

## **NEW IRS MEMO CONFIRMS TAX TREATMENT OF WELLNESS PROGRAMS & INCENTIVES**

Jun 14, 2016

In a recently released IRS Chief Counsel Memo, the IRS confirmed that wellness incentives are generally taxable. The memo also, indirectly, confirmed the tax treatment of wellness programs more generally.

As to the incentives, the IRS held that a cash payment to employees for participating in a wellness program is taxable to the employees. The memo did not deal with incentives paid to dependents, but we presume those would be taxable to the applicable employee as well. The IRS did say that certain in-kind fringe benefits (like a tee shirt) might be so de minimis as to be exempt as fringe benefits. Confirming the IRS's long-standing position, however, cash does not qualify for this exception and is taxable.

This tax treatment also applies to premium reimbursements if the premiums were paid for on a pre-tax basis through a cafeteria plan. Therefore, if employees who participate in a wellness program receive a premium reimbursement of premiums that were originally paid on a pre-tax basis, those reimbursements would be taxable to the employee. This is logical since, if an employee was simply allowed to pay less in premiums (as opposed to being reimbursed), the amounts not paid as premiums would increase his or her taxable compensation. There is no reason to expect that a reimbursement would be treated any differently for tax purposes. While the memo focused on a reimbursement of premiums that were paid for the wellness program, we do not expect the result would be any different if the reimbursement was for premiums under the major medical plan.

This brings us to the more subtle point in the memo. The memo stated that services provided under the wellness program, such as health screening, cause the wellness program to be treated as a group health plan under the tax code. While this is not news from a legal perspective, it is an important reminder that wellness programs may be group health plans. If they are, there are broader, potentially substantial, implications, such as the need to have a plan document and SPD, the need to file Forms 5500, and the need to comply with the ACA (not to mention all of the various wellness-related rules themselves under HIPAA, ADA, and GINA). The extent to which the program needs to comply with these rules depends on the nature of the wellness program and whether it is part of a group health plan or offered separately.

In short, the IRS Memo confirms that wellness incentives are generally taxable and reminds us that that wellness compliance is both complex and multi-faceted. Implementing a wellness program takes careful planning to ensure full legal compliance with a number of applicable laws.

---

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be "Attorney Advertising" under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP's principal office and Kathrine Dixon ([kathrine.dixon@bclplaw.com](mailto:kathrine.dixon@bclplaw.com)) as the responsible attorney.