

Part III – Administrative, Procedural, and Miscellaneous

Modification of Q&A-23 of Notice 2007-7

Notice 2007-99

I. Purpose

This notice modifies Q&A-23 of Notice 2007-7, 2007-5 I.R.B. 395. Notice 2007-7, Q&A-23, states that the exclusion provided under § 402(l) of the Internal Revenue Code with respect to the payment of certain health insurance premiums by certain pension plans does not apply to premiums paid to an accident or health plan that is self-insured.

II. Background

Section 402(l) of the Internal Revenue Code, which was added by section 845(a) of Pension Protection Act of 2006, P.L. 109-280 (“PPA ’06”), provides for an exclusion from gross income up to \$3,000 annually for certain distributions paid from an eligible governmental plan that are used to pay qualified health insurance premiums of an eligible retired public safety officer or his or her spouse or dependents. The term “qualified health insurance premiums” is defined in § 402(l)(4)(D) as “premiums for coverage for the eligible retired public safety officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in § 7702B(b)).” (Emphasis added.) Section 402(l)(5)(A) further limits the exclusion to premiums that are paid “directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract.” (Emphasis added.) Section 402(l) applies to distributions in taxable years beginning after December 31, 2006.

Notice 2007-7, Q&A-23, provides that premiums paid to self-insured accident or health plans are not eligible for the § 402(l) exclusion from gross income because, in order to receive favorable tax treatment under § 402(l), the accident or health plan receiving the premium payments must be an accident or health insurance plan. Thus, the plan must be providing insurance issued by an insurance company regulated by a State (including a managed care organization that is treated as issuing insurance).

In general, §§ 104(a)(3) and 105(b) and (c) exclude from gross income certain amounts received through accident or health insurance. Under § 105(e)(1), amounts received under an accident or health plan for employees are treated as received through accident or health insurance for purposes of §§ 104 and 105. Section 1.105-5(a) of the Income Tax Regulations provides that an accident or health plan may be either insured or self-insured.

On August 2, 2007, S. 1974, the Pension Protection Technical Corrections Act of 2007, was introduced in the Senate and, on August 3, 2007, H.R. 3361, the Pension Protection Technical Corrections Act of 2007, was introduced in the House of

Representatives. Both bills have identical provisions - § 9(i)(1)(B) and (C) of S. 1974 and H.R. 3361 - which would revise section 845(a) of PPA '06 by deleting the word "insurance" from the term "accident or health insurance plan," which occurs in both the definition of qualified health insurance premiums in § 402(l)(4)(D) of the Code and the direct payment requirement in § 402(l)(5)(A). Because of these pending technical corrections and special considerations involving eligible retired public safety officers, Notice 2007-7, Q&A-23, is being modified.

III. Modification of Notice 2007-7, Q&A-23

Notice 2007-7, Q&A-23, is modified as follows:

Q-23. Can the accident or health plan receiving the payments of qualified health insurance premiums be a self-insured plan?

A-23. Yes. An accident or health plan, which is defined under § 105(e), includes a self-insured plan. See § 1.105-5(a) of the Income Tax Regulations.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2007-7 is modified.

DRAFTING INFORMATION

The principal author of this notice is Angelique Carrington of Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please call the Employee Plans customer assistance service Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern time at (877) 829-5500 (a toll-free number) or e-mail Ms. Carrington at RetirementPlanQuestions@irs.gov.