LAWRENCE TAX SERVICE

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(Updated 12-24-15)

Dear LTS Client,

Beginning in 2014 (and continuing thereafter), the "individual mandate" under the Affordable Care Act begins. Not only are all individuals required to have insurance but all people who are required to file a tax return must report their insurance on that return. So we will need quite a bit of additional information to prepare your 2014 and subsequent returns.

In reporting their insurance, people will fall into one of four categories:

- You got qualifying insurance through the exchange (the Marketplace);
- You got qualifying insurance through some other source such as an employer or Medicare;
- You did *not* get qualifying insurance and you do not have an exemption which means you may be subject to the shared responsibility penalty for not having insurance;
- You did *not* get qualifying insurance but you *are* entitled to an exemption from the shared responsibility penalty.

To complicate matters, the above four categories apply to each member of your family and may apply *differently* to each member (for example, different members of the family have insurance from different sources). Moreover, any one member of your family may have changed categories during the year. The information we request below must cover each family member on a month-to-month basis. If a family member's situation was the same for the entire year, then you can document that member's insurance on a yearly basis.

Exchange: If you got insurance through the exchange, the exchange will send you a Form 1095-A, Health Insurance Marketplace Statement. This form will be used to claim any Premium Tax Credit to which you may be entitled. Note that we *cannot* give you this tax credit if you don't provide us with the form.

Other source: If you got insurance from another source, you will need to bring us documentation. If it is government insurance, such as Medicare, the government will send you the documentation. If it is employer insurance, the employer will provide you with Form 1095-B or Form 1095-C. If they do not provide either form, we can accept documentation such as a copy of the insurance policy. If you cannot provide any documentation, but you are sure you had qualifying coverage, your signature on the Engagement Letter will also serve to acknowledge this matter.

Exemption: Some exemptions are claimed on the tax return and others require a certificate from the exchange. We cannot claim an exchange exemption without that certificate. Examples of exemptions that require certification from the exchange include:

- You are a member of certain religious sects;
- You did not have access to affordable coverage at the beginning of the year due to your household income;
- You were notified that your health insurance plan would not be renewed and other plans were not affordable; or
- You experienced other problems that prevented you from getting insurance. This broad category includes homelessness, evictions or foreclosures, domestic violence, bankruptcy, illness or death in the family, and many other hardships.

If you think you qualify for an exchange exemption, visit http://marketplace.cms.gov to learn more and to get an application for exemption. We suggest you file the application as soon as possible.

As you can see, preparing your tax return will include new and complex issues to process.

Sincerely, Lawrence Tax Service

LTS Client Letter on New ACA Health Plan issues for Small Business Employers

(Re: Employer Reimbursements of Individual Health Insurance Policies & HRA's)

Dear Client: January 1, 2016

For plan years beginning after 2013, the Affordable Care Act (ACA) institutes so-called market reform provisions that place a whole host of new restrictions on group health plans. The penalty for violating the market reform restrictions is a punitive $100-per-day, per-employee penalty, or $36,500 per-employee, per-year. With limited exceptions, these new market reform provisions significantly restrict an employer's ability to reimburse employees for premiums paid on individual health insurance policies, referred to as employer payment arrangements, and Health Reimbursement Arrangements (HRA's) for other out of pocket medical expenses.

Employer Payment Arrangements

Under employer payment arrangements, the employer reimburses employees for premiums they pay on their individual health insurance policies (or the employer sometimes pays the premium on behalf of the employee). As long as the employer (1) makes the reimbursement under a medical reimbursement plan and (2) verifies that the reimbursement was spent only for insurance coverage, the premium reimbursement in the past has been excludable from the employee's income. These arrangements have long been popular with small employers who want to offer health insurance but are unwilling or unable to purchase group health coverage.

Unfortunately, according to the IRS and Department of Labor (DOL), group health plans can't be integrated with individual market policies to meet the new market reform provisions. Furthermore, according to the DOL, an employer that reimburses employees for the individual policies (on a pretax or after-tax basis) has established a group health plan because the arrangement's purpose is to provide medical care to its employees. Therefore, reimbursing employees' for any medical costs including premiums paid on individual policies and reimbursed health care expenses violates the market reform provisions, potentially subjecting the employer to a $100 per day per employee ($36,500 per year per employee) penalty.

Limited Exception for One-employee Insurance Plans (not HRA's). The market reform provisions regarding health insurance do not apply to business health plans that have only one participating employee. Therefore, it is still allowable to provide an employer payment arrangement, relating only to insurance, that covers only one employee. Note, however, that nondiscrimination rules require that essentially all full-time employees must participate in the plan.

Bottom Line: While still technically allowed under the tax code, employer payment arrangements, other than arrangements covering only one employee, are no longer a viable alternative.

Acceptable Alternatives

Because of the ACA market reform requirements, employers are basically precluded from subsidizing or reimbursing employees for individual health insurance policies and other medical costs where there is more than one employee participating in the plan. Employers can, however, do any of the following:

- Provide a tax-free fringe benefit by purchasing an ACA-approved employer-sponsored group health plan that also integrates with the business HRA. Small employers with 50 or fewer employees can provide a group health plan through the SHOP Marketplace or other commercial group insurance providers. A cafeteria plan can be set up for pretax funding of the employee portion of the premium.

- Increase the employee's taxable wages to provide funds that the employee may use to pay for individual insurance policies and medical costs. However, the employer cannot require that the funds be used to pay for insurance—it must be the employee's decision to do so (or not). The employer can claim a deduction for the wages paid. The wages are taxable to the employee, but the employee can claim the premiums as an itemized deduction subject to the 10%-of-AGI limit (7.5% if age 65 or older).

Sincerely, Lawrence Tax Service