

Transition Relief for Employees and Related Individuals Eligible to Enroll in Eligible Employer-Sponsored Health Plans for Non-Calendar Plan Years that Begin in 2013 and End in 2014

Notice 2013-42

PURPOSE

This notice provides relief from the § 5000A shared responsibility payment for specified individuals who are eligible to enroll in certain eligible employer-sponsored health plans with a plan year other than a calendar year (non-calendar year plans) if the plan year begins in 2013 and ends in 2014.

BACKGROUND

For each month beginning after December 31, 2013, § 5000A requires individuals who are not exempt to either maintain minimum essential coverage for themselves and any nonexempt family members or include an individual shared responsibility payment with their Federal income tax return. A taxpayer is liable under § 5000A for any nonexempt individual whom the taxpayer may claim as a dependent.

Under § 5000A(f)(2), minimum essential coverage includes coverage under an eligible employer-sponsored plan. On February 1, 2013, the Treasury Department and the Internal Revenue Service (IRS) published proposed regulations under § 5000A that provide that an eligible employer-sponsored plan means, with respect to an employee, a group health plan (whether an insured group health plan or a self-insured group health plan) or group health insurance coverage offered by an employer to the employee that is (i) a governmental plan (within the meaning of section 2791(d)(8) of the Public Health

Service Act (42 U.S.C. 300gg-91(d)(8)), (ii) any other plan or coverage offered in the small or large group market within a State (including for this purpose a self-insured group health plan), or (iii) a grandfathered health plan offered in a group market. See Prop. Reg. § 1.5000A-2(c)(1) (78 FR 7314, 7325).

The proposed regulations provide that an individual has minimum essential coverage for a month in which the individual is enrolled in and entitled to receive benefits under a program or plan identified as minimum essential coverage. See Prop. Reg. § 1.5000A-1(b)(1) (78 FR 7314, 7324).

Many employer-sponsored plans have a non-calendar plan year. Generally, eligible employer-sponsored plans do not permit employees to enroll in the plan after the beginning of a plan year (as defined in Prop. Reg. § 54.4980H-1(a)(30), 78 FR 242) unless certain triggering events occur, such as a change in employment status. Without transition relief, therefore, many individuals eligible to enroll in non-calendar year eligible employer-sponsored plans would need to enroll in eligible employer-sponsored plans in 2013, when § 5000A does not yet apply, in order to maintain coverage under an eligible employer-sponsored plan for months in 2014, when § 5000A applies.

On December 28, 2012, the Treasury Department and the IRS issued proposed regulations under § 4980H addressing the shared responsibility of certain employers to provide minimum essential coverage to their full-time employees. The preamble to the § 4980H proposed regulations provides transition relief to certain employers that maintain non-calendar year plans as of December 27, 2012 (the day before the

proposed regulations were issued).¹ See Prop. Reg. § 54.4980H pmb1. (78 FR 218, 236). In general, if an applicable large employer offers to an employee coverage that is affordable and provides minimum value for the first non-calendar year plan year beginning in 2014 (2014-2015 plan year), the employer will not be liable for a § 4980H assessable payment with respect to that employee for the period prior to the first day of the 2014-2015 plan year if the employee was eligible to participate in the plan as of December 27, 2012. Similar relief may also be available for certain employers with respect to employees not eligible to participate in the plan as of December 27, 2012.

In addition, the preamble to the § 4980H proposed regulations provides transition relief from the election rules proposed in § 1.125-2 with respect to salary reduction elections under a cafeteria plan for an employer-provided accident and health plan with a non-calendar year beginning in 2013 (2013-2014 plan year). Under that relief, employers may permit employees enrolled in a plan with a 2013-2014 plan year to make new cafeteria plan elections for 2014. That relief reflects the concern that an employee's preferences may change due to the implementation of the Affordable Care Act. See Prop. Reg. § 54.4980H pmb1. (78 FR 218, 237).

DISCUSSION

In order to provide transition relief during the first year that § 5000A applies to individual taxpayers, an employee, or an individual having a relationship to the

¹ The preamble to the § 4980H regulations refers to fiscal year plans. To clarify that "fiscal year" refers to a plan, and not a taxpayer, this notice uses the term "non-calendar year plans." In each case, however, the term used refers to a plan with a plan year that is not the calendar year.

employee, who is eligible to enroll in a non-calendar year eligible employer-sponsored plan with a plan year beginning in 2013 and ending in 2014 (the 2013-2014 plan year) will not be liable for the § 5000A shared responsibility payment for certain months in 2014. The transition relief begins in January 2014 and continues through the month in which the 2013-2014 plan year ends.

The relief provided by this notice applies only for determining a taxpayer's § 5000A shared responsibility payment for not maintaining minimum essential coverage. Any month in 2014 for which an individual is eligible for the transition relief provided by this notice will not be counted in determining a continuous period of less than 3 months for purposes of the short coverage gap exemption described in § 5000A(e)(4).

EXAMPLES

Example 1. Eligible for Enrollment in a Non-Calendar Year Plan for the 2013-2014 Plan Year. Taxpayer B is unmarried and has a 5-year-old daughter, D. B and D are eligible to enroll in a non-calendar year eligible employer-sponsored plan offered by B's employer, X, whose plan year begins on August 1, 2013 and ends on July 31, 2014. Neither B nor D enrolls in X's employer-sponsored plan for the 2013-2014 plan year. Both B and D are eligible for the transition relief provided in this notice for January 2014 through July 2014.

Example 2. Married Individuals each Eligible for Enrollment in a Non-Calendar Year Plan of an Employer for the 2013-2014 Plan Year and in a Calendar Year Plan of the Other Spouse's Employer for 2014. F and G are married. F and G are eligible to enroll in a non-calendar year eligible employer-sponsored plan offered by F's employer, Y, whose plan year begins on August 1, 2013 and ends on July 31, 2014. Neither F nor G enrolls in Y's employer-sponsored plan for the 2013-2014 plan year. In addition, F and G are eligible to enroll in a calendar year eligible employer-sponsored plan offered by G's employer, Z, beginning on January 1, 2014. Neither F nor G enrolls in Z's employer-sponsored plan for the 2014 plan year. Both F and G are eligible for the transition relief provided in this notice for January 2014 through July 2014.

DRAFTING INFORMATION

The principal author of this notice is John B. Lovelace of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Mr. Lovelace at (202) 622-4960 (not a toll-free call).