Reg. Section 54.4980G-1 (A-1)

Failure of employer to make comparable health savings account contributions.

Q-1: What are the comparability rules that apply to employer contributions to Health Savings Accounts (HSAs)?

A-1: If an employer makes contributions to any employee's HSA, the employer must make comparable contributions to the HSAs of all comparable participating employees. See Q & A-1 in § 54.4980G-4 for the definition of comparable contributions. Comparable participating employees are eligible individuals (as defined in section 223(c)(1)) who are in the same category of employees and who have the same category of high deductible health plan (HDHP) coverage. See sections 49 80G(b) and 4980E(d)(3). See section 223(c)(2) and (g) for the definition of an HDHP. See also Q & A-5 in § 54.4980G-3 for the categories of employees and Q & A-2 of this section for the categories of HDHP coverage. But see Q & A-6 in § 54.4980G-3 for treatment of collectively bargained employees and Q & A-1 in § 54.4980G-6 for the rules allowing larger comparable contributions to nonhighly compensated employees.

Q-2: What are the categories of HDHP coverage for purposes of applying the comparability rules?

A-2: (a) In general. Generally, the categories of coverage are self-only HDHP coverage and family HDHP coverage. Family HDHP coverage means any coverage other than self-only HDHP coverage. The comparability rules apply separately to self-only HDHP coverage and family HDHP coverage. In addition, if an HDHP has family coverage options meeting the descriptions listed in paragraph (b) of this Q & A-2, each such coverage option may be treated as a separate category of coverage and the comparability rules may be applied separately to each category. However, if the HDHP has more than one category that provides coverage for the same number of individuals, all such categories are treated as a single category for purposes of the comparability rules. Thus, the categories of "employee plus spouse" and "employee plus dependent," each providing coverage for two individuals, are treated as the single category "self plus one" for comparability purposes. See, however, the final sentence of paragraph (a) of Q & A-1 of § 54.4980G-4 for a special rule that applies if different amounts are contributed for different categories of family coverage. See also § 54.4980G-6 for the rules allowing larger comparable contributions to nonhighly compensated employees.

(b) HDHP Family coverage categories. The coverage categories are --

(1) Self plus one;

(2) Self plus two; and

(3) Self plus three or more.

(c) Examples. The rules of this Q & A-2 are illustrated by the following examples:

Example 1.

Employer A maintains an HDHP and contributes to the HSAs of eligible employees who elect coverage under the HDHP. The HDHP has self-only coverage and family coverage. Thus,

the categories of coverage are self-only and family coverage. Employer A contributes $ 750 to the HSA of each eligible employee with self-only HDHP coverage and $ 1,000 to the HSA of each eligible employee with family HDHP coverage. Employer A's contributions satisfy the comparability rules.

Example 2.

(i) Employer B maintains an HDHP and contributes to the HSAs of eligible employees who elect coverage under the HDHP. The HDHP has the following coverage options:

(A) Self-only;

(B) Self plus spouse;

(C) Self plus dependent;

(D) Self plus spouse plus one dependent;

(E) Self plus two dependents; and

(F) Self plus spouse and two or more dependents.

(ii) The self plus spouse category and the self plus dependent category constitute the same category of HDHP coverage (self plus one) and Employer B must make the same comparable contributions to the HSAs of all eligible individuals who are in either the self plus spouse category of HDHP coverage or the self plus dependent category of HDHP coverage. Likewise, the self plus spouse plus one dependent category and the self plus two dependents category constitute the same category of HDHP coverage (self plus two) and Employer B must make the same comparable contributions to the HSAs of all eligible individuals who are in either the self plus spouse plus one dependent category of HDHP coverage or the self plus two dependents category of HDHP coverage.

Example 3.

(i) Employer C maintains an HDHP and contributes to the HSAs of eligible employees who elect coverage under the HDHP. The HDHP has the following coverage options:

(A) Self-only;

(B) Self plus one;

(C) Self plus two; and

(D) Self plus three or more.

(ii) Employer C contributes $ 500 to the HSA of each eligible employee with self-only HDHP coverage, $ 750 to the HSA of each eligible employee with self plus one HDHP coverage, $ 900 to the HSA of each eligible employee with self plus two HDHP coverage and $ 1,000 to the HSA of each eligible employee with self plus three or more HDHP coverage. Employer C's contributions satisfy the comparability rules.

Q-3: What is the testing period for making comparable contributions to employees' HSAs?

A-3: To satisfy the comparability rules, an employer must make comparable contributions for the calendar year to the HSAs of employees who are comparable participating employees. See section 4980G(a). See Q & A-3 and Q & A-4 in § 54.4980G-4 for a discussion of HSA contribution methods.

Q-4: How is the excise tax computed if employer contributions do not satisfy the comparability rules for a calendar year?

A-4: (a) Computation of tax. If employer contributions do not satisfy the comparability rules for a calendar year, the employer is subject to an excise tax equal to 35% of the aggregate amount contributed by the employer to HSAs for that period.

(b) Example. The following example illustrates the rules in paragraph (a) of this Q & A-4:

Example.

During the 2007 calendar year, Employer D has 8 employees who are eligible individuals with self-only coverage under an HDHP provided by Employer D. The deductible for the HDHP is $ 2,000. For the 2007 calendar year, Employer D contributes $ 2,000 each to the HSAs of two employees and $ 1,000 each to the HSAs of the other six employees, for total HSA contributions of $ 10,000. Employer D's contributions do not satisfy the comparability rules. Therefore, Employer D is subject to an excise tax of $ 3,500 (35% of $ 10,000) for its failure to make comparable contributions to its employees' HSAs.

Q-5: If a person is liable for the excise tax under section 4980G, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-5: (a) In general. §§ 54.6011-2, 54.6151-1 and 54.6071-1(d).

(b) Effective/applicability date. The rules in this Q & A-5 are effective for employer contributions made for calendar years beginning on or after January 1, 2010.