



Taben News Alert

IRS Issues Guidance on Implementation of \$2,500 Health FSA Limit

The **2012 Affordable Care Act (ACA)** set a \$2,500 maximum annual limit on employee contributions to health flexible spending accounts (Health FSAs), effective in 2013. The IRS published **IRS Notice 2012-40** which addresses several issues concerning the limit:

- **Plan Year NOT tax year.** The \$2,500 limit for FSA contributions does not apply for plan years beginning prior to 2013. The Notice states that the limit is effective for plan years beginning after 12/31/12. This is a change to the language in the text of the law which stated that the limit was applicable for “taxable years” beginning after 12/31/12. This will allow employers with non-calendar year plans to avoid having to make a plan limit change in 2012 to comply with the limit requirements.
- **Short plan year application.** If a cafeteria plan has a short plan year that begins after 2012, the \$2,500 limit must be prorated based on the number of months in that short plan year.
- **Limit applies to employee contributions only.** The guidance clarifies that the limit only applies to employee contributions (not to employer contributions to an employee’s FSA).
- **Limit is a per-employee limit.** The guidance clarifies that the limit is a per-employee limit - - that a husband and wife could each contribute up to \$2,500 in their own FSAs (even if both spouses are employed by the same employer).
- **Grace period application.** Where a plan has a grace period for a plan year, unused salary reduction contributions to the health FSA for the plan year that are carried over into the grace period do not count against the \$2,500 limit applicable for the subsequent plan year.
- **Retroactive plan amendment.** Cafeteria plan documents must be amended to adopt the \$2,500 contribution limit. The Notice allows plans to make retroactive amendments on or before 12/31/14 as long as the plan complies with section 125 rules and guidance for plan years beginning on/after 1/1/13.
- **Correction of mistake.** The Notice provides relief for employee contributions that exceed the \$2,500 limit due to mistake and that are corrected by the employer.
- **“Use-it-or-lose it”** - Of particular note is the fact that the Notice states that the IRS is considering whether to modify the “use it or lose it” rule. The Notice requests comments on potential modifications of this rule to be submitted by August 17, 2012.