Tax Issues Related to PEBB Dependents that do not qualify as a Dependent for Tax Purposes

January 1, 2014

Internal Revenue Code (IRC) Section 152, as modified by IRC Section 105(b) – Tax Qualified Dependents

Employer contributions toward payment for health care are taxable to the employee if they are made for an individual who is a dependent that does not qualify as a dependent for tax purposes. Employees adding a dependent that does not qualify as a dependent for tax purposes (e.g., domestic partner, child of a domestic partner) to their employer sponsored insurance must identify their family tax status for the upcoming calendar year.

The employee will need to verify whether their dependents are dependents for tax purposes under IRC Section 152, as modified by IRC Section 105(b). If the dependent qualifies under IRC Section 152, the employer contribution toward the payment for the dependent's premium should not be treated as additional taxable income to the employee. If the dependent does <u>not</u> qualify under IRC Section 152, the fair market value of the employer contribution toward the coverage should be treated as additional taxable income to the employee (see below and Tables 1 and 2).

It should be noted that employer and employee contributions toward the cost of coverage for same-sex spouses no longer need to be taxed to the employee as a result of the U.S. Supreme Court's decision in *Windsor v. United States* and Internal Revenue Service Revenue Ruling 2013-17. For these purposes, an employee is considered to be in a same-sex marriage for federal tax purposes if the employee entered into a marriage in a state or country whose laws authorize the marriage of two individuals of the same sex, even if the employee lives in a state that does not recognize same-sex marriage. An employee is not considered to be married if the employee has entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated a marriage under state law. Federal taxation of health care coverage for individuals who have not entered into a same-sex marriage will continue to be governed by this document. However, federal taxation of health care coverage for individuals who have entered into a same-sex marriage will be treated the same as individuals who are in an opposite-sex marriage and that coverage will not be taxed under federal law. This favorable tax treatment is effective as of the time the individuals enter into the marriage (this includes individuals in Washington whose registered domestic partnerships are automatically converted to marriages on June 30, 2014).[1]

[1] *Further insight will be provided about any retroactive tax considerations for the portion of the year that an employee is in domestic partnership before being married. We anticipate additional guidance will be provided in advance of June 30, 2014, which is when most Washington State same-sex domestic partnerships automatically convert to marriages under RCW 26.60.100(3).*

Required Retroactive Tax Treatment

The Health Care Authority (HCA) recommends that employees enrolling a dependent that does not qualify as a dependent for tax purposes review their tax status declaration annually during the PEBB annual open enrollment period. The declaration requires the employee to anticipate the dependency status of their dependent for the upcoming year.

It is also important for employees to report to their employer any changes in dependency status during the year because IRC Section 152 requires a "look-back" at the dependency status at the end of each calendar year. If dependency changes during the calendar year, a retroactive adjustment will be necessary.

Identified on the next page are examples of status changes and instructions to correct them.

Examples of mid-year dependency status changes and instruction:

Situation:	Result:	Employee notifies you of the change in dependent tax status:	Agency must:	Agency Action:
1. Dependent qualifies as a dependent for tax purposes for a portion of the tax year *(For example: January to July)*[1]	The Fair Market Value (FMV) of coverage for dependent that does not qualify as a dependent for tax purposes is taxable income for the employee for the entire year	During the tax year	Collect the appropriate number of months of: • Federal Income Tax • Social Security Tax • Medicare Tax from the employee	• On the next 941 filed reflect the correction and file a 941c with an explanation • Verify W-2 provided in January reflects the FMV for the year
		After the end of the tax year	Collect appropriate months of : • Social Security Tax • Medicare Tax from the employee	• Verify W-2 provided in January reflects the FMV for the year • If W-2 has already been filed, file a W-2c showing corrected amount
2. Employee does not indicate dependent would qualify as a dependent for tax purposes for the entire tax year *(January-December)*	The Fair Market Value (FMV) of the coverage for the dependent is not taxable income for the employee for the entire year	During the tax year	Refund or credit the employee the appropriate months of: • Social Security Tax • Medicare Tax Optional, but not required, refund • Federal Income Tax to the employee	• On the next 941 reflect the correction and file a 941c with an explanation • Verify W-2 provided in January does not reflect the FMV for the year
		After the end of the tax year	Refund or credit the employee the appropriate months of: • Social Security Tax • Medicare Tax to the employee	• Verify W-2 provided in January does not reflect the FMV for the year • If W-2 has already been filed, file a W-2c showing corrected amount

[1] *A dependent must qualify as a dependent for tax purposes for the entire year in order to receive favorable tax treatment.*

Note: A dependent's death does not change his or her status for the portion of the year during which the dependent was alive. No adjustments would be required in the case of a death of a dependent.

IRC Section 152 Dependents that do not Qualify as a Dependent for Tax Purposes

Employees adding a dependent who does not qualify as a dependent for tax purposes will have additional taxable income, which needs to be taxed and reported.

There will be two taxation issues to be addressed.

Issue:	Action:	Resource:
1. State-share premium paid to the insurance carrier for dependents that do not qualify as a dependent for tax purposes	The Fair Market Value (FMV) of the coverage, less any after-tax contributions, is taxable to the employee and subject to: • Federal Income Tax • Social Security Tax • Medicare Tax *(Not subject to retirement)*	Appendix A, Tables 1 – 2 reports the fair market value (FMV)
2. Employee contribution for dependents that do not qualify as a dependent for tax purposes	• Do not take a pre-tax deduction for employee contributions for dependents that do not qualify as a dependent for tax purposes. *Payroll systems provide the ability to deduct pre- and post-tax based on dependents that do or do not qualify as a dependent for tax purposes under IRC Section 152, as modified by IRC Section 105(b)*	Appendix A, Tables 3 - 7

"Declaration of Tax Status" Form

Employees enrolling non-tax qualified dependents are required to complete a Declaration of Tax Status form to indicate whether his/her dependent qualifies as a dependent for tax purposes under IRC Section 152, as modified by IRC Section 105(b).

The IRS provides information on how to determine a dependent's tax status. The employee may use the *Worksheet for Determining Support* in IRS Publication 501 to assess whether a dependent enrolled on the employee's PEBB coverage qualifies as a dependent for tax purposes under IRC Section 152, as modified by IRC Section 105(b). The publication is available at www.irs.gov.

Employees with dependents that do not meet the Section 152 definitions will be able to continue to make premium contributions for their own insurance coverage with pre-tax payroll deductions even though contributions for the dependents must be deducted on a post-tax basis.

Questions

Direct any questions you have to your legal or tax advisor. Employees with questions should be directed to the IRS web site: www.irs.gov or to their tax advisor.

Note: There is federal law which requires reporting of medical and dental related contributions and costs on employee W-2 Forms beginning with the 2012 W-2 Form furnished to employees in January 2013. Refer to separate guidance provided for reporting the cost of health care on the W-2 form.

Appendix A – *HCA Finance and Administration Final 2014 PEBB Rates*

Additional Taxable Income for Dependents that do not qualify as a Dependent for Tax Purposes

Table 1: Employer Share Medical and Dental (FMV)

2014 Monthly State Premium Contribution for Medical and Dental for Employees Additional Taxable Income for Dependent Coverage

Medical and Dental Plan	Partner*	Subscriber's or Partner's Child(ren)*	Partner and Child(ren)*
All Medical Plans	$ 501	$ 395	$ 896

Table 2: Employer Share Dental Only (FMV)
Sample chart for dental only enrollment-taxable amount for dependents

Dental Plan	Partner*	Subscriber's or Partner's Child(ren)*	Partner and Child(ren)*
All Dental Plans	$ 45	$ 45	$ 90

*Premiums displayed are rounded to the nearest dollar, consistent with IRS tax reporting. The maximum state contribution (or index rate) is changed annually with the new insurance contracts, currently effective January 1 of each year, for the entire calendar year. The state contribution for employee is not displayed.

State and Higher Education Employee Monthly Contributions (Deductions) for Dependents that do not Qualify as a Dependent for Tax Purposes

Table 3: Total Monthly Employee Contribution Owed for All Coverage (pre-tax and post-tax combined)

Plan Name	Subscriber	Subscriber and Spouse	Subscriber and Child(ren)	Full Family
Group Health Classic	$ 117	$ 244	$ 205	$ 332
Group Health Value	$ 65	$ 140	$ 114	$ 189
Group Health CDHP	$ 21	$ 52	$ 37	$ 68
Kaiser Permanente Classic	$ 116	$ 242	$ 203	$ 329
Kaiser Permanente CDHP	$ 23	$ 56	$ 40	$ 73
Uniform Medical Plan Classic	$ 79	$ 168	$ 138	$ 227
Uniform Medical Plan CDHP	$ 25	$ 60	$ 44	$ 79

Table 4: Post-Tax Partner Share for "Subscriber and Spouse" Tier

Plan Name	Subscriber and Spouse	Subscriber	Partner
Group Health Classic	$ 244	$ 117	$ 127
Group Health Value	$ 140	$ 65	$ 75
Group Health CDHP	$ 52	$ 21	$ 31
Kaiser Permanente Classic	$ 242	$ 116	$ 126
Kaiser Permanente CDHP	$ 56	$ 23	$ 33
Uniform Medical Plan Classic	$ 168	$ 79	$ 89
Uniform Medical Plan CDHP	$ 60	$ 25	$ 35

Table 5: Post Tax Partner Share for "Full Family" Tier

Plan Name	Full Family	Subscriber and Child(ren)	Partner
Group Health Classic	$ 332	$ 205	$ 127
Group Health Value	$ 189	$ 114	$ 75
Group Health CDHP	$ 68	$ 37	$ 31
Kaiser Permanente Classic	$ 329	$ 203	$ 126
Kaiser Permanente CDHP	$ 73	$ 40	$ 33
Uniform Medical Plan Classic	$ 227	$ 138	$ 89
Uniform Medical Plan CDHP	$ 79	$ 44	$ 35

Table 6: Post Tax Partner and Child(ren) Share for "Full Family" Tier

Plan Name	Full Family	Subscriber	Partner and Child(ren)
Group Health Classic	$ 332	$ 117	$ 215
Group Health Value	$ 189	$ 65	$ 124
Group Health CDHP	$ 68	$ 21	$ 47
Kaiser Permanente Classic	$ 329	$ 116	$ 213
Kaiser Permanente CDHP	$ 73	$ 23	$ 50
Uniform Medical Plan Classic	$ 227	$ 79	$ 148
Uniform Medical Plan CDHP	$ 79	$ 25	$ 54

Table 7: Post Tax Partner's Child(ren) Share for "Subscriber and Child(ren)" Tier

Plan Name	Subscriber and Child(ren)	Subscriber	Partner's Children
Group Health Classic	$ 205	$ 117	$ 88
Group Health Value	$ 114	$ 65	$ 49
Group Health CDHP	$ 37	$ 21	$ 16
Kaiser Permanente Classic	$ 203	$ 116	$ 87
Kaiser Permanente CDHP	$ 40	$ 23	$ 17
Uniform Medical Plan Classic	$ 138	$ 79	$ 59
Uniform Medical Plan CDHP	$ 44	$ 25	$ 19

Appendix B *– Scenarios as possible combinations of pre-tax and post-tax combinations*

Subscriber has:	Health Insurance Deduction should be:
Domestic partner that qualifies as a dependent for tax purposes	Pre-Tax for employee's entire health insurance deduction[1] *(employee + partner)*
Domestic partner and dependent children that qualify as a dependent for tax purposes	Pre-Tax for employee's entire health insurance deduction[1] *(employee + partner + children)*
Dependent child(ren) that qualify as a dependent for tax purposes	Pre-Tax for employee's entire health insurance deduction[1] *(employee + child(ren))*
Subscriber has:	**Health Insurance Deduction should be:**
Domestic partner that does not qualify as a dependent for tax purposes	Employee's portion – Pre-Tax Domestic Partner's portion – Post-Tax *Note: Tax employee for dollar value of state's share coverage for domestic partner that does not qualify as a tax dependent also*
Domestic partner and dependent child(ren) that do not qualify as a dependent for tax purposes	Employee's portion – Pre-Tax Domestic Partner's portion – Post-Tax Child(ren)'s portion – Post-Tax *Note: Tax employee for dollar value of state's share coverage for domestic partner and child(ren) that does not qualify as a tax dependent also*
Dependent child(ren) that do not qualify as a dependent for tax purposes	Employee's portion – Pre-Tax Child(ren)'s portion – Post-Tax *Note: Tax employee for dollar value of state's share coverage for child(ren) that do not qualify as a tax dependent also*
Subscriber has a combination of dependents:	**Health Insurance Deduction should be:**
Domestic partner that does not qualify and dependent child(ren) that do qualify as a dependent for tax purposes	Employee's portion – Pre-Tax Domestic Partner's portion – Post-Tax[1] Child(ren)'s portion – Pre-Tax[1] *Note: Tax employee for dollar value of state's share coverage for domestic partner that does not qualify as a tax dependent also*
Domestic Partner and Combination of Dependent Children that do and do not qualify	Employee's portion – Pre-Tax Domestic Partner's portion – Post-Tax Child(ren)'s portion – Post-Tax[2] *Note: Tax employee for dollar value of state's share coverage for domestic partner that does not qualify as a tax dependent also*

[1] *Any tax status change from/to not qualifying as a dependent for tax purposes during a calendar year will require adjustment to a non-qualifying taxable situation for the entire calendar year, including making retroactive tax changes.* ***Tax status should be re-verified annually to ensure employers accurately report taxable income and pay appropriate employment taxes.***

[2] *Since Health Care Authority does not split the premium on a child by child basis, there is no way to determine separately the portion of the employee's total deduction to pre-tax for the children that do qualify as a dependent for tax purposes.*