



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Bob Goodlatte
Member, U.S. House of Representatives
70 North Mason Street
Harrisonburg, Virginia 22802

Attention:

Dear Congressman Goodlatte:

I am responding to your inquiry dated August 11, 2014, on behalf of your constituent, . He wrote about the ability of employers under the Affordable Care Act to reimburse medical expenses of employees with pre-tax dollars under section 105 of the Internal Revenue Code (Code).

Prior to the Affordable Care Act, an employer could reimburse employees for the medical expenses of the employee and the employee's family and exclude those amounts from the employee's income and wages under section 105(b) of the Code.

The Affordable Care Act has not changed the tax treatment of the reimbursement for employee medical expenses. However, these arrangements are considered to be group health plans and must satisfy the market reform rules enacted for them as part of the Affordable Care Act.

One of the requirements for group health plans, is that they cannot impose an annual or lifetime dollar limit on essential health benefits under section 2711 of the Public Health Service Act. An agreement by the employer to reimburse medical expenses up to a fixed amount is a group health plan under which there is an annual limit on essential health benefits. This fails to comply with the prohibition on annual limits under section 2711 of the Public Health Service Act.

If an employer offers a group health plan that satisfies the market reform rules by providing coverage for essential health benefits without annual limits in addition to a separate arrangement to pay for other medical expenses, the guidance we provided in Notice 2013-54 (2013-40 I.R.B. 287) allows the group health plan and the separate

arrangement to be combined to determine if together it satisfies the market reforms. If the employer does not offer the employee a group health plan and the employee obtains other coverage, such as when the employee is covered by an individual health insurance policy or Medicare, the separate arrangement cannot be combined with that other coverage to determine if it satisfies the market reform rules for group health plans.

Moreover, the coverage under a group health plan that does not satisfy the market reforms will generally disqualify the individual from receiving the premium tax credit under section 36B of the Code. This is because the Affordable Care Act generally does not allow an individual to receive both the benefits of pre-tax coverage under an employer-sponsored group health plan and the premium tax credit.

I hope this information is helpful. If you have any questions, please call me at _____, or _____ at _____.

Sincerely,

Harry Beker, Chief
Health and Welfare Branch
Office of Division Counsel/ Associate
Chief Counsel (Tax Exempt and
Government Entities)