

Publications

IRS Proposed Rules on Employer Comparable Contribution to HSAs

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On June 1st, the Internal Revenue Service issued proposed rules on the comparable contribution rules that govern employer contributions made to health savings accounts (HSA) outside of a Code section 125 cafeteria plan. See 26 C.F.R. 54 (June 1, 2007). Final comparable contribution regulations were issued in 2006, but reserved several questions for future determination. See 71 FR 43056 (July 31, 2006). The proposed rules answer some of those questions and provide guidance for employers where employees fail to establish an HSA or notify their employers of their HSA prior to December 31st. The proposed rules also permit employers to make accelerated calendar year contributions for employees who incur qualified medical expenses exceeding current HSA contributions.

Internal Revenue Code (Code) section 4980G requires employers who make HSA contributions to make comparable contributions to the HSA of each eligible employee. To be comparable, HSA contributions must be made to all HSA eligible employees in the same employment category with the same level of coverage in either the same dollar amount or same percentage of the health plan deductible. Employers who fail to make comparable contributions are subject to an excise tax equal to thirty-five percent of the aggregate amount of the aggregate contributions actually made. In December 2006, Congress amended Code section 4980G to allow employers to contribute greater amounts to non-highly compensated employees without violating the comparable contribution rules. The preamble to the proposed rules states that the IRS expects to issue guidance on the amendment at a later date. Please see the attached memo for further discussion.

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