

WHAT AN EMPLOYER SHOULD DO WITH ITS HEALTH INSURANCE REBATE CHECK

By James R. Olson

Recently, many employers have been receiving checks labeled “rebates” from their healthcare insurers, and their first question is, “Why am I receiving this?” Under the Patient Protection and Affordable Care Act (“PPACA”), health insurance issuers in the group or individual market must provide an annual rebate to enrollees if the issuer’s medical loss ratio (“MLR”) fails to meet minimum percentages. These minimum percentages are 85 percent in the large group market and 80 percent in the small group or individual market. The rebates may either be paid in cash or used to reduce the amount of an employee’s health insurance premium payment. Insurers must distribute the rebates by August 1.

These rebate checks can pose a trap for employers. First, many are unaware of the rebate provision in PPACA. Second, many are unsure what to do with them. Because these checks represent a rebate of premiums paid to the insurance company for the purchase of health insurance, employers must be alert as to what they are required to do with the checks. Unfortunately, many insurance providers are leery of discussing how to handle distributions of rebate due to legal considerations.

As a general rule, if the healthcare plan includes a trust or other provisions dealing with assets that are returned to the plan, the plan sponsor has a fiduciary obligation to treat the rebate as plan assets and follow the terms of the plan. If the plan sponsor is the policyholder, then determining the plan’s portion, if any, may depend on provi-

sions in the plan or the policy or on the manner in which the plan sponsor and the plan participants have shared in the cost of the policy. If the employer is the policyholder and the insurance policy or contract, together with other instruments governing the plan, can fairly be read to provide that some part or all of a distribution belongs to the employer, then that language will generally govern. In that case, the employer may retain distributions. In such an instance, it is generally recommended that the employer use the rebate to reduce its current year contribution.

However, if the plan document and other information regarding the plan do not resolve the ownership interest, then the plan sponsor must look to the person or entity that paid for the insurance. As a result, to the extent that an employee pays for their health insurance, the employee may be entitled to a portion of the rebate check. Where the employer sponsors the insurance plan and pays for 100 percent of the insurance premium, the employer may be entitled to the check. Finally, where the employer and employee share the cost of the insurance, the rebate should be allocated between the two parties.

In the situation where the employee is entitled to the rebate, the employer has the option to issue the rebate in cash or to use the rebate to reduce the employee’s current year contribution for insurance. One complicating factor in issuing cash to the employee is where the participant made their contribution on a pre-tax basis is taxable in

(continued on page 2)

(continued from page 1)

the year of receipt. In that case, to the extent that the employer actually issues the rebate back to the participant in lieu of using the rebate to reduce the current year contribution, the employee should have taxable income subject to withholding and FICA taxes.

The consequences of receiving a rebate check can be confusing. Schnader's Tax Group can assist in determining what steps an employer should take to insure proper distribution of rebate proceeds. ♦

IRS Circular 230 Disclosure. To ensure compliance with any requirements imposed by the IRS, we inform you that the federal tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney–client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

For more information about Schnader's Tax Practice Group or to speak with a member of the group at a particular Schnader office location, please contact:

*Jonathan R. Flora, Chair
215-751-2347; 415-364-6727
jflora@schnader.com*

*James R. Olson
412-577-5109
jolson@schnader.com*

www.schnader.com
©2012 Schnader Harrison Segal & Lewis LLP