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IRS Delays Rules on Opt-Out Payments Under the ACA

The IRS has finalized regulations on premium tax credits available to eligible individuals who enroll in the ACA's marketplace coverage. These regulations finalize many, but not all, of the provisions in the proposed regulations. The IRS is still examining issues related to opt-out payments and the impact such payments have on affordability of employer-provided health coverage for an individual. The IRS expects to finalize those proposed regulations separately in the future. But in the meantime, the transition relief provided in the proposed regulations for opt-out arrangements in effect before December 16, 2015 continues to apply into 2017.

Background

Last July, the IRS issued proposed regulations addressing the ACA's premium tax credit and the individual shared responsibility penalty provisions. While primarily affecting individuals who enroll in ACA marketplace coverage and claim the premium tax credit, the proposed regulations also discuss the treatment of employer-provided opt-out payments. An opt-out payment is described as an amount offered by the employer that an employee cannot use to pay for the employer's health coverage and is available only if he or she declines (or waives) that coverage. The proposed regulations followed previous guidance set out in Notice 2015-87. Generally, unless an opt-out arrangement qualifies as an "eligible opt-out arrangement," the amount of the opt-out payment will be taken into account in determining the amount of the employee's required contribution (e.g., it increases the amount that the employee is deemed to pay for employer health coverage and in turn can affect employer shared responsibility assessments).

Payments made under an eligible opt-out arrangement are available only to employees who both:

- Decline employer-sponsored coverage
- Provide reasonable evidence annually that they (and their tax dependents) have or will have minimum essential coverage, other than individual market coverage (whether obtained through the public marketplace or not), during the plan year or other period covered by the opt-out arrangement

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An eligible opt-out payment does not increase the cost of the employer coverage. The provisions in the proposed regulations related to opt-out arrangements were effective for plan years beginning on or after January 1, 2017. For more information on opt-out payments (and flex contributions), see our September 14, 2016 *FYI In-Depth.*

Continued Examination of Opt-Out Credits

On December 19, the IRS published final regulations. The preamble of these final regulations notes that the IRS received comments on the proposed opt-out payment rules and that they will continue to examine the issues. Thus, at this time, the IRS did not finalize the opt-out arrangement provisions in the proposed regulations.

Transition Relief

Previous guidance specified that the regulations on opt-out arrangements generally will apply only for periods after the applicability of final regulations. Until final regulations are applicable, employers (and individuals) can rely on transition relief provided in the notice and proposed regulations (even after January 1, 2017). That transition relief applies for opt-out arrangements adopted before December 16, 2015. Generally, for shared responsibility information reporting purposes (Form 1095-C), employers offering arrangements meeting the transition relief requirements need not increase an employee's required contribution by the (unconditional) opt-out amount. See our September 14, 2016 *FYI In-Depth* for more information on the transition relief.

In Closing

At this point, employers with opt-out arrangements adopted before December 16, 2015 may have made changes that align with the proposed regulations. That is a reasonable, conservative approach. Those employers that have not made changes may continue to apply and rely on the transition relief. The IRS continues to study this issue and expects to issue a separate final regulation later.

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