



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

OFFICE OF THE CHIEF COUNSEL

September 20, 2017

Number: **2017-0027**
Release Date: 9/29/2017

CONEX-126087-17

UIL Code: 4980B.03-00

The Honorable Ron DeSantis
Member, U.S. House of Representatives
31 Lupi Court, Suite 130
Palm Coast, FL 32137

Attention:

Dear Representative DeSantis:

I am responding to your inquiry dated August 8, 2017, on behalf of your constituent, . asked us to determine if his former employer properly calculated his premium as prescribed under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) under Section 4980B of the Internal Revenue Code (the Code) for his health reimbursement arrangement (HRA).

provided information that shows his former employer sponsors a high deductible health plan (HDHP) combined with an HRA for its active employees. It appears that his former employer's COBRA practices require a qualified beneficiary who chooses to elect COBRA continuation coverage to elect both the HDHP and the HRA.

Your constituent elected COBRA coverage for his former employer's HDHP and HRA. He disputes the COBRA premium charged by his former employer for the HRA. He asked that we audit his former employer's COBRA practices to determine whether it charged excessive premiums for the HRA portion of his COBRA coverage. Your constituent also states that his former employer failed to notify him about the increase in the premium for HRA coverage or about its open enrollment process in February 2016.

Under COBRA, an employer can charge a qualified beneficiary, like your constituent, the "applicable premium." The applicable premium is the cost to the plan of the coverage for similarly situated beneficiaries to whom a qualifying event has not occurred, plus 2 percent for administrative expenses. See Section 4980B(f)(2)(C)(i).

We issued guidance that provides:

- HRAs are subject to COBRA
- the COBRA applicable premium under an HRA may not be based on a qualified beneficiary's reimbursement amounts available from the HRA
- the COBRA premium for an HRA is determined under existing rules in Section 4980B. See Notice 2002-45 (enclosed).

COBRA permits the plan administrator to choose between one of two methods for determining COBRA premiums for a self-funded plan. The applicable premium can be calculated either on:

- an actuarial basis, or
- on the basis of past cost. See Section 4980B(f)(4)(B).

The IRS has not issued specific guidance on how to determine the applicable premium under either method. Based on the information provided in your constituent's case, we can't determine whether his former employer's charge for HRA premiums exceeds the amount determined under either method or whether his employer is not operating in good faith compliance with a reasonable interpretation of the statute.

In response to his request for the IRS to audit his former employer's COBRA operational requirements, the IRS uses several different methods to select an organization's accounts and financial information for review. Information is evaluated for reliability and accuracy before it is used as the basis for an examination or investigation. Individuals, such as your constituent, can use Form 3949-A, Information Referral, to report suspected tax law violations by individuals and businesses to the IRS. This form can be found at www.irs.gov.

In addition, if we decide to conduct an audit, we cannot provide your constituent with any information concerning any action the IRS may or may not have taken, with respect to a specific taxpayer as such information is the return information of that taxpayer, as that term is defined under Section 6103(b)(2), and can only be provided to your constituent if one of the exceptions to the general prohibition on disclosure of confidential tax information provided for at Section 6103(a) has been met. Based on the information provided, we are unable to verify that your constituent has met any of the exceptions under Section 6103.

Please note that the Department of Labor (DOL) and the IRS administer COBRA for private-sector plans. DOL is responsible for administering notice requirements and disclosures that employers must provide to qualified beneficiaries under COBRA. Your constituent may want to contact DOL's Employee Benefits Security Administration (EBSA) electronically at askebsa.dol.gov or call toll free 1-866-444-3272 concerning whether his former employer complied with the COBRA notice and disclosure requirements with respect to notification about HRA premium increases and its open enrollment process.

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

Sincerely,

Denise Trujillo, Branch Chief
Health and Welfare Branch
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure: