

IRS Releases Guidance on \$2,500 Health FSA Limit

June 11, 2012

Attorney Articles

On May 30, 2012, the Internal Revenue Service issued Notice 2012-40 to address the implementation of the new section 125(i) dollar limit on contributions to health flexible spending arrangements (“health FSAs”). Added by the Affordable Care Act, section 125(i) requires that cafeteria plans impose a \$2,500 annual limit (indexed for inflation) on salary reduction elections to health FSAs . The Notice clarifies that:

- The \$2,500 limit applies to the plan year of the cafeteria plan (not the tax year of the employee making the election), and is initially effective for plan years that begin after December 31, 2012.
- For plans that allow employees a grace period in which to carry over unused prior year contributions, amounts carried over do not count toward the subsequent plan year limit.
- The \$2,500 limit only applies to salary reduction contributions to health FSAs, and does not apply to employer non-elective flex credits. In contrast, flex credits that can be received as cash or a taxable benefit are treated as salary reduction contributions under section 125(i).

The Notice further provides that:

- Amendments made to a cafeteria plan to conform to the new requirements must be made on or before December 31, 2014, and may be made effective retroactively, so long as the cafeteria plan operates in accordance with the requirements of section 125(i) for plan years beginning after December 31, 2012.
- Reasonable mistakes that are caught and corrected by the employer are subject to limited relief.
- The IRS requests comments by August 17, 2012 on whether the “use-or-lose” rule should be modified for health FSAs.

The full Notice is available [here](#).

If you have any questions about the new health flexible spending arrangements guidance, please contact the attorney in the Benefits and Compensation practice group with whom you work.

IRS CIRCULAR 230 NOTICE: Any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Authors

Leslie J. Anderson
Jordan Martell

Related Services

[Benefits and Compensation](#)

© 2012 Dorsey & Whitney LLP. This article is intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. An attorney-client relationship is not created or continued by reading this article. Members of the Dorsey & Whitney LLP group issuing this communication will be pleased to provide further information regarding the matters discussed therein.