Part III - Administrative, Procedural, and Miscellaneous

Notice 2004-2
(with items A-2, A-12 and A-14 as changed by Notice 2004-50, as revised)

PURPOSE

This notice provides guidance on Health Savings Accounts.

BACKGROUND

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added section 223 to the Internal Revenue Code to permit eligible individuals to establish Health Savings Accounts (HSAs) for taxable years beginning after December 31, 2003. HSAs are established to receive tax-favored contributions by or on behalf of eligible individuals and amounts in an HSA may be accumulated over the years or distributed on a tax-free basis to pay or reimburse qualified medical expenses.

A number of the rules that apply to HSAs are similar to rules that apply to Individual Retirement Accounts (IRAs) under sections 219, 408 and 408A, and to Archer Medical Savings Accounts (Archer MSAs) under section 220. For example, like an Archer MSA, an HSA is established for the benefit of an individual, is owned by that individual, and is portable. Thus, if the individual is an employee who later changes employers or leaves the work force, the HSA does not stay behind with the former employer, but stays with the individual.

This notice provides certain basic information about HSAs in question and answer format, without attempting to enumerate all of the specific rules that apply under section 223.

The notice is divided into five parts. Part I of the notice explains what HSAs are and who can have them. Part II describes how HSAs can be established. Parts III and IV cover contributions to HSAs and distributions from HSAs. Part V discusses other matters relating to HSAs.

QUESTIONS AND ANSWERS

Set forth below are questions and answers concerning HSAs.

I. What Are HSAs and Who Can Have Them?

Q-1. What is an HSA?

A-1. An HSA is a tax-exempt trust or custodial account established exclusively for the purpose of paying qualified medical expenses of the account beneficiary who, for the months for which contributions are made to an HSA, is covered under a high-deductible health plan.

Q-2. Who is eligible to establish an HSA?

A-2. An "eligible individual" can establish an HSA. An "eligible individual" means, with respect to any month, any individual who**:** (1) is covered under a high-deductible health plan (HDHP) on the first day of such month; (2) is not also covered by any other health plan that is not an HDHP (with certain exceptions for plans providing certain limited types of coverage); (3) is not enrolled in Medicare (generally, has not yet reached age 65); and (4) may not be claimed as a dependent on another person's tax return.

Q-3. What is a "high-deductible health plan" (HDHP)?

A-3. Generally, an HDHP is a health plan that satisfies certain requirements with respect to deductibles and out-of-pocket expenses. Specifically, for self-only coverage, an HDHP has an annual deductible of at least $1,000 and annual out-of-pocket expenses required to be paid (deductibles, co-payments and other amounts, but not premiums) not exceeding $5,000. For family coverage, an HDHP has an annual deductible of at least $2,000 and annual out-of-pocket expenses required to be paid not exceeding $10,000. In the case of family coverage, a plan is an HDHP only if, under the terms of the plan and without regard to which family member or members incur expenses, no amounts are payable from the HDHP until the family has incurred annual covered medical expenses in excess of the minimum annual deductible. Amounts are indexed for inflation. A plan does not fail to qualify as an HDHP merely because it does not have a deductible (or has a small deductible) for preventive care (e.g., first dollar coverage for preventive care). However, except for preventive care, a plan may not provide benefits for any year until the deductible for that year is met. See A-4 and A-6 for special rules regarding network plans and plans providing certain types of coverage.

Example (1): A Plan provides coverage for A and his family. The Plan provides for the payment of covered medical expenses of any member of A's family if the

member has incurred covered medical expenses during the year in excess of $1,000 even if the family has not incurred covered medical expenses in excess of $2,000. If A incurred covered medical expenses of $1,500 in a year, the Plan would pay $500. Thus, benefits are potentially available under the Plan even if the family's covered medical expenses do not exceed $2,000. Because the Plan provides family coverage with an annual deductible of less than $2,000, the Plan is not an HDHP.

Example (2): Same facts as in example (1), except that the Plan has a $5,000 family deductible and provides payment for covered medical expenses if any member of A's family has incurred covered medical expenses during the year in excess of $2,000. The Plan satisfies the requirements for an HDHP with respect to the deductibles. See A-12 for HSA contribution limits.

Q-4. What are the special rules for determining whether a health plan that is a network plan meets the requirements of an HDHP?

A-4. A network plan is a plan that generally provides more favorable benefits for services provided by its network of providers than for services provided outside of the network. In the case of a plan using a network of providers, the plan does not fail to be an HDHP (if it would otherwise meet the requirements of an HDHP) solely because the out-of-pocket expense limits for services provided outside of the network exceeds the maximum annual out-of-pocket expense limits allowed for an HDHP. In addition, the plan's annual deductible for out-of-network services is not taken into account in determining the annual contribution limit. Rather, the annual contribution limit is determined by reference to the deductible for services within the network.

Q-5. What kind of other health coverage makes an individual ineligible for an HSA?

A-5. Generally, an individual is ineligible for an HSA if the individual, while covered under an HDHP, is also covered under a health plan (whether as an individual, spouse, or dependent) that is not an HDHP. See also A-6.

Q-6. What other kinds of health coverage may an individual maintain without losing eligibility for an HSA?

A-6. An individual does not fail to be eligible for an HSA merely because, in addition to an HDHP, the individual has coverage for any benefit provided by "permitted insurance." Permitted insurance is insurance under which substantially all of the coverage provided relates to liabilities incurred under workers' compensation laws, tort liabilities, liabilities relating to ownership or use of property (e.g., automobile insurance), insurance for a specified disease or illness, and insurance that pays a fixed amount per day (or other period) of hospitalization.

In addition to permitted insurance, an individual does not fail to be eligible for an HSA merely because, in addition to an HDHP, the individual has coverage (whether provided through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care. If a plan that is intended to be an HDHP is one in which substantially all of the coverage of the plan is through permitted insurance or other coverage as described in this answer, it is not an HDHP.

Q-7. Can a self-insured medical reimbursement plan sponsored by an employer be an HDHP?

A-7. Yes.

II. How Can An HSA Be Established?

Q-8. How does an eligible individual establish an HSA?

A-8. Beginning January 1, 2004, any eligible individual (as described in A-2) can establish an HSA with a qualified HSA trustee or custodian, in much the same way that individuals establish IRAs or Archer MSAs with qualified IRA or Archer MSA trustees or custodians. No permission or authorization from the Internal Revenue Service (IRS) is necessary to establish an HSA. An eligible individual who is an employee may establish an HSA with or without involvement of the employer.

Q-9. Who is a qualified HSA trustee or custodian?

A-9. Any insurance company or any bank (including a similar financial institution as defined in section 408(n)) can be an HSA trustee or custodian. In addition, any other person already approved by the IRS to be a trustee or custodian of IRAs or Archer MSAs is automatically approved to be an HSA trustee or custodian. Other persons may request approval to be a trustee or custodian in accordance with the procedures set forth in Treas. Reg. § 1.408-2(e) (relating to IRA nonbank trustees). For additional information concerning nonbank trustees and custodians, see Announcement 2003-54, 2003-40 I.R.B. 761.

Q-10. Does the HSA have to be opened at the same institution that provides the HDHP?

A-10. No. The HSA can be established through a qualified trustee or custodian who is different from the HDHP provider. Where a trustee or custodian does not sponsor the HDHP, the trustee or custodian may require proof or certification that the account beneficiary is an eligible individual, including that the individual is covered by a health plan that meets all of the requirements of an HDHP.

III. Contributions to HSAs.

Q-11. Who may contribute to an HSA?

A-11. Any eligible individual may contribute to an HSA. For an HSA established by an employee, the employee, the employee's employer or both may contribute to the HSA of the employee in a given year. For an HSA established by a self-employed (or unemployed) individual, the individual may contribute to the HSA. Family members may also make contributions to an HSA on behalf of another family member as long as that other family member is an eligible individual.

Q-12. How much may be contributed to an HSA in calendar year 2004?

A-12. The maximum annual contribution to an HSA is the sum of the limits determined separately for each month, based on status, eligibility and health plan coverage as of the first day of the month. For calendar year 2004, the maximum monthly contribution for eligible individuals with self-only coverage under an HDHP is 1/12 of the lesser of 100% of the annual deductible under the HDHP (minimum of $1,000) but not more than $2,600. For eligible individuals with family coverage under an HDHP, the maximum monthly contribution is 1/12 of the lesser of 100% of the annual deductible under the HDHP (minimum of $2,000) but not more than $5,150. In addition to the maximum contribution amount, catch-up contributions, as described in A-14, may be made by or on behalf of individuals age 55 and older, who are not enrolled in Medicare.

All HSA contributions made by or on behalf of an eligible individual to an HSA are aggregated for purposes of applying the limit. The annual limit is decreased by the aggregate contributions to an Archer MSA. The same annual contribution limit applies whether the contributions are made by an employee, an employer, a self-employed person, or a family member. Unlike Archer MSAs, contributions may be made by or on behalf of eligible individuals even if the individuals have no compensation or if the contributions exceed their compensation. If an individual has more than one HSA, the aggregate annual contributions to all the HSAs are subject to the limit.

Q-13. How is the contribution limit computed for an individual who begins self-only coverage under an HDHP on June 1, 2004 and continues to be covered under the HDHP for the rest of the year?

A-13. The contribution limit is computed each month. If the annual deductible is $5,000 for the HDHP, then the lesser of the annual deductible and $2,600 is $2,600. The monthly contribution limit is $216.67 ($2,600 /12). The annual contribution limit is $1,516.69 (7 x $216.67).

Q-14. What are the “catch-up contributions” for individuals age 55 or older?

A-14. For individuals (and their spouses covered under the HDHP) who have attained 55 and are also not enrolled in Medicare, the HSA contribution limit is increased by $500 in calendar year 2004. This catch-up amount will increase in $100 increments annually, until it reaches $1,000 in calendar year 2009. As with the annual contribution limit, the catch-up contribution is also computed on a monthly basis. After an individual has attained age 65 (the Medicare eligibility age), contributions, including catch-up contributions, cannot be made to an individual's HSA.

Example: An individual attains age 65 and becomes enrolled in Medicare in July, 2004 and had been participating in self-only coverage under an HDHP with an annual deductible of $1,000. The individual is no longer eligible to make HSA contributions (including catch-up contributions) after June, 2004. The monthly contribution limit is $125 ($1,000/12 + $500/12 for the catch-up contribution). The individual may make contributions for January through June totaling $750 (6 x $125), but may not make any contributions for July through December, 2004.

Q-15. If one or both spouses have family coverage, how is the contribution limit computed?

A-15. In the case of individuals who are married to each other, if either spouse has family coverage, both are treated as having family coverage. If each spouse has family coverage under a separate health plan, both spouses are treated as covered under the plan with the lowest deductible. The contribution limit for the spouses is the lowest deductible amount, divided equally between the spouses unless they agree on a different division. The family coverage limit is reduced further by any contribution to an Archer MSA. However, both spouses may make the catch-up contributions for individuals age 55 or over without exceeding the family coverage limit.

Example (1): H and W are married. H is 58 and W is 53. H and W both have family coverage under separate HDHPs. H has a $3,000 deductible under his HDHP and W has a $2,000 deductible under her HDHP. H and W are treated as covered under the plan with the $2,000 deductible. H can contribute $1,500 to an HSA (1/2 the deductible of $2,000 + $500 catch up contribution) and W can contribute $1,000 to an HSA (unless they agree to a different division).

Example (2): H and W are married. H is 35 and W is 33. H and W each have a self-only HDHP. H has a $1,000 deductible under his HDHP and W has a $1,500 deductible under her HDHP. H can contribute $1,000 to an HSA and W can contribute $1,500 to an HSA.

Q-16. In what form must contributions be made to an HSA?

A-16. Contributions to an HSA must be made in cash. For example, contributions may not be made in the form of stock or other property. Payments for the HDHP

and contributions to the HSA can be made through a cafeteria plan. See A-33.

Q-17**.** What is the tax treatment of an eligible individual's HSA contributions?

A-17. Contributions made by an eligible individual to an HSA (which are subject to the limits described in A-12) are deductible by the eligible individual in determining adjusted gross income (i.e., "above-the-line"). The contributions are deductible whether or not the eligible individual itemizes deductions. However, the individual cannot also deduct the contributions as medical expense deductions under section 213.

Q-18. What is the tax treatment of contributions made by a family member on behalf of an eligible individual?

A-18. Contributions made by a family member on behalf of an eligible individual to an HSA (which are subject to the limits described in A-12) are deductible by the eligible individual in computing adjusted gross income. The contributions are deductible whether or not the eligible individual itemizes deductions. An individual who may be claimed as a dependent on another person's tax return is not an eligible individual and may not deduct contributions to an HSA.

Q-19. What is the tax treatment of employer contributions to an employee's HSA?

A-19. In the case of an employee who is an eligible individual, employer contributions (provided they are within the limits described in A-12) to the employee's HSA are treated as employer-provided coverage for medical expenses under an accident or health plan and are excludable from the employee's gross income. The employer contributions are not subject to withholding from wages for income tax or subject to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), or the Railroad Retirement Tax Act. Contributions to an employee's HSA through a cafeteria plan are treated as employer contributions. The employee cannot deduct employer contributions on his or her federal income tax return as HSA contributions or as medical expense deductions under section 213.

Q-20. What is the tax treatment of an HSA?

A-20. An HSA is generally exempt from tax (like an IRA or Archer MSA), unless it has ceased to be an HSA. Earnings on amounts in an HSA are not includable in gross income while held in the HSA (i.e., inside buildup is not taxable). See A-25 regarding the taxation of distributions to the account beneficiary.

Q-21. When may HSA contributions be made? Is there a deadline for contributions to an HSA for a taxable year?

A-21. Contributions for the taxable year can be made in one or more payments, at the convenience of the individual or the employer, at any time prior to the time prescribed by law (without extensions) for filing the eligible individual's federal income tax return for that year, but not before the beginning of that year. For calendar year taxpayers, the deadline for contributions to an HSA is generally April 15 following the year for which the contributions are made. Although the annual contribution is determined monthly, the maximum contribution may be made on the first day of the year. See A-22 regarding correcting excess contributions.

Example: B has self-only coverage under an HDHP with a deductible of $1,500 and also has an HSA. B's employer contributes $200 to B's HSA at the end of every quarter in 2004 and at the end of the first quarter in 2005 (March 31, 2005). B can exclude from income in 2004 all of the employer contributions (i.e., $1,000) because B's exclusion for all contributions does not exceed the maximum annual HSA contributions. See A-12.

Q-22. What happens when HSA contributions exceed the maximum amount that may be deducted or excluded from gross income in a taxable year?

A-22. Contributions by individuals to an HSA, or if made on behalf of an individual to an HSA, are not deductible to the extent they exceed the limits described in A-12. Contributions by an employer to an HSA for an employee are included in the gross income of the employee to the extent that they exceed the limits described in A-12 or if they are made on behalf of an employee who is not an eligible individual. In addition, an excise tax of 6% for each taxable year is imposed on the account beneficiary for excess individual and employer contributions.

However, if the excess contributions for a taxable year and the net income attributable to such excess contributions are paid to the account beneficiary before the last day prescribed by law (including extensions) for filing the account beneficiary's federal income tax return for the taxable year, then the net income attributable to the excess contributions is included in the account beneficiary's gross income for the taxable year in which the distribution is received but the excise tax is not imposed on the excess contribution and the distribution of the excess contributions is not taxed.

Q-23. Are rollover contributions to HSAs permitted?

A-23. Rollover contributions from Archer MSAs and other HSAs into an HSA are permitted. Rollover contributions need not be in cash. Rollovers are not subject to the annual contribution limits. Rollovers from an IRA, from a health reimbursement arrangement (HRA), or from a health flexible spending arrangement (FSA) to an HSA are not permitted.

IV. Distributions from HSAs.

Q-24. When is an individual permitted to receive distributions from an HSA?

A-24. An individual is permitted to receive distributions from an HSA at any time.

Q-25. How are distributions from an HSA taxed?

A-25. Distributions from an HSA used exclusively to pay for qualified medical expenses of the account beneficiary, his or her spouse, or dependents are excludable from gross income. In general, amounts in an HSA can be used for qualified medical expenses and will be excludable from gross income even if the individual is not currently eligible for contributions to the HSA.

However, any amount of the distribution not used exclusively to pay for qualified medical expenses of the account beneficiary, spouse or dependents is includable in gross income of the account beneficiary and is subject to an additional 10% tax on the amount includable, except in the case of distributions made after the account beneficiary's death, disability, or attaining age 65.

Q-26. What are the “qualified medical expenses” that are eligible for tax-free distributions?

A-26. The term “qualified medical expenses” are expenses paid by the account beneficiary, his or her spouse or dependents for medical care as defined in section 213(d) (including nonprescription drugs as described in Rev. Rul. 2003-102, 2003-38 I.R.B. 559), but only to the extent the expenses are not covered by insurance or otherwise. The qualified medical expenses must be incurred only after the HSA has been established. For purposes of determining the itemized deduction for medical expenses, medical expenses paid or reimbursed by distributions from an HSA are not treated as expenses paid for medical care under section 213.

Q-27. Are health insurance premiums qualified medical expenses?

A-27. Generally, health insurance premiums are not qualified medical expenses except for the following: qualified long-term care insurance, COBRA health care continuation coverage, and health care coverage while an individual is receiving unemployment compensation. In addition, for individuals over age 65, premiums for Medicare Part A or B, Medicare HMO, and the employee share of premiums for employer-sponsored health insurance, including premiums for employer-sponsored retiree health insurance can be paid from an HSA. Premiums for Medigap policies are not qualified medical expenses.

Q-28. How are distributions from an HSA taxed after the account beneficiary is no longer an eligible individual?

A-28. If the account beneficiary is no longer an eligible individual (e.g., the individual is over age 65 and entitled to Medicare benefits, or no longer has an HDHP), distributions used exclusively to pay for qualified medical expenses continue to be excludable from the account beneficiary's gross income**.**

Q-29. Must HSA trustees or custodians determine whether HSA distributions are used exclusively for qualified medical expenses?

A-29. No. HSA trustees or custodians are not required to determine whether HSA distributions are used for qualified medical expenses. Individuals who establish HSAs make that determination and should maintain records of their medical expenses sufficient to show that the distributions have been made exclusively for qualified medical expenses and are therefore excludable from gross income.

Q.-30. Must employers who make contributions to an employee's HSA determine whether HSA distributions are used exclusively for qualified medical expenses?

A-30. No. The same rule that applies to trustees or custodians applies to employers. See A-29.

Q-31. What are the income tax consequences after the HSA account beneficiary's death?

A-31. Upon death, any balance remaining in the account beneficiary's HSA becomes the property of the individual named in the HSA instrument as the beneficiary of the account. If the account beneficiary's surviving spouse is the named beneficiary of the HSA, the HSA becomes the HSA of the surviving spouse. The surviving spouse is subject to income tax only to the extent distributions from the HSA are not used for qualified medical expenses.

If, by reason of the death of the account beneficiary, the HSA passes to a person other than the account beneficiary's surviving spouse, the HSA ceases to be an HSA as of the date of the account beneficiary's death, and the person is required to include in gross income the fair market value of the HSA assets as of the date of death. For such a person (except the decedent's estate), the includable amount is reduced by any payments from the HSA made for the decedent's qualified medical expenses, if paid within one year after death.

V. Other Matters.

Q-32. What discrimination rules apply to HSAs?

A-32. If an employer makes HSA contributions, the employer must make

available comparable contributions on behalf of all "comparable participating employees" (i.e., eligible employees with comparable coverage) during the same period. Contributions are considered comparable if they are either the same amount or same percentage of the deductible under the HDHP.

The comparability rule is applied separately to part-time employees (i.e., employees who are customarily employed for fewer than 30 hours per week). The comparability rule does not apply to amounts rolled over from an employee's HSA or Archer MSA, or to contributions made through a cafeteria plan. If employer contributions do not satisfy the comparability rule during a period, the employer is subject to an excise tax equal to 35% of the aggregate amount contributed by the employer to HSAs for that period.

Example: Employer X offers its collectively bargained employees three health plans, including an HDHP with self-only coverage and a $2,000 deductible. For each employee electing the HDHP self-only coverage, X contributes $1,000 per year on behalf of the employee to an HSA. X makes no HSA contributions for employees who do not elect the HDHP. X's plans and HSA contributions satisfy the comparability rule.

Q-33. Can an HSA be offered under a cafeteria plan?

A-33. Yes. Both an HSA and an HDHP may be offered as options under a cafeteria plan. Thus, an employee may elect to have amounts contributed as employer contributions to an HSA and an HDHP on a salary-reduction basis.

Q-34. What reporting is required for an HSA?

A-34. Employer contributions to an HSA must be reported on the employee's Form W-2. In addition, information reporting for HSAs will be similar to information reporting for Archer MSAs. The IRS will release forms and instructions, similar to those required for Archer MSAs, on how to report HSA contributions, deductions, and distributions.

Q-35. Are HSAs subject to COBRA continuation coverage under section 4980B?

A-35. No. Like Archer MSAs, HSAs are not subject to COBRA continuation coverage.

Q-36. How do the rules under section 419 affect contributions by an employer to an HSA?

A-36. Contributions by an employer to an HSA are not subject to the rules under section 419. An HSA is a trust that is exempt from tax under section 223. Thus, an HSA is not a "fund" under section 419(e)(3) and, therefore, is not a "welfare benefit fund" under section 419(e)(1).

Q-37. May eligible individuals use debit, credit or stored-value cards to receive distributions from an HSA for qualified medical expenses?

A-37. Yes.

Q-38. Are HSAs subject to other statutory rules and provisions?

A-38. Yes. HSAs are subject to other statutory rules and provisions not addressed in this notice. No inference should be drawn regarding issues not expressly addressed in this notice that may be suggested by a particular question or answer, or by the inclusion or exclusion of certain questions.

COMMENTS REQUESTED

Comments are requested on the questions and answers set forth in this notice. In addition, comments are requested on any other issue not addressed in this notice but which should be addressed in future IRS guidance. In particular, comments are requested as to the following:

1. The appropriate standard for preventive care in section 223(c)(2)(C).
2. The relationship between section 223 and the rules governing health FSAs in cafeteria plans under section 125 and the proposed and final regulations under section 125 (in particular, Prop. Treas. Reg. § 1.125-2 Q&A 7).
3. Whether transition relief should be provided in cases of inappropriate coordination of an HDHP with other coverage.
4. The relationship between HSAs and health FSAs or HRAs.
5. The application of the nondiscrimination rules in section 125 to HSAs offered under a cafeteria plan.
6. The corrective procedures in instances where employer contributions exceed the statutory contribution limits.
7. The relationship between limits on out-of-pocket expenses in section 223(c)(2)(A) and reasonable lifetime maximums on benefits in health insurance plans.

Send comments to: CC:DOM:CORP:R (Notice 2004-2), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Comments may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORT:R (Notice 2004-2), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. Alternatively, taxpayers may submit comments electronically at:

Notice.2004.2.Comments@irscounsel.treas.gov (a Service Comments e-mail address).

DRAFTING INFORMATION

The principal authors of this notice are Elizabeth Purcell and Shoshanna Tanner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice contact Ms. Purcell or Ms. Tanner on (202) 622-6080 (not a toll-free call).