BusinessManagement DAILY

JANUARY 17, 2017

IRS warns against health plans' double dipping

Double dips are great for ice cream cones, but not group health benefits. According to Stephen Tackney, deputy associate chief counsel for employee benefits in the IRS Office of Associate Chief Counsel, the newest variation of a health plan double dip involves wellness plans. But health plan double dipping goes back well over a decade.

Wellness plan double dip. The IRS has encountered situations where employees pay wellness plan premiums with pretax dollars through cafeteria plans and then have those premiums "reimbursed" by their employers. The IRS concluded in a legal memorandum, ILM 201622031, that this was a double dipping arrangement, because you can't reimburse employees' pretax contributions. Reason: Employees' pretax contributions for cafeteria plan benefits are considered employers' contributions, so there's nothing to reimburse.

According to Tackney, some promoters aren't buying it because ILMs aren't legally binding. While that's true, Tackney said, the opinion came from the IRS' national office and, if necessary, the IRS will list the transaction and flag promoters for audits.

MAKE MINE CHOCOLATE AND VANILLA: It's not a double dip if a wellness plan uses reduced monthly premiums for group major medical coverage as an incentive for employees to participate in the plan.

Other double dipping arrangements. Double dipping goes back to at least 2002. The IRS concluded in legally binding guidance that the following arrangements were double dipping:

- The IRS concluded in Rev. Rul. 2002-3 (*IRB 2002-3*) that an employer that didn't have a cafeteria plan couldn't make pretax deductions from employees' pay for health insurance and then reimburse employees.
- The IRS concluded in Rev. Rul. 2002-80 (*IRB 2002-49*) that an employer couldn't make "advanced reimbursements" to employees in the amount of their monthly premiums and health FSA contributions or make loans to employees for the same amounts.

IF IT LOOKS TOO GOOD TO BE TRUE: Well, then it probably is. And the penalty for getting it wrong is prohibitive—if the IRS disqualifies your cafeteria plan, then all benefits, even tax-free benefits, will become taxable to employees. You will owe the matching FICA contribution, also.

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