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legislativeUPDATE

July 18, 2014

## IRS Issues Guidance on Employers and the Individual Exchange

On May 13, 2014 the IRS issued [guidance](#) for large employers warning that they will not be in compliance with the Patient Protection and Affordable Care Act (PPACA) if they move employees to public exchanges by allocating pre-tax dollar amounts to purchase individual health insurance (either inside or outside of an exchange). Premium reimbursement arrangements provided on an after-tax basis are still permissible.

According to the IRS, “employer payment plans” in which employers reimburse employees on a pre-tax basis for individual health insurance premiums do not comply with PPACA’s market reforms. These pre-tax employer payment plans may be subject to an excise tax of \$100 per/day for each applicable employee (\$36,500 per year per employee).

An “employer payment plan” generally does not include an employer-sponsored arrangement that allows an employee to choose either cash or *an after-tax* amount to be applied toward health coverage. Thus, premium reimbursement arrangements made on an after-tax basis are not considered “employer payment plans” and will still be permitted. Employers that plan on using after-tax premium reimbursement arrangements should be aware that these arrangements may be considered ERISA plans.

Should you have any questions, please contact your Conner Strong & Buckelew account representative.