

Hot Topics for Health & Welfare Plans

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JOHNSON LAMBERT
CPAs AND CONSULTANTS

GROOM LAW GROUP
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Speakers

Diane Marotta

Partner

Johnson Lambert & Co. LLP

Jenifer Cromwell

Senior Associate

Groom Law Group, Chartered

Presentation Overview

- ❖ Form 5500 & audit issues
- ❖ Health Reimbursement Arrangements
- ❖ Section 125-Cafeteria Plans

Form 5500 & Audit Issues

- ❖ Form 5500 –
 - Who must file?
 - Changes impacting health & welfare plans
 - Common pitfalls on health & welfare plan filings

- ❖ When is an audit required for a health & welfare plan?

- ❖ Complexities of auditing health & welfare plans

Form 5500 – Who must file

- ❖ Welfare plans must file unless meet a specific exemption; can be a complicated determination

- ❖ Common exceptions
 - Fewer than 100 participants at beginning of plan year, and one of the following:
 - Fully insured
 - Unfunded
 - Combination of insured and unfunded

Form 5500- Who must file

❖ Unfunded

- No trust (or separate fund or account deemed to be a trust under state law) exists that holds participant and/or employer contributions

❖ Fully insured

- Benefits provided exclusively through insurance contracts or policies; premiums paid directly from employer assets and/or employee contributions forwarded within 3 months
- ASO (Administrative Services Only) agreements do not qualify - plan bears insurance risk

Form 5500 – Who must file

❖ Common exceptions (continued)

- Unfunded and/or insured plan that provides benefits to only select group of management or highly compensated employees
- Maintained solely to comply with workers' compensation, unemployment compensation, or disability insurance laws
- Government or church plan
- Day care center

Form 5500 – 2009 Filing Issues

❖ New Schedule C

- Report service providers receiving \$5000 or more in direct or indirect compensation paid by the plan

Form 5500 – Common Pitfalls

- ❖ Correct reporting of prohibited transactions
- ❖ Schedule H – question 4(1)
 - Has the plan failed to provide any benefits when due under the plan?
- ❖ Service providers (TPAs) are not insurance companies – do not belong on Schedule A
- ❖ Fees paid to an insurance carrier under an “Administrative Services Only” contract are reportable on Sch. C, rather than Sch. A

Form 5500 – Common Pitfalls

❖ Incorrect response to Line 9 –

- *Funding arrangement* is the method for the receipt, holding, investment, and transmittal of plan assets prior to the time the plan actually provides benefits.
- *Benefit arrangement* is the method by which the plan provides benefits to participants.

When is an audit required?

- ❖ Complicated – AICPA Audit Guide Flowchart
- ❖ Generally, over 100 participants at beginning of plan year
- ❖ Exceptions:
 - Less than 120 participants at beg of plan yearAND
 - Filed Form 5500 – Schedule I for previous plan year

When is an audit required?

- ❖ Exceptions (Continued):
 - Plan is
 - Unfunded
 - Fully insured
 - Combination of Unfunded and Fully Insured

Audit Complexities

- ❖ Defined benefit, self-insured plans:
 - Auditing Claims
 - Auditing plan obligations

- ❖ Unrelated business income tax

Auditing Claims

- ❖ Service provider processing claims may or may not have a SAS 70 that you can rely on
- ❖ Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliance balanced with SAS 103 documentation requirements
 - PHI – Protected Health Information - Information that identifies an individual and reveals a past, present or future medical condition or diagnosis
 - "De-identified" health information not subject to HIPAA

Auditing Claims

- ❖ Expertise required to audit claim files
- ❖ Objectives:
 - Validity – evidence services provided, and that they are covered under the plan
 - Eligibility – was the person who received services covered under the plan as of date of service?
 - Accuracy of Payment – correct amount? Copays and deductibles applied correctly?
 - Receipt of payment – compare amount of payment to cash disbursement

Auditing Plan Obligations

❖ Types:

- Amounts currently payable (including IBNR)
- Post-employment benefits
- Post-retirement benefits

❖ SAS 73 – Use of specialist

- Evaluate qualifications
- Test completeness & accuracy of data provided and used in calculation
- Obtain an understanding of the actuary's objectives, scope of work, methods and assumptions and consistency of application

Unrelated Business Income Tax

- ❖ *Unrelated business income* – any trade or business regularly carried on by the trust or by a partnership of which the trust is a member
- ❖ Tax exempt health & welfare plans – subject to UBIT on investment income if their assets exceed certain allowable reserves
 - Assets > claims payable + IBNR
 - Does not include postretirement medical liabilities

Health Reimbursement Arrangements

❖ Health Reimbursement Arrangement (“HRA”) is an arrangement that:

- (1) reimburses employees for Code § 213(d) medical care expenses for the employee, the employee’s spouse and dependents;
- (2) provides for reimbursements up to a maximum dollar amount for a coverage period with any unused amounts carried forward to increase the maximum reimbursement amount in a subsequent period; and
- (3) that is paid for solely by the employer and not by the employee pursuant to a salary reduction election under a § 125 cafeteria plan.

HRAs

- ❖ IRS Guidance – Rev. Ruling 2002-41 and IRS Notice 2002-45
 - Describes the rules and elements of HRAs
- ❖ Tax Treatment
 - Like other employer-provided health coverage
 - Internal Revenue Code §§ 106 and 105 allow for exclusion from gross income of amounts paid by employer for coverage and for amounts/benefits received

HRAs – A Comparison

- ❖ How are HRAs the same or different from FSAs and HSAs?
 - Generally reimburse the same expenses – Code § 213(d) with some differences
 - All account styled arrangements
 - Different contribution/funding source
 - Different contribution limits
 - Different carry-over of funds

FSA's and HSA's

Flexible Spending Accounts

- ❖ Employees receive reimbursement for certain Code § 213(d) medical expenses
- ❖ Generally offered as part of an employer's cafeteria plan
- ❖ Contributions typically made by employees through salary reduction
- ❖ “Use it or lose it” rule

Health Savings Accounts

- ❖ Trust or custodial account used to accumulate funds on a tax-preferred basis to pay for certain Code § 213(d) medical expenses
- ❖ Available to individuals covered by a high deductible health plan (“HDHP”) and no other health plan that is not a HDHP except for certain "permitted" insurance or coverage
- ❖ Contributions may be made by an employer, eligible individual, or both
- ❖ An HSA may be offered through a cafeteria plan

HRAs

- ❖ HRAs generally are ERISA plans and subject to ERISA reporting and disclosure, including Form 5500 – unless exception applies
- ❖ HRAs are subject to HIPAA portability and HIPAA privacy
- ❖ HRAs are subject to COBRA
- ❖ HRAs are subject to Code § 105(h) nondiscrimination

HRAs & Form 5500

❖ Same Form 5500 analysis

- Number of participants
- Funding

❖ HRA Funding

- Commonly unfunded – paid from employer’s general assets
- Do see funded HRAs particularly in retiree context
 - Voluntary employees’ beneficiary association (VEBAs)
 - If funded, must file Form 5500

HRAs Compliance Issues

- ❖ HRAs have the usual ERISA plan compliance issues
 - Plan document – drafting and updating
 - Plan amendments
 - Distribution of participant disclosures
 - COBRA
 - Code § 105(h) nondiscrimination testing

HRAs and COBRA

❖ COBRA does apply to HRAs

- Who is eligible for COBRA coverage?
- What level of coverage must be provided under COBRA?
- What is the applicable premium for COBRA under an HRA plan?
 - It's not 1/12th of the account balance or the annual HRA contribution
 - Many unanswered questions in this area

HRAs and Code § 105(h)

- ❖ Code § 105(h) nondiscrimination rules apply to HRAs
 - Under Code § 105(h), self-insured medical expense reimbursement plans cannot discriminate in favor of highly compensated employees as to eligibility and benefits
 - HCE defined
 - What is the eligibility test?
 - What is the benefits test?

Code § 125 – Cafeteria Plans

- ❖ Code § 125 sets forth the requirements for the design and operation of cafeteria plans
- ❖ Proposed IRS regulations issued August 6, 2007 – expecting final regulations “soon”
- ❖ Code § 125 defines a cafeteria plan as
 - a written plan that is maintained by an employer
 - for the benefit of its employees
 - where participants may choose among two or more benefits consisting of cash and nontaxable qualified benefits

Code § 125 – Cafeteria Plans

❖ Written plan requirement

- Sometimes clients don't have a written plan
- What needs to be said in the plan?

❖ Who may participate in a cafeteria plan?

- Employees

❖ Permissible benefits

- Only certain "qualified" benefits or cash may be part of the cafeteria plan

Code § 125 – Cafeteria Plans

❖ Qualified benefits – some examples

- Coverage under an accident or health plan
 - Health HSAs
 - Disability and AD&D insurance
- Dependent care assistance program (DCAP)
- Group term life insurance for employee
- Health savings accounts (HSAs)

Code § 125 – Cafeteria Plans

❖ Contributions

- Participant contributions
 - Salary reductions (treated as employer contributions)
 - Pre-tax and after-tax contributions
- Employer contributions
- Limits on amounts
 - Health FSA
 - Dependent care

Code § 125 – Cafeteria Plans

❖ Elections

- Employees must elect to participate in the cafeteria plan
- Election generally must be made in advance
- Election must be irrevocable with some exceptions
 - Mid-year election changes
 - HSA contribution changes must be permitted monthly and when HSA eligibility is lost

Code § 125 – Cafeteria Plans

❖ Mid-year election changes

- Plans may (but are not required to) permit mid-year election changes
- Change must be because of one of 14 certain events
 - events include, for example:
 - change in status
 - cost changes
 - Curtailment or improvement in coverage
 - change in coverage under other employer plan
 - HIPAA special enrollment right

Code § 125 – Cafeteria Plans

Compliance Issues

❖ Audits

- IRS audits – documents and operation, including nondiscrimination testing

❖ Reporting

- No Form 5500 for cafeteria plan
 - Underlying benefits/plans still must file Form 5500

❖ Participant disclosures

- Underlying benefits/plans have disclosure requirements

Additional Resources

❖ AICPA Employee Benefit Plan Audit Quality Center

<http://ebpqac.aicpa.org/>

❖ IRS publications and guidance <http://www.irs.gov/>

Contact Information

Diane Marotta

Partner

Johnson Lambert & Co. LLP

3110 Fairview Park Drive, Suite 800

Falls Church, VA 22042

Direct: 703-842-1119

Main: 703-842-1115

Fax: 866-251-2002

dmarotta@jlco.com

Jenifer Cromwell

Senior Associate

Groom Law Group, Chartered

1701 Pennsylvania Avenue, NW

Washington, DC 20006

Direct: 202-861-6329

Main: 202-861-6329

Fax: 202-659-4503

jcromwell@groom.com