GROOM LAW GROUP

Publications

IRS Issues FAQs on the Tax Treatment of Employer-Provided Work-Life Referral Services

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On April 16, 2024, the IRS issued Fact Sheet 2024-13, which includes FAQs addressing the tax treatment of employer-provided work-life referral services. The FAQs generally provide that the value of these services can be excluded from an employee's gross income and employment taxes as a de minimis fringe benefit.

Facts

The IRS describes a "work-life referral ("WLR") program" as an employer-funded fringe benefit that provides WLR services to employees. WLR services are "restricted to informational and referral consultations that assist employees with identifying, contacting, and negotiating with life-management resources for solutions to a personal, work, or family challenge." The IRS states that WLR services offer employees "guidance, support, information, and referrals in connection with, for example:

- identifying appropriate education, care, and medical service providers;
- choosing a child or dependent care program;
- navigating eligibility for government benefits, including VA benefits;
- evaluating and using paid leave programs offered through an employer or state or locality;
- locating home services professionals who specialize in adapting a home for a family member with special care needs;
- navigating the medical system, including private insurance and public programs, and utilizing available medical travel benefits; and
- connecting with local retirement and financial planning professionals."

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GROOM INSIGHT: The IRS notes that these programs are frequently incorporated into EAPs or bundled with other employer services, although the IRS notes the FAQs only address the federal tax treatment of the services and not the direct or indirect payment for life-management resources or similar services offered through an EAP. Some employer programs cover both referrals for resources and the actual resources themselves. The IRS' statement is intended to limit the scope of the FAQs to exclude WLR programs that offer the actual resources themselves.

De Minimis Fringe Benefits

The FAQs go through the basic tax rules for de minimis fringe benefits under Code section 132. An excludible de minimis fringe benefit is any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to making accounting for it unreasonable or administratively impracticable.

The Code section 132 regulations require the employer to establish the frequency with which it provides fringe benefits by referencing the frequency with which the employer provides the fringe benefits to each individual employee. If the employer can establish that it would be administratively difficult to determine such employee-measured frequency, it may instead reference the frequency with which the employer provides the fringe benefits to the workforce as a whole.

FAQs

There are three FAQs that cover the following issues:

1. In general, a de minimis fringe benefit is one which, considering its value and the frequency with which it is provided, is so small that accounting for it would be unreasonable or administratively impracticable. In circumstances where it would be administratively difficult to determine the frequency with which fringe benefits are provided to each employee, the employer can measure frequency using the employer-measured frequency standard. De minimis fringe benefits are excluded from gross income and are not subject to U.S. employment taxes.
2. The use of WRL services is excluded from an employee's gross income as a de minimis fringe benefit.
3. The use of WRL services is excluded from U.S. employment taxes, including FICA, FUTA, and federal income tax withholding as a de minimis fringe benefit.

GROOM INSIGHT: The IRS does not provide a detailed analysis as to how it reached its conclusion and there was not any reference to a particular dollar value for the services. However, two aspects of the FAQs are particularly notable. First, as a practical matter, the IRS appears to take for granted that the value of these services are "so small" that accounting for them would be unreasonable or administratively impractical. The IRS seems focused on WLR providers that charge a per-employee monthly fee, so the IRS' answer may be different for a provider that charges a per-service fee.

Second, Treas. Reg. § 1.132-6(b)(1) requires an employer to establish the frequency with which it provides fringe benefits by referencing the frequency with which the employer provides the benefits to each individual employee. But, Treas. Reg. § 1.132-6(b)(2) provides that if it would be administratively difficult to determine the employee-measured frequency, employers can instead reference the frequency with which they provide the fringe benefit to the workforce as a whole. Thus, the IRS appears to imply that, given the difficulties that can be associated with tracking the frequency that the employer provides WLR services to each employee, it may be reasonable to reference the frequency with which the employer provides the benefits to the workforce as a whole in order to demonstrate that the benefit is provided infrequently.

Practical Considerations

WLR programs have become increasingly popular over the years. The FAQs provide welcome answers to tax questions for WLR programs with which employers and service providers have been grappling. However, FAQs are merely informal guidance and are non-precedential. In fact, the IRS expressly states that it issued the FAQs to "provide general information . . . as expeditiously as possible." The IRS also states that if an FAQ turns out to be an inaccurate statement of the law as applied to a particular taxpayer's case, the law will control the taxpayer's tax liability. But, taxpayers who rely in good faith on the FAQs will satisfy the reasonable

cause standard for penalty relief. Thus, employers and service providers should carefully compare their WLR programs against the programs discussed in the FAQs when analyzing the tax treatment of their programs.