

TECH FLEX

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The topics covered in this issue are:

Benefits:

- *DOL Issues Guidance on the 2009 Form 5500 Schedule C*
- *New Jersey Further Extends Health Care Coverage for Dependent Children*

Payroll:

- *IRS Rules There is No Dollar Limit on De Minimis Fringe Benefits*
- *Connecticut Increases Minimum Wage*

DOL ISSUES GUIDANCE ON THE 2009 FORM 5500 SCHEDULE C

The Department of Labor has issued additional guidance regarding the 2009 Form 5500 requirements for a plan (i.e. medical plan) reporting service provider fees and compensation on Schedule C.

As background, generally, the Form 5500 is used to report information concerning employee benefit plans to the Internal Revenue Service. All welfare benefit plans, with certain exceptions, covered by the Employment Retirement Income Security Act (ERISA) are required to file a Form 5500. Welfare benefit plans provide benefits such as medical, dental, life insurance, apprenticeship and training, scholarship funds, severance pay and disability. Form 5500 and the required Schedules must be filed annually by no later than the last day of the seventh month after the close of the plan year.

The Form 5500 Schedule C must be attached to the Form 5500 that is filed for a “large” welfare benefit plan if an amount of \$5,000 or more was “paid by the plan” to plan service providers. A large benefit plan is generally one where the number of participants in the plan totals 100 or more as of the beginning of the plan year.

The recently released guidance was provided in the form of 40 frequently asked questions. A few samples of the topics discussed are as follows:

Fees Paid to Agents

Commissions paid to an agent in connection with the sale of an investment, product, or service to a plan constitute reportable indirect compensation because that indirect compensation includes payment of “finder fees” or other payments by a service provider to an independent agent or employee for a transaction or service involving the plan. (Q/A 6)

Insubstantial Business Gifts

Schedule C need not include meals and other gratuities that are occasional and insubstantial provided to plan service providers. The meal or other gratuity is considered insubstantial if the value is less than \$50.00 for a single gift from one source or less than \$100.00 in aggregate for multiple gifts from once source. However, gifts with a value of less than \$10.00 need not be counted toward the \$100.00 aggregate. (Q/A 34)

Payments Made by Plan Sponsor

According to the 2009 Form 5500 Instructions, payments made to plan service providers directly by the plan sponsor and not reimbursed by the plan are not reportable on Schedule C even if the services are provided to the plan itself. However, if a plan sponsor pays a service provider for services rendered to the plan and then receives reimbursement of that payment from the plan, the Schedule C should reflect direct payment from the plan to the provider and not a payment to the employer. (Q/A 37)

For a copy of the 2009 Form 5500 Schedule C frequently asked questions, please click on the link provided below.

http://www.dol.gov/ebsa/faqs/faq_scheduleC.html

NEW JERSEY FURTHER EXTENDS HEALTH CARE COVERAGE FOR DEPENDENT CHILDREN

New Jersey law currently requires health insurers and Health Maintenance Organizations (HMOs) that provide dependent coverage, as well as the state’s health benefit plan, to offer extended coverage to dependent children under the age of 30 who are losing coverage because they have reached the plan’s limiting age. The law applies to health insurance contracts, policies, or plans issued or renewed in New Jersey on or after May 12, 2006.

On July 8, 2008 New Jersey Governor Jon Corzine signed legislation into law that raised the age until which dependent children must be allowed to continue coverage under a parent’s health insurance or HMO plan from age 30 to age 31. The new age requirement applies to plan years beginning on or after January 4, 2009.

For specific information relating to the New Jersey dependent children health care coverage requirements, please refer to the April 2006 Tech Flex link provided below.

[April 2006 Tech Flex](#)

IRS RULES THERE IS NO DOLLAR LIMIT ON DE MINIMIS FRINGE BENEFITS

Responding to an inquiry from Senator Richard Shelby (R- Alabama) on behalf of a constituent, the Internal Revenue Service (IRS) has clarified that there is no specified dollar limit in relation to the taxation of “de minimis fringe” benefits.

Under the Internal Revenue Code “the term de minimis fringe means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.” (IRC §132(e)(1)).

The letter provided to the IRS outlined a practice where an employer’s policy as a “rule of convenience” was to tax only noncash benefits provided by the employer to the employee if the value of the gift was greater than \$50.00.

The IRS responded in part as follows:

Your employer may be using this \$50 limit as a rule of convenience in the administration of the de minimis fringe benefit rules. The \$50 limit is not imposed by the Internal Revenue Code.

However, the IRS did point out that some de minimis fringe benefits are specifically excluded from income under Treasury Regulation § 1.132-6(e)(1) and that “no dollar limit is placed on these examples.” These examples include the following:

- occasional typing of personal letters by a company secretary;
- occasional personal use of an employer's copying machine, provided that the employer exercises sufficient control and imposes significant restrictions on the personal use of the machine so that at least 85 percent of the use of the machine is for business purposes;
- occasional cocktail parties, group meals, or picnics for employees and their guests;
- traditional birthday or holiday gifts of property (not cash) with a low fair market value;
- occasional theater or sporting event tickets;
- coffee, doughnuts, and soft drinks; local telephone calls; and
- flowers, fruit, books, or similar property provided to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis).

It is important to note that Treasury Regulation § 1.132-6(e)(2) provides specific de minimis fringe benefits that are not excludable from income. For example:

- season tickets to sporting or theatrical events;
- the commuting use of an employer-provided automobile or other vehicle more than one day a month;

- membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility;
- employer-provided group-term life insurance on the life of the spouse or child of an employee; and
- use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend.

For a copy of the IRS response to the de minimis fringe benefit dollar threshold question, please click on the link provided below.

<http://www.irs.gov/pub/irs-wd/08-0023.pdf>

CONNECTICUT INCREASES MINIMUM WAGE

Effective January 1, 2009, the minimum wage rate in relation to Connecticut state law will be changing from \$7.65 per hour to \$8.00 per hour. On January 1, 2010, the state minimum wage will be raised again to \$8.25 per hour.

As of January 1, 2009, the tip credit will increase to 31% of the state minimum wage (\$2.48 an hour) from the current 29.3 % level (\$2.24) for hotel and restaurant employees. For bartenders who customarily and regularly receive tips, the tip credit will increase to 11% of the state minimum wage (\$0.88 an hour) from 8.2% (\$0.63 an hour). When the minimum wage increases again on January 1, 2010, the tip credit amounts will also increase to \$2.56 an hour for hotel and restaurant employees and \$0.91 for bartenders.

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