

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2017-11
March 13, 2017**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

EMPLOYEE PLANS

Notice 2017-20, page 1010.

The notice extends the period for an employer that provides a qualified small employer health reimbursement arrangement (QSEHRA) (under a new Code section added by 21st Century Cures Act (Cures Act)) to furnish an initial written notice to its eligible employees regarding the QSEHRA. The notice extends the period from March 13, 2017 (90 days after the Cures Act was enacted) to at least 90 days after additional guidance regarding the contents of the QSEHRA notice is issued. The notice also provides transition relief from penalties under section 6652(o) (also added to the Code by the Cures Act) for failure to furnish such written notice until after further guidance has been issued.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III. Administrative, Procedural, and Miscellaneous

EXTENSION OF PERIOD FOR FURNISHING WRITTEN QSEHRA NOTICE TO ELIGIBLE EMPLOYEES

Notice 2017-20

PURPOSE

This notice extends the period for an employer to furnish an initial written notice to its eligible employees regarding a qualified small employer health reimbursement arrangement (QSEHRA) under section 9831(d) of the Internal Revenue Code (Code).

BACKGROUND

A QSEHRA is an arrangement described in section 9831(d), which was added to the Code by the 21st Century Cures Act (Cures Act), Pub. L. 114-255, 130 Stat. 1033, enacted December 13, 2016. Under that section, an eligible employer (generally an employer with fewer than 50 full-time employees, including full-time equivalent employees, that does not offer a group health plan to any of its employees) may provide a QSEHRA to its eligible employees. Under a QSEHRA, after an eligible employee provides proof of coverage, payments or reimbursements may be made to that eligible employee for expenses for medical care (as defined in section 213(d) and including expenses for premiums for individual health insurance policies) incurred by the eligible employee or the eligible employee's family members, provided certain requirements are satisfied. Section 9831(d)(1) provides that a QSEHRA will not be treated as a group health plan.

Section 9831(d)(4) generally requires an eligible employer to furnish a written notice to its eligible employees at least 90 days before the beginning of a year for

which the QSEHRA is provided (or, in the case of an employee who is not eligible to participate in the arrangement as of the beginning of such year, the date on which such employee is first so eligible). Section 9831(d)(4)(B) provides that the written notice must include: (i) a statement of the amount that would be the eligible employee's permitted benefit under the arrangement for the year; (ii) a statement that the eligible employee should provide the information described in clause (i) to any health insurance exchange to which the employee applies for advance payment of the premium tax credit; and (iii) a statement that if the eligible employee is not covered under minimum essential coverage for any month, the employee may be liable for an individual shared responsibility payment under section 5000A for that month and reimbursements under the arrangement may be includible in gross income.

Section 6652(o), which was also added to the Code by the Cures Act, imposes a penalty for failing to timely furnish eligible employees with the required written QSEHRA notice. Section 18001(a)(7) of the Cures Act provides that this penalty applies for years beginning after December 31, 2016, and further provides that an eligible employer that provides a QSEHRA to its eligible employees for a year beginning in 2017 will not be treated as failing to timely furnish the initial written notice if the notice is furnished to its eligible employees no later than 90 days after the enactment of the Cures Act. The 90th day after the enactment of the Cures Act is March 13, 2017.

For more information about QSEHRAs, see FAQs About Affordable Care Act Implementation Part 35, Q 3, issued by the Department of Labor, the Department of the Treasury (Treasury), and the Department of Health and Human Services (<https://www.dol.gov/sites/default/files/ebsa/about-ebsa/>

[our-activities/resource-center/faqs/aca-part-35.pdf](https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-35.pdf)).

TRANSITION RELIEF

Treasury and the Internal Revenue Service (IRS) understand that some eligible employers may find it difficult to comply with the written notice requirement absent additional guidance concerning the contents of the notice. Treasury and IRS intend to issue that guidance in the near future. In order to provide eligible employers additional time to furnish the initial required written notice to eligible employees following the issuance of such guidance, an eligible employer that provides a QSEHRA to its eligible employees for a year beginning in 2017 is not required to furnish the initial written notice to those employees until after further guidance has been issued by Treasury and the IRS. That further guidance will specify a deadline for providing the initial written notice that is no earlier than 90 days following the issuance of that guidance.¹ No section 6652(o) penalties will be imposed for failure to provide the initial written notice before the extended deadline specified in that guidance. Employers that furnish the QSEHRA notice to their eligible employees before further guidance is issued may rely upon a reasonable good faith interpretation of the statute to determine the contents of the notice.

DRAFTING INFORMATION

The principal author of this notice is Ronald Rutherford-Triche of the Office of Associate Chief Counsel (Tax Exempt and Government Entities), although other Treasury and IRS officials participated in its development. For further information regarding this notice, contact Mr. Rutherford-Triche at (202) 317-5500 (not a toll-free number).

¹Consistent with section 18001(a)(7)(F)(iii) of the Cures Act, an application for enrollment under section 1411(b) of the Patient Protection and Affordable Care Act made before April 1, 2017, shall be treated as having met the requirement of section 1411(b)(3)(B) of such Act, if the information described therein is provided not later than 30 days after the date on which the applicant receives the notice described in section 9831(d)(4) of the Code.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.