

### Internal Revenue Code Section 105(h)

Amounts received under accident and health plans.

- (h) Amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan.
  - (1) In general. In the case of amounts paid to a highly compensated individual under a self-insured medical reimbursement plan which does not satisfy the requirements of paragraph (2) for a plan year, subsection (b) shall not apply to such amounts to the extent they constitute an excess reimbursement of such highly compensated individual.
  - (2) Prohibition of discrimination. A self-insured medical reimbursement plan satisfies the requirements of this paragraph only if—
    - (A) the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate; and
    - (B) the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals.
  - (3) Nondiscriminatory eligibility classifications.
    - (A) In general. A self-insured medical reimbursement plan does not satisfy the requirements of subparagraph (A) of paragraph (2) unless such plan benefits—
      - (i) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefit under the plan; or
      - (ii) such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated individuals.
    - (B) Exclusion of certain employees. For purposes of subparagraph (A), there may be excluded from consideration—
      - (i) employees who have not completed 3 years of service;
      - (ii) employees who have not attained age 25;

- (iii) part-time or seasonal employees;
  - (iv) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and
  - (v) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).
- (4) Nondiscriminatory benefits. A self-insured medical reimbursement plan does not meet the requirements of subparagraph (B) of paragraph (2) unless all benefits provided for participants who are highly compensated individuals are provided for all other participants.
- (5) Highly compensated individual defined. For purposes of this subsection, the term "highly compensated individual" means an individual who is—
- (A) one of the 5 highest paid officers,
  - (B) a shareholder who owns (with the application of section 318) more than 10 percent in value of the stock of the employer, or
  - (C) among the highest paid 25 percent of all employees (other than employees described in paragraph (3)(B) who are not participants).
- (6) Self-insured medical reimbursement plan. The term "self-insured medical reimbursement plan" means a plan of an employer to reimburse employees for expenses referred to in subsection (b) for which reimbursement is not provided under a policy of accident and health insurance.
- (7) Excess reimbursement of highly compensated individual. For purposes of this section, the excess reimbursement of a highly compensated individual which is attributable to a self-insured medical reimbursement plan is—
- (A) in the case of a benefit available to highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B)), the amount reimbursed under the plan to the employee with respect to such benefit, and
  - (B) in the case of benefits (other than benefits described in subparagraph (A)) paid to a highly compensated individual by a plan which fails to satisfy the requirements of paragraph (2), the total amount reimbursed to

the highly compensated individual for the plan year multiplied by a fraction—

- (i) the numerator of which is the total amount reimbursed to all participants who are highly compensated individuals under the plan for the plan year, and
- (ii) the denominator of which is the total amount reimbursed to all employees under the plan for such plan year. In determining the fraction under subparagraph (B), there shall not be taken into account any reimbursement which is attributable to a benefit described in subparagraph (A).

- (8) Certain controlled groups, etc. All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.
- (9) Regulations. The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.
- (10) Time of inclusion. Any amount paid for a plan year that is included in income by reason of this subsection shall be treated as received or accrued in the taxable year of the participant in which the plan year ends.