



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

MAR 15 2005

Linda A. Wilkins, Esq.  
Locke Liddell & Sapp LLP  
2200 Ross Avenue  
Suite 2200  
Dallas, TX 75201-6776

Subject: Texas Nonsubscriber Plans

Dear Ms. Wilkins:

This letter responds to your request of February 15, 2005 and subsequent correspondence, concerning the above-captioned program. Specifically, you ask whether employees covered under Texas nonsubscriber plans are eligible individuals who may contribute to a Health Savings Account (HSA) as described in section 223 of the Internal Revenue Code. We can provide you with the following general information concerning your question.

It is our understanding that employers in Texas may elect to provide workers' compensation benefits by subscribing to the State regulated workers' compensation system on either a fully-insured or self-insured basis. Alternatively, employers may elect not to participate in the State system and provide no workers' compensation benefits for their employees. These nonsubscribing employers face potential liability for workplace injuries under Texas tort law theories of negligence.

However, nonsubscribing employers may limit their liability by providing an occupational injury and illness benefit plan that generally provides no-fault medical, wage-replacement, death and dismemberment benefits to employees who have work-related injury or illness (i.e., Texas nonsubscriber plans, also referred to as "Texas injury benefit plans"). In addition, these plans often include the following in the scope of the coverage: injury by accident, occupational disease and illnesses and cumulative trauma arising in the course and scope of employment. Because coverage under the nonsubscriber plans is limited solely to accident or illness with a workplace origin, you state that there is no overlap between Texas nonsubscriber plans and the employers' group health plans. Thus, coverage under Texas nonsubscriber plans and any high deductible health plan (HDHP) offered by an employer would be mutually exclusive.

Section 223(a) allows a deduction for contributions to an HSA for an "eligible individual."

Section 223(c)(1)(A) defines "eligible individual" with respect to any month, as an individual who, in addition to other requirements, is covered under an HDHP on the first day of such month and is not, while covered under an HDHP, "covered under any health plan which is not a high deductible health plan, which provides coverage for any benefit which is covered under the high deductible health plan." An eligible individual may also have permitted insurance, disregarded coverage and preventive care in addition to an HDHP. Under section 223(c)(1)(B)(ii), disregarded coverage includes coverage for accidents and disability (whether through insurance or otherwise).

It is our view that the Texas nonsubscriber plans, as described above, provide disregarded coverage within the meaning of section 223(b)(1)(B)(ii). Accordingly, employees who are covered under Texas nonsubscriber plans and who are otherwise eligible as defined in section 223(c)(1), are eligible to contribute to HSAs.

Please note that an "information letter" is advisory only and calls attention to well-established interpretations or principles of tax law without applying them to a specific set of facts. Rev. Proc. 2005-1 § 2.04, 2005-1 C.B. 7.

I hope this information is helpful. If you have additional questions, please contact me or Elizabeth Purcell of this office at (202) 622-6080.

Sincerely,



Harry Beker  
Chief, Health and Welfare Branch  
Office of Division Counsel/Associate Chief  
Counsel  
(Tax Exempt & Government Entities)