



## \$2,500 Medical Care Reimbursement Account Limit under the Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (PPACA) requires that Flexible Benefit Plans that have Medical Care Reimbursement Accounts limit the maximum employee contribution to \$2,500.

The \$2,500 limit applies to “taxable years” beginning on or after January 1, 2013. For purposes of the limit, the term “taxable year” refers to the taxable year of the employee participating in the health FSA. Almost universally, this will be the calendar year.

The \$2,500 limit raises special issues for non-calendar year health FSAs, which might inadvertently permit an employee to exceed the \$2,500 cap for a calendar year if the plan allows more than that amount to be reimbursed over the fiscal/plan year. Employers with fiscal year plans must take the \$2,500 limit into account when conducting enrollment for the plan year that includes the January 1, 2013 effective date.

The IRS recently released Notice 2012-9. Our attorney’s take away from this notice is as follows:

- (a) The “safest” thing to do is to amend the Section 125 cafeteria plan prior to the start of their 2012-2013 fiscal plan year to reduce the health FSA to \$2,500.
- (b) Employers should not just stop deferrals in 2013 when \$2,500 is reached. This violates the “equal interval” requirement for deferrals.
- (c) The IRS will not be able to monitor, via W-2, salary deferrals in excess of \$2,500 in 2013 so long as the health FSA is funded only by employee salary deferrals, or the employer contributes \$501 or less per year. Accordingly, depending on the employer’s tolerance for risk, the employer could simply continue the full salary deferral budget through the 2012-2013 year, even if more than \$2,500 will be deferred during 2013.
- (d) The employer could “front load” the deferrals by allowing monthly deferrals in the 2012 portion of the plan year that exceed \$2,500 divided by 12 (\$208.33), but limiting monthly deferrals in the 2013 portion of the plan year to the \$208.33 amount. Unequal deferral amounts are not expressly in violation of cafeteria plan regulations however they are not consistent with the overall theme of the regulations which discourage “gaming” the timing or amount of deferrals in relation to incurred claims, etc. If the employer takes this approach it must be careful to monitor use of the higher 2012 deferral limit. If it is mostly used by “key employees” the plan could fail the 25% “concentration test” which is a component of the nondiscrimination rules affecting cafeteria plans.
- (e) An employer could also pro-rate the higher 2012 deferral amount and the lower 2013 deferral amount across the 12 month fiscal year but this would require that the employer reduce deferrals in the first half of the 2013-2014 fiscal year to equal \$2,500, when combined with the pro-rated deferrals during the latter half of the 2012-2013 fiscal year. Clearly, timing of the fiscal year start (whether early in 2013, or late in the year) may make the front-loading or pro-rated options unaffordable for some participants.
- (f) The employer should amend the cafeteria plan to reduce the health FSA budget to \$2,500 for the 2013-2014 plan fiscal year.

As this limit may affect your benefit plan in 2013, we recommend that you contact your legal counsel, CPA or benefits consultant regarding this matter. Should you wish to amend your Plan now or in the future, we will be more than happy to provide the needed Amendment and Summary Plan Description to support and explain the Amendment.