

Your Benefits News

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Twas the Night Before Christmas Eve and Congress Calls a Truce, For Now...

The Temporary Payroll Tax Cut Continuation Act of 2011 temporarily extends the two percentage point payroll tax cut for nearly 160 million workers, continuing the reduction of their Social Security tax withholding rate from 6.2 percent to 4.2 percent of wages paid through Feb. 29, 2012. This reduced Social Security withholding will have no effect on employees' future Social Security benefits.

Employers should implement the new payroll tax rate as soon as possible in 2012 but not later than Jan. 31, 2012. For any Social Security tax over-withheld during January, employers should make an offsetting adjustment in workers' pay as soon as possible but not later than March 31, 2012.

Employers and payroll companies will handle the withholding changes, so workers should not need to take any additional action.

Under the terms negotiated by Congress, the law also includes a new "recapture" provision, which applies only to those employees who receive more than \$18,350 in wages during the two-month period (the Social Security wage base for 2012 is \$110,100, and \$18,350 represents two months of the full-year amount). This provision imposes an additional income tax on these higher-income employees in an amount equal to 2 percent of the amount of wages they receive during the two-month period in excess of \$18,350 (and not greater than \$110,100).

This additional recapture tax is an add-on to income tax liability that the employee would otherwise pay for 2012 and is not subject to reduction by credits or deductions. The recapture tax would be payable in 2013 when the employee files his or her income tax return for the 2012 tax year. With the possibility of a full-year extension of the payroll tax cut being discussed for 2012, the IRS will closely monitor the situation in case future legislation changes the recapture provision.

The IRS will issue additional guidance as needed to implement the provisions of this new two-month extension, including revised employment tax forms, instructions and information for employees who may be subject to the new "recapture" provision. For most employers, the quarterly employment tax return for the quarter ending March 31, 2012, is due April 30, 2012.

In addition, under the agreement, **Medicare** will continue paying doctors at current rates for two months, averting a 27 percent cut that would have otherwise occurred on Jan. 1.

Source: IR-2011-124, Dec. 23, 2011

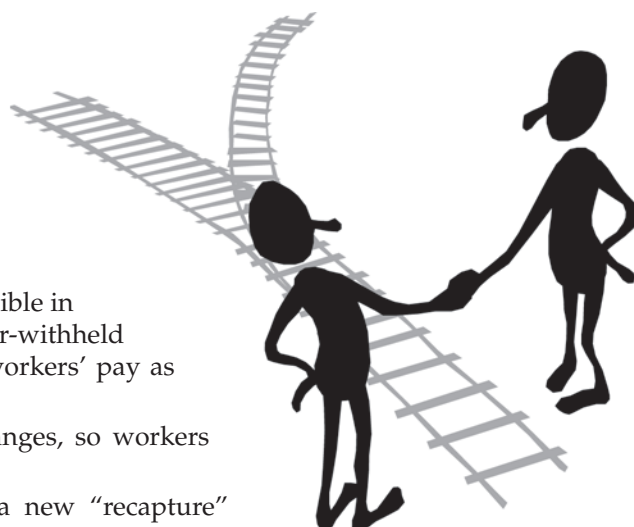
For more information see

<http://www.irs.gov/newsroom/article/0,,id=251650,00.html>

Editors Note: The two month extension of the payroll tax cut means that the drama will continue mid January as Congress returns from the holiday recess. As election season begins the posturing between the parties will be a mainstay for 2012. With the onslaught of political ads it will be tempting to hit the mute button on the remote, however, there will need to be activity on this area early in the year because the Presidents Day recesses are already scheduled for the Senate and the House. In the Senate, Presidents Day recess is scheduled the 20th through the 24th of February and the House has a different week, the 18th through 26th. That creates even more pressure to work on a further extension sooner than later. Stay tuned! ■

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IRS issues more guidance on W-2 reporting of health coverage

The Internal Revenue Service released **Notice 2012-9** which provides guidance and resolves additional questions from employers regarding the health care reform law provision that will require them to report the cost of health care coverage on employees' W-2 wage and income statements.

Under that requirement, health care cost information will have to be reported on 2012 W-2s, which will be issued in 2013. Under previous IRS guidance, smaller employers—those that distribute fewer than 250 W-2s in 2011—are exempt from this requirement until at least 2014 and possibly longer.

The latest guidance also reiterates numerous provisions in last year's guidance, including that the cost of coverage that is taxable to employees, such as for a child over age 26, must be reported on the W-2, and that contributions employees make to flexible spending accounts are to be excluded from the health care cost figure.

In response to comments, this notice supersedes Notice 2011-28 and makes the following changes to the guidance provided in Notice 2011-28:

Modifies Q&A-3 to provide that until further guidance is issued, the reporting requirement will not apply to tribally chartered corporations wholly owned by Federally recognized Indian tribal governments.

Modifies Q&A-3 to clarify the application of the interim relief from the reporting requirement for employers filing fewer than 250 Forms W-2 for the preceding calendar year.

Adds a new example to Q&A-19 that demonstrates that the reporting requirement does not apply to coverage under a health flexible spending arrangement (FSA) if contributions occur only through employee salary reduction elections.

Modifies Q&A-20 to clarify that the standard for determining whether coverage under a dental plan or vision plan is subject to the reporting requirement is based upon the same standard for determining whether the coverage is subject to the rules set forth in the regulations under HIPAA.

Modifies and corrects Q&A-23 to clarify that the reporting requirement does not apply to the cost of coverage includible in income under § 105(h), or payments or reimbursements of health insurance premiums for a 2% shareholder-employee of an S corporation who is required to include the premium payments in gross income.

Modifies Q&A-28 to clarify the application of the reporting requirement if a composite rate is used with respect to the premium charged active participants, but not the premium charged under COBRA to a qualifying beneficiary.

The notice also provides the following additional guidance through new Q&A's:

Provides that employers are **not required to include** the cost of coverage under an employee assistance program (EAP), wellness program, or on-site medical clinic in the reportable amount if the employer does not charge a premium with respect to that type of coverage provided under COBRA to a qualifying beneficiary (**Q&A-32**).

Clarifies that employers may include the cost of coverage under programs **not required to be included** under applicable interim relief, such as the cost of coverage under a Health Reimbursement Arrangement (HRA) (**Q&A-33**).

Clarifies how to calculate the reportable amount for coverage only a portion of which constitutes coverage under a group health plan (**Q&A-34**).

Clarifies how to calculate the reportable amount if an employer is provided notice after December 31 of a calendar year of events that occurred on or before December 31 of a calendar year that affect the prior year's coverage, such as an employee providing an employer notice of a divorce or other change in family status that occurred during a prior calendar year (**Q&A-35**).

Clarifies how to calculate the reportable amount where coverage extends over the payroll period including December 31 (**Q&A-36**).

Clarifies the application of the exception for certain hospital indemnity or other fixed indemnity insurance offered by an employer on an after-tax basis (**Q&A-37 and Q&A-38**).

Provides that the reportable amount is not required to be included on a Form W-2 provided by a third-party sick pay provider (**Q&A-39**).

This reporting to employees is for their information only. The reporting is intended to inform them of the cost of their health care coverage, and does not cause excludable employer-provided health care coverage to become taxable. Nothing in § 6051(a)(14), this notice, or the additional guidance that is contemplated under § 6051(a)(14), causes or will cause otherwise excludable employer-provided health care coverage to become taxable.

You can see the full notice at: <http://www.irs.gov/pub/irs-drop/n-12-09.pdf> ■



2012 QUICK FACTS

- Mileage deduction incidental to medical care DECREASES to **23** cents per mile beginning January 1, 2012.
- When giving services to a charitable organization, mileage deduction REMAINS 14 cents per mile for 2012.
- For business purposes, the mileage deduction REMAINS **55.5** cents per mile beginning January 1, 2012.
- In 2012, the Social Security Wage base will increase to \$110,100. The Social Security rate of 6.2%* is applied to wages up to the maximum taxable amount for the year; the Medicare portion of 1.45% is applied to all wages.

*The Temporary Payroll Tax Cut Continuation Act of 2011 temporarily extends the two percentage point payroll tax cut for employees, continuing the reduction of their Social Security tax withholding rate from 6.2 percent to 4.2 percent of wages paid through Feb. 29, 2012. As a result, employees will pay only 4.2% Social Security tax on wages up to \$106,800. Employers will continue to pay 6.2% Social Security tax on wages up to \$106,800. The Medicare tax rate will remain 1.45% in 2011 for both the employee and the employer. Congress will again take up this issue in January after the recess for a potential further extension of the payroll tax cut for 2012.

- The indexed compensation levels for determining who is a highly compensated or a key employee are as follows:

	<u>2012</u>	<u>2011</u>
Highly Compensated Employee	\$ 115,000	\$110,000
Top Paid Group of 20%	\$ 115,000	\$110,000
Key Employee	\$ 165,000	\$160,000

- The maximum for elective deferrals to a 401(k) plan will increase to \$17,000 in 2012. For those that are 50 or older, the catch-up contribution rate remains \$5,500.
- Standard Deductions for 2012:
 - \$5,950 Unmarried Individuals and Married Filing Separately
 - \$8,700 Heads of Households
 - \$11,900 Married Filing Jointly
- Personal Exemption for 2012: \$3,800
- Transportation Plan Limits for 2012: \$125*/mo Transit/Van Pooling \$240/mo Parking

*Temporary extension of the increase expired 12/31/11.
Without further action from Congress the amount reverted back to pre-ARRA levels.

- HSA Annual Contributions Levels for 2012: \$3,100 Individual \$6,250 Family
- HSA Catch Up Contributions for 2012: \$1,000 for individuals over the age of 55
- HSA Minimum Deductibles for 2012: \$1,200 Individual \$2,400 Family
- HSA Maximum Annual Out-of-pocket for 2012: \$6,050 Individual \$12,100 Family

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Tax Time

Personal Income Tax Deadlines

The Internal Revenue Service announced that for the 2012 tax filing season taxpayers have until April 17 to file their tax returns and pay any tax due because April 15 falls on a Sunday, and Emancipation Day, a holiday observed in the District of Columbia, falls this year on Monday, April 16. According to federal law, District of Columbia holidays impact tax deadlines in the same way that federal holidays do; therefore, all taxpayers will have two extra days to file this year. Taxpayers requesting an extension will have until Oct. 15 to file their 2011 tax returns.

IRS Publication 502-Medical and Dental Expenses (for 2011 Tax Returns)

At press time, the IRS had not yet released the latest version of Publication 502 (Pub. 502), which describes what medical expenses are deductible by taxpayers on their 2011 federal income tax returns. This is the list most commonly referred to claim itemized medical deductions on Form 1040. **Use Pub. 502 with caution** relative to Health Reimbursement Arrangements (HRA) and Flexible Spending Accounts (FSA) because Pub. 502 addresses only what expenses are deductible and it doesn't describe the different rules for reimbursing medical expenses under health FSAs, HSAs, or HRAs. See www.irs.gov/pub502 for more information.



The 2011 version should remain very similar to last year, however, changes likely will include the following:

Standard mileage rate.

The standard mileage rate allowed for operating expenses for a car when you use it for medical reasons is 19 cents per mile for the period 1/1/2011-6/30/2011 and 23.5 cents per mile for the period 7/1/2011-12/31/2011.

Health Savings Accounts (HSA)

The IRS has created a page on IRS.gov for information about Form 8889 and its instructions, at www.irs.gov/form8889. Information about any future developments affecting Form 8889 (such as legislation enacted after we release it) will be posted on that page. See Pub. 969, Health Savings Accounts and Other Tax-Favored Health Plans, for more details on HSAs.

Use Form 8889 to:

- Report health savings account (HSA) contributions (including those made on your behalf and employer contributions),
- Figure your HSA deduction,
- Report distributions from HSAs, and
- Figure amounts you must include in income and additional tax you may owe if you fail to be an eligible individual.

IRS Releases 2011 Form 2441 and Instructions

The IRS has released Form 2441 (Child and Dependent Care Expenses) and its accompanying instructions for the 2011 tax year. Form 2441 is a dual-purpose form. Taxpayers file it with Form 1040 to determine the amount of their available dependent care tax credit (DCTC). In addition, DCAP participants must file the form with Form 1040 to support the income exclusion for their DCAP reimbursements.

The 2011 Form 2441 and its instructions are substantially similar to the 2010 versions. However, a few minor changes have been made to the 2011 instructions. For example, further clarification has been added regarding the circumstances under which a married person filing separately can claim the DCTC. There is also a reminder that DCAP participants who are also claiming the DCTC must complete lines 27-31 of Form 2441.

Don't forget...

Dependent Care Flexible Spending Account elections should be reported in Box 10 on the W-2.

Both Employer contributions and Employee contributions to Health Savings Accounts (HSA) should be reported in Box 12, coded as a "W" on the W-2. ■

Health Savings Accounts - Am I eligible?

Open enrollment is typically a time when employers make changes to their benefits. These changes may include adding a High Deductible Health Plan (HDHP) along with a Health Savings Account (HSA). Any changes that affect your Plan may need to be incorporated into your Plan Document and you should contact our offices to determine how your benefit changes will impact your Plan Document.



When employers add the HSA component to the Plan, they are sometimes not aware of how this may impact employees currently participating in the General Purpose Medical Account especially if the Plan offers a grace period (2½ month extension to incur claims). Unfortunately, under the grace period

arrangement, if any General-purpose medical FSA participants have funds left in the account on the **first day of the Plan year** in which a grace period will start, they are not HSA eligible until the grace period is over. It does not matter if they do not have claims to submit toward their remaining balance or if they were simply late in filing claims, this balance will cause them to lose eligibility for contributions (both their own as well as employer contributions) to the HSA. This causes problems for many participants whose employers are converting from a traditional health plan to a HDHP at the start of a new Plan Year.

In addition, being covered under another major medical plan (through a spouse or another supplemental health plan) that provides benefits at a level below the minimum deductible (for 2012 this minimum is \$1200 for a single plan and \$2400 for family) would cause an employee to lose HSA eligibility status. If your Plan has a copay for prescription drugs or a copay on office visits, that would mean your Plan is not an HSA compatible health Plan.

What many participants do not realize is if their spouse is participating in a General Purpose Medical account and they now have access to a HDHP with an HSA, their spouse's participation in the General-Purpose Medical FSA disqualifies them from making or receiving contributions to the HSA with their employer. Because General-Purpose cannot be elected on a single or family coverage basis, it is considered other qualified coverage and until the end of the Plan Year (not when the funds are exhausted) the participant will remain ineligible for the HSA. In addition, whether or not you claim expenses for the dependent is not a factor when determining HSA eligibility. If it is possible to file a claim, that would constitute impermissible coverage and consequently the participant in the high deductible health plan who might otherwise be HSA eligible, will be considered not eligible for the HSA contributions.

When an employer adds the HSA component to their existing Plan, they most typically add the Limited Purpose Medical Reimbursement account. This account allows a participant to remain HSA eligible but still have a pre-tax vehicle to pay for optical and dental expenses. A participant can leave their HSA funds grow for those larger expenses and pay for their glasses, contacts, dental, and orthodontic payments through this Limited Purpose Medical account. This is certainly a way to tax shelter as much money as possible!

The moral of the story is when enrolling in an HSA or deciding to offer the HSA to your employees, it is important to take all coverage into consideration. ■

Up on the Hill



Congress will return to the Hill mid January and we expect that this will be a year filled with more bickering across party lines as we approach the election. 2012 should also be a year of more guidance on the existing health care reform laws. The Supreme Court announced in December that it will use an unprecedented week's worth of argument time in late March to decide the constitutionality of President Barack Obama's historic health care overhaul.

The following four issues will be addressed on appeal:

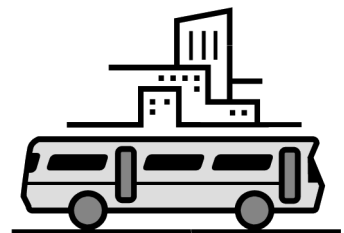
- **Constitutionality of the Individual Mandate.** The Court set aside two hours to hear oral arguments on whether Congress had the constitutional authority to enact the minimum coverage provision of the Affordable Care Act, which requires non-exempted individuals to maintain a minimum level of health insurance or pay a tax penalty beginning in 2014.
- **"Severability" of the Individual Mandate from the Entire Law.** Ninety minutes have been allotted for arguments on whether the individual mandate, if found to be unconstitutional, can be severed from the remaining provisions of the Affordable Care Act or whether some or all of the remaining law must also be invalidated.
- **Whether the Individual Mandate May Be Challenged Prior to Enforcement.** The Court will hear one hour of oral arguments on the question of whether federal law (specifically, the Anti-Injunction Act) prohibits the Court from hearing challenges to the individual mandate before the requirement becomes effective in 2014 and a taxpayer actually incurs a penalty tax for non-compliance.
- **Constitutionality of the Expansion of Medicaid.** Finally, one hour has been allotted by the Court to hear arguments on whether the Affordable Care Act's expansion of the eligibility and coverage thresholds that states must adopt to remain eligible to participate in Medicaid is a valid exercise of constitutional authority by Congress.

The Employer Council on Flexible Compensation (ECFC) will be holding their Annual Conference in Washington DC during this same time. With the March dates set that will likely mean that a final decision on the massive health care overhaul will likely come before July 4th, which will be in the middle of Obama's re-election campaign. The new law has been opposed by all of Obama's prospective GOP opponents.

Editors Note: Sue Sieger, CFCI will be traveling to Washington DC in early March to attend the Employer Council on Flexible Compensation's Annual Conference. There is a day of Capitol Hills visits planned where we will continue to reach out to the congressional offices to advocate on behalf of employers and the importance of tax advantaged plans. We will have a complete update of that conference and the congressional visits in our next newsletter published in April. ■



PRE-TAX TRANSIT UPDATES 2012



Congress adjourned before Christmas without extending the parity on transit benefits, which means the **maximum** amount that a participant can set aside for **Transit Benefits in 2012 will be \$125 per month.**

Since the 2009 stimulus package, employers have been able to offer the same maximums for parking and transit expenses. However, because of the inaction of Congress, the transit benefit will drop to \$125 a month at year's end, while the **parking rate will increase to \$240 per month.** We will automatically make adjustments to elections that exceed the statutory limits.

Although it would seem that to encourage mass transit would make sense, Congress seemed more focused on whether to extend the payroll tax cut and unemployment benefits before the Christmas break. The temporary two month extension of those benefits may mean Congress could retroactively reinstate pretax levels in 2012 possibly as part of the continued work to pass a longer term bill on the payroll tax break and unemployment benefits. The effort to extend current policy, even retroactively, is much easier than starting from scratch. There is no guarantee that the limits for transit will increase beyond the \$125 per month levels. We will continue to monitor this and will report any changes as applicable. ■



Our 2012 Holiday Schedule

Monday January 16th	Martin Luther King Jr.	Mail Holiday
Monday February 20th	Washington's Birthday	Mail Holiday
Monday May 28th	Memorial Day	Office Closed
Wednesday July 4th	Independence Day	Office Closed
Monday September 3rd	Labor Day	Office Closed
Monday October 8th	Columbus Day	Mail Holiday
Monday November 12th	Veterans Day	Mail Holiday
Wednesday November 21st	Thanksgiving Holiday	Office Close at 1:00
Thursday November 22nd	Thanksgiving Day	Office Closed
Friday November 23rd	Thanksgiving Holiday	Office Closed
Monday December 24th	Christmas Eve	Office Closed
Tuesday December 25th	Christmas Day	Office Closed

Mail holidays are noted above as well as our office schedule. Please note while our offices may not be closed on the postal holidays; processing deadlines should be noted to avoid a delay in payments to your participants.

In the event a holiday falls on Monday or Wednesday, the claims and funding deadline for Service Option 1 will be the preceding work day. Service Option 2 claims deadline will be the preceding work day as well. ■

New Summary of Benefits and Coverage (SBC) Requirement Delayed

The U.S. Department of Labor (DOL) has released a [new set of Frequently Asked Questions \(FAQs\)](#) which addresses the timing of the Affordable Care Act's [requirement that group health plans provide participants and beneficiaries with certain information about their health plan benefits and coverage](#). The FAQs make clear that compliance will not be required until final rules are issued and effective. (*Note: Under the proposed rules the new requirement would have been applicable beginning March 23, 2012.*)

This is welcome news, as the model notice was not Health Reimbursement Arrangement (HRA) friendly.

For a copy: <http://www.dol.gov/ebsa/faqs/faq-aca7.html> ■

Please Note:

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that neither the author nor the publisher is engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, legal counsel should be consulted.

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