8725.01 May an employer deduct the cost of reimbursing its employees for individual health insurance premium costs?

Generally, no. The market reform provisions that now apply under the Affordable Care Act generally prohibit employers from reimbursing employees for individual health insurance premiums.[[1]](#footnote-1) This is because these types of employer-sponsored reimbursement arrangements typically place a cap on the amount that the employer will reimburse for these expenses, in violation of the ACA prohibition on annual benefit limits. This is the case whether or not the payments are treated as pre-tax or after-tax to the employee.

See Q8725.02 for a discussion of situations where an employer-sponsored reimbursement arrangement may be treated as integrated with another type of policy so as to avoid violating the prohibition on annual benefit limits.

8725.02 Under the PPACA, can a health reimbursement arrangement (HRA) be integrated with health insurance coverage without violating the prohibition on plans that place annual dollar limits on available benefits?

The IRS has issued guidance providing that a health reimbursement arrangement (HRA) cannot be integrated with individually purchased coverage in order to comply with the ACA prohibition against annual dollar limits on benefits available under a plan, eliminating the possibility that employers could use HRAs to subsidize employees’ purchase of health insurance on the individual exchanges.[[2]](#footnote-2) This is the case unless certain specific criteria are met (see below).

Further, the guidance provides the circumstances under which an HRA *will* be considered integrated with a health plan so that it does not violate the annual dollar limit prohibition.  An HRA, which inherently provides a dollar limitation because only certain amounts may be contributed annually, may be considered integrated with another health plan (and, thus, not in violation of the prohibition against annual dollar limits) if it meets one of two tests.

First, an HRA can be integrated if (1) the employer offers a second group health plan that does not consist solely of certain excepted benefits, (2) the employee receiving the HRA is actually enrolled that group health plan, (3) the HRA is only available to employees enrolled in the non-HRA group coverage, (4) the HRA is only permitted to reimburse one or more of: co-payments, co-insurance, deductibles, and premiums under the non-HRA coverage, or medical expenses for non-essential benefits and (5) the employee is permitted to opt-out of the HRA.

Under the second method, if the HRA does not limit reimbursements as required under the first method, (1) the employer must offer a group health plan in addition to the HRA that provides certain minimum value under IRC Section 36B, (2) the employee must actually be enrolled in that plan, (3) the HRA must only be available to employees enrolled in non-HRA plan and (4) the employee must be permitted to opt-out.

Q8725.03 What are the consequences if an employer reimburses its employees for individual health insurance premium costs?

Reimbursement arrangements whereby an employer reimburses its employees for the cost of individual health insurance premiums generally cannot be integrated with individual policies in order to satisfy the market reform provisions of the Affordable Care Act (ACA). As a result, these arrangements will typically violate the ACA prohibition on annual benefit limits and will cause the employer to be subject to a $100 per day penalty per employee.[[3]](#footnote-3)

1. See Department of Labor FAQ about Affordable Care Act Implementation (Part XXII), updated November 6, 2014, available at: http://www.dol.gov/ebsa/faqs/faq-aca22.html. [↑](#footnote-ref-1)
2. Notice 2013-54, 2013-40 IRB 287. [↑](#footnote-ref-2)
3. See IRS FAQ, Employer Health Care Arrangements, updated December 9, 2014, available at <http://www.irs.gov/Affordable-Care-Act/Employer-Health-Care-Arrangements>. See also IRC Sec. 4980D. [↑](#footnote-ref-3)