



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Warren Davidson
Member, U.S. House of Representatives
8857 Cincinnati-Dayton Road, #102
West Chester, OH 45069

Attention:

Dear Representative Davidson:

I am responding to your inquiry dated January 28, 2021, on behalf of your constituent, [REDACTED], who claims that his health savings account (HSA) custodian mismanaged his HSA and failed to provide him with a corrected Form 5948-SA, *HSA, Archer MSA, or Medicare Advantage MSA Information*. He also stated that his former employer made contributions to his HSA that exceeded the annual HSA contribution limit.

Specifically, [REDACTED] asked for help to obtain a corrected Form 5498-SA and would like his former employer to refund the excess contributions to his HSA. He also asked if he has rights that protect him from HSA mismanagement and asked who is responsible for handling consumer or policy information requests. While I cannot respond to the specific details of [REDACTED] situation, I can provide general information about HSAs.

Section 223(d)(1)(E) of the Internal Revenue Code provides that an individual's interest in an HSA is nonforfeitable. Notice 2008-59, 2008-29 I.R.B. 123 clarifies that when an employer contributes more than the annual limit to an employee's HSA due to an error, the employer may correct the error. Question and Answer 24 of Notice 2008-59 states that at the employer's option, the employer may ask the financial institution to return the excess amount to the employer. If the employer does not recover the excess amount, the employer must include the amount on the employee's Form W-2, *Wage and Tax Statement*, as wages for the year the employer made contributions.

Form 5498-SA is an informational form HSA custodians file with the IRS. Therefore, your constituent will need to contact his HSA custodian to obtain a corrected Form 5948-SA. While taxpayers should keep a copy of Form 5498-SA, please note that Form W-2 also shows HSA contributions. Your constituent can find more information about HSAs in IRS Publication 969, *Health Savings Accounts and Other Tax Favored Health Plans*, available online at <https://www.irs.gov/pub/irs-pdf/p969.pdf>.

In addition, the Employee Retirement Income Security Act of 1974 (ERISA) may govern your constituent's HSA. If so, he should contact the Department of Labor for information about ERISA, including applicable fiduciary duties.

I hope this information is helpful. If you have additional questions, please contact me or
at .

Sincerely,

Denise Trujillo
Branch Chief, Health and Welfare Branch
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)