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IRS Issues Draft Form W-2 and PPACA Interim Relief for Reporting Cost of Coverage Under Group Health Plan

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The Internal Revenue Service has issued a draft Form W-2 Wage and Tax Statement for 2011 which employers may use to report wages and employee tax withholding, including the cost of coverage under an employer-sponsored group health plan. The draft Form was issued concurrent with IRS Notice 2010-69 which provides interim relief to employers with respect to reporting the cost of coverage under an employer-sponsored group health plan pursuant to Section 6051(a)(14) of the Internal Revenue Code (the "Code") as added pursuant to the Patient Protection and Affordable Care Act of 2010 (PPACA).

The PPACA generally provides that the aggregate cost of applicable employer-sponsored coverage must be reported on Form W-2. For these purposes, the aggregate cost is to be determined under the rules of Code Section 4980B(f)(4), referring to the "applicable premium" under the rules provide for COBRA continuation coverage (which include the aggregate amount of employee and employer premium). The PPACA reporting requirement is effective for taxable years beginning on or after January 1, 2011.

However, the Notice provides that the IRS will defer the new reporting requirement for employers to report the cost of coverage making that reporting by employers optional in 2011. Accordingly, an employer will not be treated as failing to

meet the requirements of the PPACA for 2011, and will not be subject to any penalties for failure to meet such requirements, merely because it does not report the aggregate cost of employer-sponsored coverage on Form W-2 issued for 2011.

Comment. The deferral is necessary as the IRS and the U.S. Department of the Treasury anticipate issuing further guidance on the reporting requirements set forth in the PPACA around the end of 2010. The IRS and the U.S. Department of the Treasury note that this relief is necessary to provide employers the time they need to make changes to their payroll systems or procedures in preparation for compliance with the new reporting requirements.

The draft Form W-2 issued concurrent with the Notice includes codes that employers may use to report the cost of coverage under an employer-sponsored group health plan. As anticipated, the draft Form W-2 provides that the cost of employer-sponsored health coverage will be reported in Box 12, using Code DD. Furthermore, the IRS continues to stress that the amounts reportable are not taxable to the employee/participant.

Comment. The PPACA reporting requirement is intended to be informational only, and to provide employees with greater transparency into overall health care costs.

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