

Part IV. Items of General Interest

Archer Medical Savings Accounts – Cut-Off Year

Announcement 2007-44

PURPOSE

Sections 220 (i) and (j) of the Internal Revenue Code provide that if the number of Archer Medical Savings Account (Archer MSA) returns filed for 2005 or 2006 or a statutorily specified projection of the number of Archer MSA returns that will be filed for 2005 or 2006 exceeds 750,000, then April 19, 2007, is a "cut-off" date for the Archer MSA pilot project. The Internal Revenue Service (IRS) has determined the following: (1) The applicable number of Archer MSA returns filed for 2004 is 39,037 and the applicable number of Archer MSA returns projected to be filed for 2005 is 35,246 (after reduction in each case for statutorily specified exclusions, such as the exclusion for previously uninsured taxpayers).

Consequently, 2005 is not a "cut-off" year for the Archer MSA pilot project. (2) The applicable number of Archer MSA returns filed for 2005 is 16,850 and the applicable number of Archer MSA returns projected to be filed for 2006 is 15,192 (after reduction in each case for statutorily specified exclusions, such as the exclusion for previously uninsured taxpayers). Consequently, April 19, 2007 is not a "cut-off" date and 2006 is not a "cut-off" year for the Archer MSA pilot project.

BACKGROUND

The Health Insurance Portability and Accountability Act of 1996 added section 220 to the Code to permit eligible individuals to establish Archer MSAs under a pilot project effective January 1, 1997. The pilot project, as amended by The Tax Relief and Health Care Act of 2006 (TRHCA), Pub. Law. No. 109-432, § 117, has a scheduled "cut-off" year of 2006, but may have an earlier "cut-off" date if the number of individuals who have established Archer MSAs exceeds certain numerical limitations. Trustees' reports for Archer MSAs established between (1) January 1, 2005 and June 30, 2005 and (2) January 1, 2006 and June 30, 2006, were due no later than March 20, 2007. IRS is required to publish a determination of whether 2005 or 2006 is a "cut-off" year no later than April 19, 2007. See sections 220 (i) and (j) as amended by TRHCA; Ann. 2007-24, 2007-10 I.R.B. 681.

If a year is a "cut-off" year, section 220 (i) (1) generally provides that no individual will be eligible for a deduction or exclusion for Archer MSA contributions for any taxable year beginning after the "cut-off" year unless the individual (A) was an active Archer MSA participant for any taxable year ending on or before the close of the "cut-off" year, or (B) first became an active Archer MSA participant for a taxable year ending after the "cut-off" year by reason of coverage under a high deductible health plan of an Archer MSA-participating employer.

Section 220 (j) (2) (A) provides that the numerical limitation for 2005 is exceeded

if the number of Archer MSA returns filed on or before April 15, 2005, for taxable years ending with or within the 2004 calendar year, plus the Secretary's estimate of the number of Archer MSA returns for those taxable years which will be filed after April 15, 2005, exceeds 750,000.

Section 220 (j) (2) (A) provides that the numerical limitation for 2006 is exceeded if the number of Archer MSA returns filed on or before April 15, 2006, for taxable years ending with or within the 2005 calendar year, plus the Secretary's estimate of the number of Archer MSA returns for those taxable years which will be filed after April 15, 2006, exceeds 750,000.

For this purpose, section 220 (j) (2) (A) provides that a tax return is an Archer MSA return for a taxable year if any exclusion is claimed under section 106 (b) or any deduction is claimed under section 220 for that taxable year. Section 220 (j) (2) (B) provides, as an alternative test, that: (1) the numerical limitation for 2005 is also exceeded if the sum of 90 percent of the Archer MSA returns for 2004 plus the product of 2.5 and the number of Archer MSAs for taxable years beginning in 2005 that are established during the portion of 2005 preceding July 1 (based on reports by Archer MSA trustees and custodians), exceeds 750,000 and (2) the numerical limitation for 2006 is also exceeded if the sum of 90 percent of the Archer MSA returns for 2005 plus the product of 2.5 and the number of Archer MSAs for taxable years beginning in 2006 that are established during the portion of 2006 preceding July 1 (based on reports by Archer MSA

trustees and custodians), exceeds 750,000.

Under section 220 (j) (3), in determining whether any calendar year is a "cut-off" year, the Archer MSA of any previously uninsured individual is not taken into account. In addition, section 220 (j) (4) (D) specifies that, to the extent practical, all Archer MSAs established by an individual are aggregated and two married individuals opening separate Archer MSAs are to be treated as having a single Archer MSA for purposes of determining the number of Archer MSAs.

2005 Not a Cut-Off Year

A total of 33,622 tax returns reporting an excludable or deductible contribution to an Archer MSA for the 2004 taxable year were filed by April 15, 2005. The number of taxpayers reported as being previously uninsured was not available. It has been estimated that an additional 5,415 tax returns reporting Archer MSA contributions for the 2005 taxable year have been or will be filed after April 15, 2005, including 0 taxpayers who were previously uninsured. Accordingly, it has been determined that there were 39,037 (33,622 plus 5,415) Archer MSA returns for 2005. As a result, 39,622 (39,037 plus 585) Archer MSA returns count toward the applicable statutory limitation for 2005 Archer MSA returns of 750,000.

Based on the Forms 8851 filed on or before March 20, 2007, by Archer MSA trustees and custodians, it has been determined that 45 taxpayers who did not have Archer MSA contributions for 2004 established Archer MSAs for 2005

during the portion of 2005 preceding July 1. Of this total, 0 taxpayers were reported by trustees and custodians as previously uninsured, and therefore are not taken into account in determining whether 2005 is a "cut-off" year. The alternative limitation for 2005 (90 percent of the applicable number of Archer MSA returns for 2004 plus the product of 2.5 and the number of applicable Archer MSAs established from January 1, 2005, through June 30, 2005) is 35,246 (90 percent of 39,037 plus 2.5 multiplied by 45), which is less than the statutory limit of 750,000. Thus, 2005 is not a "cut-off" year for the Archer MSA pilot project by reason of either the 2005 Archer MSA returns test of section 220 (j) (2) (A) or the alternative test of section 220 (j) (2) (B) of the Code.

2006 Not a Cut-Off Year

A total of 17,306 tax returns reporting an excludable or deductible contribution to an Archer MSA for the 2005 taxable year were filed by April 15, 2006. Of this total, 3,038 taxpayers were reported as being previously uninsured. It has been estimated that an additional 3,055 tax returns reporting Archer MSA contributions for the 2005 taxable year have been or will be filed after April 15, 2006, including 473 taxpayers who were previously uninsured. Accordingly, it has been determined that there were 20,361 (17,306 plus 3,055) Archer MSA returns for 2006. Of this total, 3,511 (3,038 plus 473) were for taxpayers reported as being previously uninsured. As a result, 16,850 (20,361 minus 3,511) Archer MSA returns count toward the applicable statutory limitation for 2006 Archer MSA returns of 750,000.

Based on the Forms 8851 filed on or before March 20, 2007, by Archer MSA trustees and custodians, it has been determined that 11 taxpayers who did not have Archer MSA contributions for 2005 established Archer MSAs for 2006 during the portion of 2006 preceding July 1. Of this total, 0 taxpayers were reported by trustees and custodians as previously uninsured, and therefore are not taken into account in determining whether 2006 is a "cut-off year. In addition, 0 taxpayers were reported by trustees and custodians as excludable from the count because his or her spouse also established an Archer MSA. Accordingly, the applicable number of Archer MSAs established from January 1, 2006, through June 30, 2006, is 11 (11 minus (0 plus 0)). The alternative limitation for 2006 (90 percent of the applicable number of Archer MSA returns for 2005 plus the product of 2.5 and the number of applicable Archer MSAs established from January 1, 2006, through June 30, 2006) is 15,192 (90 percent of 16,850 plus 2.5 multiplied by 11), which is less than the statutory limit of 750,000. Thus, 2006 is not a "cut-off" year for the Archer MSA pilot project by reason of either the 2006 Archer MSA returns test of section 220 (j) (2) (A) or the alternative test of section 220 (j) (2) (B) of the Code.

Questions regarding this announcement may be directed to Shoshanna Tanner in the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) at (202) 622-6080 (not a toll-free number).