

## Impact of Affordable Care Act on Employer Health Care Arrangements

The Internal Revenue Service (IRS) issued [Notice 2015-17](#) on February 18, 2015, providing additional guidance on the application of the \$100 per day excise tax to certain employer reimbursement arrangements. The Notice supplements and further clarifies guidance provided in IRS Notice 2013-54. It addresses transition relief from the excise tax for small employers sponsoring employer premium reimbursement arrangements, treatment of premium arrangements for two-percent (2%) shareholders of a Subchapter S Corporation, integration of Medicare and TRICARE reimbursement arrangements, and other employer compensation arrangements. Please note that this transition relief does not apply to stand-alone HRAs or other arrangements that reimburse employees for medical expenses other than insurance premiums, or to plans being offered by applicable large employers (ALEs).

While the guidance does not eliminate the requirements necessary to meet the market reforms under the Affordable Care Act (ACA), it does provide additional time for employers to meet the requirements without the risk of being assessed the excise tax. It also provides further clarification on allowable arrangements, based on questions previously raised by Paychex to the IRS. Ultimately, the notice is a direct response to these questions, which were posed by our accountants, CPAs, and clients. The questions and answers are outlined below:

### Frequently Asked Questions

1. Can employees receive reimbursement from employers for individual health insurance premiums?

Reimbursement of individual premiums using a health reimbursement arrangement (HRA) or other type of reimbursement arrangement is **no longer allowed**. Such an arrangement fails to satisfy the market reforms under the Affordable Care Act (ACA) and may be subject to a \$100 per day excise tax for each applicable employee (which is \$36,500 per year, per employee) under section 4980D of the Internal Revenue Code.

In order to satisfy the ACA market reform requirements, these reimbursement arrangements **must be integrated with a group health plan** covering two or more participants.

2. Should employer reimbursements of health insurance premiums for S Corporation owners be entered as non-cash fringe benefit amounts fully taxable for federal income tax, FUTA, and FICA?

There is no change at the federal level in taxation of S-Corp owner group health insurance benefits. Federal and State taxability for those health insurance premiums that meet the FICA exemption under IRC Sec. 3121 (a)(2)(B) would be identical to Pay Code 33: Health Insurance premiums paid by an S-Corp on behalf of 2% Shareholder employees. Box 14 of Form W-2 is at the option of the employer. Paychex created Pay Code 33 to report these health insurance premiums in Box 14; however, this reporting is not mandated by the IRS.

3. What is the impact of the ACA on state income and unemployment taxes? Would non-cash fringe benefits (NCFB) properly cover taxability for 2% shareholder reimbursement?

There is no impact at this time because there has been no change in taxability.

4. Is the amount for health insurance premium reimbursements for 2% shareholder employees reported in Box 12 or 14 of the Form W-2? If so, under what code or description?

The amount does not get reported in Box 12. Form W-2 reporting instructions state that payment/reimbursement of health insurance premiums for 2% shareholder-employees included in gross income does not get reported. This amount may be included in Box 14 of Form W-2 at the option of the employer; it is not IRS mandated.

5. Are 2% shareholders eligible to receive a pre-tax reimbursement through a Health Reimbursement Arrangement?

Greater than 2% shareholders of an S Corporation are not eligible to participate in HRAs. Therefore, a 2% owner would not be eligible to receive a pre-tax reimbursement using such plan, even if the plan otherwise met the market reform requirements under the ACA.

6. Is there transition relief for small employers that provides additional time to meet the requirements without the risk of being assessed the excise tax?

There is transition relief for small employers (those who do not meet the definition of an applicable large employer (ALE) under Code § 4980H). They will not be assessed the excise tax under Code § 4980D for any failure to satisfy the market reforms by employer payment plans. This includes plans that pay or reimburse employees for individual health policy premiums, or Medicare Part B or Part D premiums, for 2014 (if not an ALE in 2014), and for such reimbursements **from January 1 through June 30, 2015**, for small employers in 2015. **After June 30, 2015, such employers may be liable for the excise tax.**

For additional information, please visit:

<http://www.irs.gov/pub/irs-drop/n-15-17.pdf>