AMERICAN PAYROLL ASSOCIATION

April 6, 2018

The Honorable David J. Kautter
Assistant Secretary of Tax Policy
U.S. Department of the Treasury
Acting Commissioner
Internal Revenue Service
1500 Pennsylvania Avenue, NW
Washington, DC 20220
David.kautter@treasury.gov

Re: Request for Transition Relief for Health Saving Accounts Maximum Limit Changes

Dear Assistant Secretary Kautter:

The American Payroll Association (APA) requests immediate transition relief for employers that sponsored Health Savings Account (HSA) qualified plans for their employees for 2018 following guidance issued by the IRS in 2017. This relief is necessary to significantly reduce the administrative burden on employers and their payroll departments.

The APA is a professional organization serving the interests of more than 20,000 payroll professionals nationwide. Our primary mission is to educate members about the laws and regulations that impact payroll operations, including tax administration. APA's advocacy goals center on reduced administrative burden for government, employers, and individual workers. With 70.1 percent of tax collections coming from wage withholding and employer taxes (*2017 IRS Data Book*), the IRS's implementation of U.S. tax policy is extremely important to APA.

The Internal Revenue Code (IRC) places a limit on the amounts that may be contributed to an HSA each year, subject to an annual cost of living adjustment based on inflation. The IRS issued *Revenue Procedure 2017-37* on May 4, 2017, with the inflation-adjusted HSA contribution limits for calendar year 2018 in accordance with IRC § 223(g). Under the IRC, the IRS issues this revenue procedure each year by June 1 because the law offers time to adjust payroll processes and procedures.

Pub. L. 115-97, The Tax Cuts and Jobs Act (TCJA), changed the Consumer Price Index used for determining certain dollar thresholds in the IRC, including the HSA contribution limits. The law, signed on December 22, 2017, resulted in the IRS having to publish revised procedure, *Revenue Procedure 2018-18*, on March 5, 2018 to account for any lower 2018 dollar thresholds. One of these was the maximum HSA contribution limits for individuals with a family high-deductible health plan, which was reduced from $6,900 to $6,850 ($50 difference). The change was applied retroactively to January 1, 2018.

The TCJA did not recognize the fact that employers established their procedures for 2018 beginning in June 2017. Accordingly, employees' decisions to ensure that they and their families have sufficient healthcare coverage also were made in 2017. When adjusting their payroll systems to accommodate the change, employers must notify employees of the changes that affect their HSA contributions. For large employers, especially those with remote employees, making the adjustment is not a small task.

In addition, the management of excess contributions under an HSA is not simple. IRC § 223(f)(3) governs the tax treatment of excess amounts. The excess returned contribution must account for the net income attributed to that excess amount. Under IRC § 223(f)(3)(A) that net income must then be included in the gross income for that individual for the taxable year in which it is received. The excess $50 in contributions caused by the TCJA is reportable as taxable income requiring an adjustment by payroll departments at a cost to employers that far exceeds $50.

Cost estimates are difficult to assess, in part, because there is disagreement under the U.S. Department of Labor's requirements for the Employee Retirement Income Security Act and safe harbor for HSA plans about whether the plan sponsor can unilaterally make the necessary changes or whether the employee must actively request a corrective return for excess contributions. Some practitioners have estimated costs at $150 per affected account. This may be conservative. If an employee needs to actively make the request to the employer, continuing rounds of correspondence are bound to ensue, which creates additional expense to the employer. In the meantime, the penalty for excess contributions may be assessed for each year in which the excess contribution continues to be in the account.

Payroll management is further complicated by whether HSA contributions are paid by individuals in full at the beginning of the year or spread throughout the year. A surprising number of accounts were fully funded at the beginning of 2018, at the $6,900 level.

The TCJA allows the IRS to provide transition relief in these types of circumstances. In addition, the TCJA did not change IRC § 223(g), which requires that contribution limits be announced by June 1 of the prior calendar year. Thus, transition relief falls within the authority of the Department of the Treasury and IRS regarding HSA contribution limit changes under the TCJA.

Thank you for consideration of APA's request for transition relief.

Sincerely,

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