.

The Notice provides that applicable employer-sponsored coverage does not include the following:

- Coverage of HIPAA “excepted benefits” (accident or disability income, liability, workers’ compensation or similar insurance, automobile medical payment, credit-only, and other similar coverage specified in regulations if the benefits for medical care are secondary or incidental to other insurance benefits);
- Long-term care coverage;
- Stand-alone insured dental and vision coverage (but see below regarding the treatment of self-funded dental or vision coverage);
- Non-coordinated coverage for a specified disease or illness (e.g., cancer coverage); and
- Hospital indemnity or other fixed indemnity insurance if benefit payments are not excludable from gross income (and no business deduction is allowed).

***BUCK COMMENT.*** Note that the exclusion for HIPAA excepted benefits does not extend to the cost of care provided by on-site medical clinics.

## Aggregate Reportable Cost

The aggregate reportable cost of applicable employer-sponsored coverage includes amounts paid by both the employer and the employee, regardless of whether the employee's contributions are made on a pre- or post-tax basis.

Notice 2011-28 provides that although self-insured vision and dental plans fall within the definition of applicable employer-sponsored coverage, the cost of such coverage does not have to be reported if not integrated with medical coverage. It also provides that contributions to a health savings account (HSA) and contributions to an Archer MSA are not included in the aggregate reportable cost. Generally, salary reduction amounts contributed to a health FSA offered through a cafeteria plan are not reportable. However, flex credits applied to a health FSA

must be reported in the aggregate cost when the amount in the health FSA for the plan year exceeds the employee's salary reductions for all qualified benefits offered through the cafeteria plan. Flex credits applied to a health FSA do not have to be reported if the amount in the health FSA for the plan year is less than the employee's total salary reduction amounts for all qualified benefits.

Until further guidance is issued, an employer is not required to include the cost of coverage under a health reimbursement account (HRA) in determining the aggregate reportable cost. Any reimbursements to highly compensated individuals as a result of a violation of the nondiscrimination provisions of Code Section 105(h) do not affect the calculation of the aggregate reportable cost.

## Plans Exempt from the Reporting Requirements

Until further guidance is issued, employers are not required to report costs associated with (1) multiemployer plans; (2) self-insured group health plans that are not subject to any federal continuation coverage requirements such as COBRA (e.g., plans sponsored by church organizations); and (3) government plan coverage primarily for the benefit of members of the military and their families.

***BUCK COMMENT.*** *The exemption from reporting for amounts contributed to multiemployer plans is welcome news.*

## Calculating the Cost of Coverage

Generally, the Code provides that the aggregate cost is to be determined under rules similar to the rules for determining the premium for COBRA continuation coverage. Fully insured plans use the premium charged by the carrier. In the case of a self-insured plan, COBRA requires the employer to calculate the premium using either an actuarial method or a past cost method. Until there is guidance, employers must make that calculation in good faith using a reasonable interpretation of the Code.

Regardless of the method used to calculate the aggregate reportable cost, Notice 2011-28 applies the following rules for Form W-2 reporting:

- All plan costs must be reported on a calendar year basis, regardless of the employer's plan year;
- If an employee begins, changes, or terminates coverage during the year, the reported costs must reflect the actual periods of coverage; and
- Where plans utilize composite rates, it is acceptable to report based on those composite rates provided this method is applied to all types of coverage offered under the plan.

***BUCK COMMENT.*** *It is not acceptable to simply look at a census on a given date and extrapolate plan costs for the entire year. The employer must track actual coverage for each employee over the course of the entire calendar year and report accordingly.*

## Administration

Under Notice 2011-28, employers must report the aggregate cost of applicable employer-sponsored group health plan coverage on Forms W-2 issued for 2012. The information is not reportable on the summary Form W-3. The employer reports the amount in Box 12 of the Form W-2 using code DD. Notice 2011-28 provides special rules for the following situations:

- **Employees Terminating Service During the Calendar Year.** An employer may apply any reasonable method of reporting the cost of coverage for an employee who terminates employment before the end of the calendar year. The employer has the flexibility to report only the cost of coverage received prior to termination or to report the cost of COBRA coverage. The same method must be used for all employees receiving coverage under the same plan who terminate employment before the end of the year. If an employee terminates employment and requests a Form W-2 before the end of the 2012 calendar year, the employer is not required to report any amount in Box 12.

***BUCK COMMENT.** The non-reporting mid-year rule is currently only a rule for the 2012 Form W-2. The IRS has said it is looking at what the rule should be in future years. In addition, the Notice only addresses situations where the former employee requests the Form W-2 upon mid-year separation; however, logically, the same non-reporting rule should apply in situations where the employer voluntarily provides the Form W-2 on separation during 2012.*

- **Individuals with Multiple Related Employers.** If employers are related employers and one of the employers is a common paymaster, the common paymaster must include the aggregate reportable cost of the coverage provided by all the employers for whom it serves. The individual employers do not report the cost of coverage that they provided.
- **Employee Transfers to Successor Employer.** If an employee transfers to a successor employer, both the predecessor and the successor must report the aggregate reportable cost of coverage that each provided unless the successor employer chooses to issue one Form W-2 reflecting wages paid and the aggregate reportable cost of health coverage provided to the employee during the calendar year by both the predecessor and successor employers.
- **Retirees and COBRA Participants.** An employer is not required to report aggregate costs of health coverage to an individual for whom the employer is not otherwise required to issue a Form W-2.

***BUCK COMMENT.** Many feared that the Form W-2 reporting requirement would include all plan participants. This is great news for plan sponsors.*

## Transition Rules

Certain of the rules discussed above are specifically designated by the Notice as transition rules. These are the rules on (1) employers with fewer than 250 Forms W-2; (2) employees who terminate before the end of the year; (3) HRAs; (4) self-insured dental and vision plans; and (5) self-insured plans of employers excluded from COBRA.

The IRS provides that future guidance may limit the applicability of the transition rules, but any change will be prospective only and will not apply earlier than January 1 of the calendar year beginning at least six months after the date of issuance of any change.

## Conclusion

The IRS recognizes that there is little guidance on how to determine COBRA costs for self-funded plans. Notice 2011-28 accepts this and does not try to take on the far bigger project of answering questions about determining COBRA cost. The need for more guidance on the question of calculating COBRA premiums will become especially important as the “Cadillac” tax begins to take effect in 2018.

The IRS has chosen to defer informational reporting for small plans and participants in multiemployer plans for now as they try to work through some of the administrative complexities surrounding multiemployer plans. The IRS invites comments on Notice 2011-28. Comments must be submitted by June 27, 2011.

Buck’s consultants are available to assist you in better understanding the guidance and how it applies to your plans. We are also available to assist you in submitting comments if you wish to do so.

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*This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.*