




Employer health care arrangements

Q1. What are the consequences to the employer if the employer does not establish a health insurance plan for its own employees, but reimburses those employees for premiums they pay for health insurance (either through a qualified health plan in the Marketplace or outside the Marketplace)?

Under [IRS Notice 2013-54](#) [PDF](#), such arrangements are described as employer payment plans. An employer payment plan, as the term is used in this notice, generally does not include an arrangement under which an employee may have an after-tax amount applied toward health coverage or take that amount in cash compensation. As explained in Notice 2013-54, these employer payment plans are considered to be group health plans subject to the market reforms, including the prohibition on annual limits for essential health benefits and the requirement to provide certain preventive care without cost sharing. Notice 2013-54 clarifies that such arrangements cannot be integrated with individual policies to satisfy the market reforms. Consequently, such an arrangement fails to satisfy the market reforms and may be subject to a \$100/day excise tax per applicable employee (which is \$36,500 per year, per employee) under section 4980D of the Internal Revenue Code.

Related

- Individual shared responsibility provision
- The Premium Tax Credit – The basics
- [Small Business Health Care Tax Credit](#)
- Employer shared responsibility provisions
- [Information Reporting by ALEs](#)
- [Information Reporting by Coverage Providers](#)
- Affordable Care Act information returns (AIR)
- [HealthCare.gov](#) 
- How to correct an electronically filed return rejected for a missing Form 8962

Q2. Is there transition relief available from the excise tax under § 4980D for certain employers who offered their employees health coverage through arrangements that would constitute an employer payment plan as described in Notice 2013-54?

Yes. On February 18, 2015, the IRS issued [Notice 2015-17](#) [PDF](#), which provides transition relief from the excise tax under § 4980D for failure to satisfy the market reforms in certain circumstances. The transition relief applies to employer healthcare arrangements that are (1) employer payment plans, as described in Notice 2013-54, if the plan is sponsored by an employer that is not an Applicable Large Employer (ALE) under Code § 4980H(c)(2) and §§ 54.4980H-1(a)(4) and -2 of the regulations; (2) [S corporation healthcare arrangements](#) for 2-percent shareholder-employees; (3) Medicare premium reimbursement arrangements; or (4) TRICARE-related health reimbursement arrangements (HRAs).







Notice 2015-17 provides temporary relief from the § 4980D excise tax for failure to satisfy the Affordable Care Act market reforms such as the prohibition on annual limits. Under the notice, small employers with employer payment plans get relief for 2014 and up to July 1, 2015. Small employers are employers that are not Applicable Large Employers under § 4980H (generally less than 50 full time and full time equivalent employees in prior year).

Notice 2015-17 also clarifies that S corporations may continue to report reimbursements of health insurance of 2 percent shareholders pursuant to Notice 2008-1. Until further guidance is issued, and in any event through the end of 2015, the excise tax under Code § 4980D will not be asserted for any failure to satisfy the market reforms by a 2-percent shareholder-employee healthcare arrangement.

Q3. Where can I get more information?

On Sept. 13, 2013, the IRS issued [Notice 2013-54](#) [PDF](#), which explains how the Affordable Care Act's market reforms apply to certain types of group health plans, including health reimbursement arrangements (HRAs), health flexible spending arrangements (health FSAs) and certain other employer healthcare arrangements, including arrangements under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy. On February 18, 2015, the IRS issued [Notice 2015-17](#) [PDF](#), which reiterates the conclusion in previous guidance addressing employer payment plans, including Notice 2013-54, that employer payment plans are group health plans that will fail to comply with the market reforms that apply to group health plans under

the Affordable Care Act. Notice 2015-17 also provides transition relief from the assessment of the excise tax under § 4980D for failure to satisfy market reforms in certain circumstances.

DOL has issued a notice in substantially identical form to Notice 2013-54, [DOL Technical Release 2013-03](#) . On Jan. 24, 2013, [DOL](#)   and [HHS](#)  issued FAQs that address the application of the Affordable Care Act to HRAs. On Nov. 6, 2014, DOL issued additional [FAQs](#)   that address the application of the Affordable Care Act to HRAs and other payment arrangements.

More information

For more information the latest legal guidance on this topic, see the Employer Health Care Arrangement section on our [ACA Tax Provisions for Employers page](#).

For more links to legal guidance on all ACA tax provisions see our [legal guidance and other resources page](#).

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