

Tax Talk Today

Specialty Taxes: Estate and Gift, and Employment Taxes

May 12, 2009

Q&A, Part II – Employment Taxes

Question

What procedures will be implemented to discourage employees from failing to notify their former employers that they have become eligible for coverage under another group health plan (new job, or through spouse)? Will employers have to report those that declined coverage?

Answer

An assistance eligible individual who fails to provide notification at the required time and in the required manner, and continues to receive the premium subsidy after the termination of the individual's eligibility for such subsidy, will be subject, pursuant to IRC section 6720C, to a penalty equal to 110% of the subsidy provided after termination of eligibility. The Department of Labor model employee notices relating to the subsidy discuss the need to notify the employer of eligibility for other coverage and the tax penalty for failing to do so. See also Notice 2009-27 for more information.

Employers will only report the number of individuals provided COBRA premium assistance.

Question

My employer has multiple EINs, can the cobra subsidy be claimed on the corporate EIN or must it be broken out on the respective 941 that the employee falls under?

Answer

The COBRA subsidy credit should be claimed on the Form 941 that is filed in compliance with the employer's employment tax obligations. See Q&As FP-21 and RD-14 on the IRS website at www.irs.gov.

Question

Does the subsidy only cover 65% of the premium or does it also include the premium plus 2% administrative fee?

Answer

The subsidy covers 65% of the COBRA premium the assistance eligible individual would have otherwise been required to pay. Under the Federal COBRA rules, the premium that the assistance eligible individual would have otherwise been required to pay generally cannot exceed 102% of the premium cost for active employees (without regard to whether it is paid by the employer or employee).

Question

Does the COBRA subsidy apply to a deceased employee's family?

Answer

The COBRA subsidy applies only if the qualifying event that resulted in COBRA eligibility is the involuntary termination of employment, and the death of an employee is not an involuntary termination of employment for this purpose. See Notice 2009-27, Q&A-19. However, if an employee and his or her family members become eligible for COBRA as a result of an involuntary termination of employment and are assistance eligible individuals, the later death of the employee does not end the family members' eligibility for the subsidy. See Notice 2009-27, Q&A-39.

Question

If Cobra payments exceed Payroll Tax Liability - will employer get a refund?

Answer

If COBRA premium assistance payments exceed an employer's payroll tax liability for the tax period, the employer may apply the overpayment to its next return or request it as a refund.

Question

How do laid off employees pay their COBRA premiums? Is this paid directly to the insurance carrier or to the employer who continues paying premiums on their behalf?

Answer

This is determined by the employer and group health plan, not by the IRS.

Question

Should a 941X be prepared when it is discovered the EFTPS payments were reported on the 941, but one payment in the quarter was inadvertently not scheduled until the accounting dept discovered the amount was not taken out.

Answer

A Form 941-X should not be used in this case. Form 941-X is not used to correct deposit errors.

Question

If we acquire a company that is currently offsetting the COBRA subsidy against the tax liability (that will no longer have a tax liability), can the successor employer take the COBRA subsidy (if the ex-employee's are converted to the successors COBRA plan) on their FEIN 941's or is it a 941-x on the predecessor's FEIN which has not tax liability to report?

Answer

The result depends on the facts and circumstances, including whether an obligation to provide COBRA coverage continues to apply and, if so, which entity is required to provide the COBRA coverage.

Question

We have an employee who was laid off in early Feb 2009. He elected to receive state assisted health care coverage instead of COBRA. He recently lost that coverage (the state is now telling him it was a mistake and he is no longer eligible). Now he wants to apply for the COBRA coverage. Can he still apply?

Also, we have less than 20 employees. Isn't COBRA only for employers with 20 or more employees?

Answer

As is the case with most questions under COBRA, the answers to these questions depend on the particular facts and circumstances, such as the number of the employer's employees during the preceding year, which determines whether Federal COBRA applies. If Federal COBRA does not apply, the answers depend on whether state law imposes health continuation coverage requirements and, if so, how long an individual has to elect such coverage. The employer should therefore consult its COBRA advisor to determine whether COBRA coverage must be provided.

Question

What are the employer requirements to contribute the 65% portion to a self funded VEBA arrangement? Timing if at all?

Answer

The COBRA subsidy law requires an employer to provide COBRA coverage if an assistance eligible individual pays 35% of the premium the individual would have otherwise been required to pay. It does not address whether the employer would be required to contribute the 65% to a self-funded VEBA.

Question

National Research Project - What years will the payroll audit include?

Answer

The NRP will be looking at returns for three years:

- 2008 returns for the NRP examinations started in FY 2010
- 2009 returns for the NRP examinations started in FY 2011
- 2010 returns for the NRP examinations started in FY 2012

Question

Can we attach a spreadsheet describing the changes if there are multiple adjustments? This would help clarify the explanation in Part 4.

Answer

Yes, a spreadsheet or other explanation may be attached to a Form 941-X to explain the multiple adjustments for the tax period covered by the Form 941-X.