Presents

New IRS Guidance on HSAs

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Summary

- The IRS released two new pieces of guidance on June 4, 2008
  - Notice 2008-51
    - rolling over IRA funds to an HSA
  - Notice 2008-52
    - annual HSA contribution limit
- These notices clarify the changes made by the Tax Relief and Health Care Act of 2006
- These changes are effective for tax years 2007 and later

Notice 2008-51

- The maximum amount that can be rolled over from an IRA to an HSA is the annual contribution limit for an HSA plus the catch-up contribution amount for anyone age 55 or older
- The amount contributed to the HSA from the IRA rollover is not allowed as a deduction against income as are other contributions to an HSA
- The withdrawal from the IRA is neither included in the individual's gross income nor subject to any penalty (subject to the testing period rules described later)

Notice 2008-51

- If an individual loses their HSA eligibility during the testing period, the amount of the rollover is included in the individual's gross income in the tax year in which the individual first loses HSA eligibility
  - The individual must also pay an additional 10% tax penalty unless the individual loses eligibility due to disability or death
  - Earnings on the rollover amount are not included in gross income
- The amount contributed to the HSA from the IRA rollover counts against the individual's maximum annual HSA contribution for the year (including catch-up contributions)
  - If the individual does not reach their maximum contribution as a result of the rollover, he or she is allowed to make additional contributions to reach the maximum (tax deductible under the normal HSA contribution rules)

Notice 2008-51

- Funds may be rolled over only from traditional IRAs or Roth IRAs to an individual's HSA
  - Funds may not be rolled over from:
    - Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRAs)
    - Simplified Employee Pension (SEP IRAs)
    - 401(k) accounts
    - 403(b) accounts, or
    - other retirement programs, including any plan in which no employer contributions have been made for the plan year ending with or within the IRA owner's taxable year in which the IRA-to-HSA rollover is made

Notice 2008-51

- To be eligible to rollover funds from an IRA to an HSA, an individual must own the IRA from which the rollover is made
- An individual may not use his or her IRA rollover funds to contribute to the HSA another individual
  - The only exception is after the death of an IRA or Roth IRA owner
    - In this case, the beneficiary can roll over the decedent's IRA funds to his or her HSA subject to the contribution limits.
- The rollover must be completed by December 31
  - The rules which allow individuals to make HSA contributions by the due date for the individual's tax return for the year (usually April 15) do not apply

Notice 2008-51

- An individual may not rollover funds from more than one IRA to an HSA
  - If an individual owns multiple IRAs and wants to rollover funds from more than one IRA, he or she must first rollover funds to a single IRA and then take those combined funds to rollover to an HSA
- The rollover must be a direct transfer of funds from the IRA to the HSA
  - This can be accomplished by a direct trustee-to-trustee transfer
    - This can include making a check payable to the HSA trustee or custodian for delivery by the account holder to the HSA trustee or custodian

Notice 2008-51

- Only one HSA to IRA rollover is allowed during the lifetime of the individual, except:
  - if an individual makes the rollover while he or she has self-only HSA-qualified coverage and then later in the same year switches to family HSA-qualified coverage, he or she is allowed a second rollover in that year.
- Rollovers are subject to a "testing period"
  - The testing period begins with the month in which the funds are deposited to the HSA account and ends on the last day of the 12th month following that month
    - Example: rollover made in June 2008 – testing period ends July 31, 2009

Notice 2008-51

- If an individual makes more than one rollover from his or her IRA during the year, a separate testing period applies to each rollover
- An individual remains an eligible individual during the testing period even if his or her coverage changes from family coverage to self-only coverage as long the coverage is HSA-qualified
- Employers are not responsible for reporting whether an employee remains an eligible individual during the testing period
- An IRA-to-HSA rollover is not subject to withholding by an employer

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Notice 2008-51

- If the individual fails to remain an eligible individual during the testing period, some of the rollover amount must be included in the individual's gross income (and subject to the 10% penalty)
  - The amount is the lesser of:
    - The amount that would have been in excess of the pro-rated HSA contribution amount allowed for the tax year, or
    - The amount of contributions to the HSA for the taxable year other than the amount contributed as a result of the IRA rollover
- For purposes of determining whether a distribution requested by an IRA owner satisfies the requirements, the IRA trustee may rely on reasonable representations made by the account owner

Notice 2008-51

- The examples provided by the IRS are extremely helpful in understanding these rules

Notice 2008-51

Example 1:

Bob (age 45) enrolls in HSA-qualified family coverage on January 1, 2008 and remains an eligible individual through December 31, 2009. Bob owns an IRA with a balance of $2,000. On April 2, 2008, Bob makes a direct trustee-to-trustee transfer of $2,000 from his IRA trustee to his HSA trustee on April 2, 2008.

Results:

- Bob's testing period begins in April 2008 and ends on April 30, 2009.
- The $2,000 distribution is a "qualified HSA funding distribution" and is not included in Bob's gross income and is not subject to any tax penalty.
- Bob's maximum annual HSA contribution for 2008 is $5,800. After he rolls over $2,000 from his IRA, he can still contribute an additional $3,800 to his HSA for 2008. Bob can deduct $3,800 on his income taxes for 2008.

Notice 2008-51

<u>Example 2</u>:

Frank (age 49) enrolls in HSA-qualified family coverage on January 1, 2008 and remains an eligible individual through December 31, 2009. Frank owns an IRA with a balance of $2,000. On April 2, 2008, Frank makes a direct trustee-to-trustee transfer of $2,000 from his IRA trustee to his HSA trustee on April 2, 2008. Frank loses his job and HSA-qualified coverage on January 1, 2009.

Results:

- Fred's testing period begins in April 2008 and ends on April 30, 2009.
- Fred's maximum annual HSA contribution for 2008 is $5,800. After he rolls over $2,000 from his IRA, he can still contribute an additional $3,800 to his HSA for 2008.
- Fred must include $2,000 in gross income plus an additional tax of $200 (10 percent of the amount included in income) for 2009.

Notice 2008-51

Example 3:

Mary (age 57) enrolls in HSA-qualified self-only coverage effective January1, 2008 and remains an eligible individual through December 31, 2009. Mary owns an IRA with a balance of $13,550. Mary makes a direct trustee-to trustee transfer of $3,800 from her IRA trustee to her HSA trustee on June 4, 2008.

Results:

- Mary’s testing period begins in June 2008 and ends on June 30, 2009.
- Mary’s maximum annual HSA contribution for 2008 is $3,800 ($2,900 plus the $900 catch-up contribution).
- Mary’s $3,800 rollover to her HSA is a “qualified HSA funding distribution” and is not included in her gross income and not subject to any penalty.
- The rollover of $3,800 equals Mary’s 2008 maximum annual HSA contribution. She cannot make any additional contributions to her HSA for 2008.

Notice 2008-51

Example 4:

Sally (age 38) enrolls in HSA-qualified self-only coverage on January 1, 2008 and remains an eligible individual through December 31, 2009. Sally owns an IRA with a balance of $12,550. Sally makes a direct trust-to-trustee transfer of $2,800 from her IRA to her HSA on June 4, 2008. On August 1, 2008 Sally enrolls in family HSA-qualified coverage. Sally then transfers $3,000 from her IRA trustee directly to her HSA trustee on August 15, 2008.

Results:

- The $2,800 and $3,000 IRA withdrawals are "qualified HSA funding distributions" and are not included in Sally's gross income and are not subject to any penalty.
- Sally's testing period for the rollover begins in June 2008 and ends on June 30, 2009. Sally's testing period for the second rollover begins in August 2008 and ends on August 31, 2009.
- The combined rollover of $5,800 ($2,800 + $3,000) equal Sally's maximum annual HSA contribution for 2008.

Notice 2008-51

Example 5:

John (age 33) enrolls in HSA-qualified family coverage on January 1, 2008. John owns an IRA with a balance of $17,500. On March 18, 2008, he rolls over $5,800 from his IRA directly to his HSA. On June 1, 2008 gets divorced and changes to self-only HSA coverage but remains an eligible individual through December 31, 2009.

Results:

- The $5,800 rollover from John's IRA is a "qualified HSA funding distribution" and is not included in his gross income and is not subject to any penalty.
- The $5,800 rollover equals John's maximum annual HSA contribution, at the time the rollover occurred, for 2008.
- John's testing period begins in March 2008 and ends on March 31, 2009.

Notice 2008-51

Example 6:

Larry (age 50) begins HSA-qualified family coverage on June 1, 2008. Larry owns an IRA with a balance of $20,000. On June 4, 2008, he rolls over $3,500 from his IRA trustee to his HSA trustee. Larry also contributes $2,300 in cash to his HSA on June 4 for a total contribution of $5,800. On July 1, 2009, Larry loses his job and drops his HSA-qualified coverage.

Results:

- The $3,500 rollover is a "qualified HSA funding distribution" and is not included in Larry's gross income and is not subject to any penalty in 2008.
- The testing period for his $3,500 rollover begins in June 2008 and ends on June 30, 2009. Because Larry remains an eligible individual during the testing period, none of the $3,500 is included in his gross income in either 2008 or 2009.
- The testing period for Larry's $2,300 contribution begins in December 2008 and ends on December 31, 2009. Because Larry does not remain an eligible individual during the entire testing period, some of his $2,300 contribution must be included in income and is subject to penalty in 2009.
- Larry's maximum annual contribution for 2008 is the greater of $5,800 or $3,383 (7/12 x $5,800).
- The amount included in Larry's gross income and subject to the 10% penalty in 2009 is the lesser of $2,300 or $2,417 ($5,800 - $3,383).

Notice 2008-51

Example 7:

Sheila (age 53) begins HSA-qualified family coverage on June 1, 2008. Sheila owns an IRA with a balance of $20,000. On June 4, 2008, she rolls over $1,000 from her IRA trustee to her HSA trustee. Sheila also contributes $4,800 in cash to her HSA on June 4 for a total contribution of $5,800. On July 1, 2009, Sheila loses her job and drops her HSA-qualified coverage.

Results:

- The $1,000 rollover is a “qualified HSA funding distribution” and is not included in Sheila’s gross income and is not subject to any penalty in 2008.
- The testing period for her $1,000 rollover begins in June 2008 and ends on June 30, 2009. Because Sheila remains an eligible individual during the testing period, none of the $1,000 is included in her gross income in either 2008 or 2009.
- The testing period for Sheila’s $4,800 contribution begins in December 2008 and ends on December 31, 2009. Because Sheila does not remain an eligible individual during the entire testing period, some of her $4,800 contribution must be included in income and is subject to penalty in 2009.
- Sheila’s maximum annual contribution for 2008 is the greater of $5,800 or $3,383 (7/12 x $5,800).
- The amount included in Sheila’s gross income and subject to the 10% penalty in 2009 is the lesser of $4,800 or $2,417 ($5,800 - $3,383).

Notice 2008-51

Example 8:

Tom (age 40) begins HSA-qualified family coverage on June 1, 2008. Tom owns an IRA with a balance of $20,000. On June 4, 2008, he rolls over $3,500 from his IRA trustee to his HSA trustee. Tom also contributes $2,300 in cash to his HSA on June 4 for a total contribution of $5,800. On May 1, 2009, Tom loses his job and drops his HSA-qualified coverage.

Results:

- The $3,500 rollover is a "qualified HSA funding distribution" and is not included in Tom's gross income and is not subject to any penalty in 2008.
- The testing period for his $3,500 rollover begins in June 2008 and ends on June 30, 2009. Because Tom does not remain an eligible individual during the testing period, some of the $3,500 is included in his gross income and subject to the 10% penalty in 2009.
- The testing period for Tom's $2,300 contribution begins in December 2008 and ends on December 31, 2009. Because Tom does not remain an eligible individual during the entire testing period, some of his $2,300 contribution must be included in income and is subject to penalty in 2009.
- Tom's maximum annual contribution for 2008 is the greater of $5,800 or $3,383 (7/12 x $5,800).
- The amount included in Tom's gross income and subject to the 10% penalty in 2009 is the lesser of $2,300 or $2,417 ($5,800 - $3,383).

Notice 2008-51

Example 9:

Doris (age 47) has HSA-qualified family coverage that begins on January 1, 2008. Her maximum annual HSA contribution for 2008 is $5,800. Doris owns an IRA with a balance of $10,000. On September 26, 2008 she rolls over $10,000 from her IRA trustee to her HSA trustee.

Results:

- Doris' $10,000 rollover exceeds her HSA annual contribution limit of $5,800 so only $5,800 is a "qualified HSA funding distribution" from her IRA. The remaining $4,200 must be included in her gross income in 2008 as a taxable IRA distribution.
- The $4,200 is also subject to the 10% tax penalty as well as the 6% excise tax on excess HSA contributions for 2008.

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Notice 2008-51

Example 10:

Brenda (age 32) has HSA-qualified self-only coverage that begins on January 1, 2007 and she remains an eligible individual through December 31, 2009. Brenda owns an IRA with a balance of $4,500 and rolls over $1,000 from her IRA trustee to her HSA trustee on September 6, 2007. Brenda then makes another rollover of $1,500 from her IRA trustee to her HSA trustee on April 28, 2008. She makes no other contributions to her HSA for 2008.

Results:

- Brenda's maximum annual HSA contribution for 2007 is $2,850 and $2,900 for 2008.
- Brenda's $1,000 rollover to her HSA in September 2007 is a "qualified HSA funding distribution" and is not included in her gross income and is not subject to any penalty. The testing period for the $1,000 rollover begins in September 2007 and ends on September 30, 2008.
- Brenda's $1,500 rollover in April 2008 is not a "qualified HSA funding distribution" and must be included in her gross income for 2008 as a taxable IRA distribution, and is subject to the 10% penalty.
- However, Brenda's $1,500 contribution to her HSA is deductible against her income in 2008 as an HSA contribution because she remains an eligible individual in 2008 and has not exceeded her HSA contribution of $2,900 for 2008.
- No testing period applies to the $1,500 contribution.

Notice 2008-52

- Individuals whose HSA-qualified coverage starts after January 1 (but not later than December 1) may make the maximum HSA contribution for the full year (including catch-up contributions) as long as they maintain HSA-qualified coverage through the "testing period" (described later)
- The individual is treated as enrolled in the same type of HSA-qualified coverage (i.e., self-only or family coverage) as he or she has on December 1 for the entire year
  - For example, an individual gets married during the year and switches from individual to family HSA-qualified coverage by December 1, the individual is considered to have family coverage for the entire year

Notice 2008-52

- The testing period:
  - begins on December 1 of the year in which the individual's HSA-qualified coverage starts
  - ends on December 31 of the following calendar year
    - Example: the testing period for HSA contributions made for 2008 begins on December 1, 2008 and ends on December 31, 2009
- If an individual fails to remain covered by an HSA-qualified plan for the entire testing period, some of the money must be "paid back" based on the number of months he or she was covered by an HSA-qualified plan during the prior year

Notice 2008-52

- The “excess” amount is computed by subtracting the pro-rated amount from the amount actually contributed
  – The “excess” amount of the contribution made is included in the individual's gross income and may be subject to an additional 10% penalty
  – The 10% penalty applies regardless of age (i.e., even after age 65)
- The “excess” amount that is taxable does not need to be withdrawn from an individual’s HSA
  – Doing so will not prevent the inclusion of the excess amount in gross income nor the additional 10% penalty
  – Earnings on the amount contributed are not included in gross income and not subject to the 10% additional penalty, so long as the earnings remain in the HSA or are used for qualified medical expenses

Notice 2008-52

- The amount included in an individual's gross income because he or she failed to remain an eligible individual during the testing period is not considered an "excess contribution" that would otherwise be subject to the 6% excise tax
- Individuals need to maintain HSA-qualified coverage but do not need to keep the same level of HSA-qualified coverage (self-only or family coverage) during the testing period
  - Even if an individual switches coverage from family to single coverage during the testing period, this will not cause an additional amount to become taxable or subject to the 10% penalty

Notice 2008-52

- Employers custodians are not responsible for reporting whether an individual remains an eligible individual during the testing period
- HSA trustees and custodians are not r responsible for reporting whether an individual remains an eligible individual during the testing period

Notice 2008-52

- The examples provided by the IRS are extremely helpful in understanding these rules

Notice 2008-52

Example 1:

Laura (age 53) enrolls in HSA-qualified family coverage on December 1, 2008 but is not an eligible individual in any other month in 2008. Laura contributes $5,800 to her HSA for 2008.

Results:

- Laura's annual contribution limit for 2008 is the greater of $5,800 or $483.33 (1/12 of $5,800).
- Laura's testing period begins on December 1, 2008 and ends on December 31, 2009.

Notice 2008-52

Example 2:

Jennifer (age 33) enrolls in HSA-qualified family coverage on December 1, 2008 but is not an eligible individual in any other month in 2008. She contributes $5,800 to her HSA for 2008. Jennifer drops her HSA-qualified coverage in June 2009.

Results:

- Jennifer's annual contribution limit for 2008 is the greater of $5,800 or $483.33 (1/12 of $5,800).
- Jennifer's testing period begins on December 1, 2008 and ends on December 31, 2009. Because she ceases to be an eligible individual during the entire testing period, Jennifer must include $5,316.67 ($5,800 - $483.33) in her gross income for 2009.
- Jennifer must also pay the 10% penalty ($532) in 2009.

Notice 2008-52

Example 3:

Sam (age 39) enrolls in HSA-qualified self-only coverage on January 1, 2008. Sam gets married and changes to family HSA-qualified coverage on November 1, 2008. Sam contributes $5,800 to his HSA for 2008. He remains an eligible individual through December 31, 2009.

Results:

- Sam is an eligible individual with family HSA-qualified coverage on December 1, 2008. Sam's contribution limit for 2008 is the greater of $5,800 or $3,383.34 [(2/12 x $5,800) + (10/12 x $2,900)].
- Sam's testing period begins on December 1, 2008 and ends on December 31, 2009.

Notice 2008-52

Example 4:

Ruth (age 47) is covered by a general purpose health FSA in 2007 with a grace period ending March 15, 2008. Ruth enrolls in HSA-qualified family coverage on January 1, 2008. On April 2, 2008, she contributes $5,800 to her HSA for 2008. Ruth maintains her HSA-qualified coverage through December 31, 2009.

Results:

- Ruth's HSA eligibility begins on April 1, 2008.
- Because she is an HSA-eligible individual with family coverage on December 1, 2008, her maximum HSA contribution for 2008 is the greater of $5,800 or $4,350 (9/12 x $5,800).
- The testing period for her 2008 contribution ends on December 31, 2009. Because Ruth remains eligible during the entire testing period, none of the $5,800 contribution is included in her gross income and is not subject to the 10% penalty in 2009.

Notice 2008-52

Example 5:

David (age 57) enrolls in HSA-qualified family coverage on December 1, 2008 but was not eligible individual in any other month in 2008. David contributes $6,700 to his HSA on December 1, 2008 and remains an eligible individual through December 31, 2009.

Results:

- David is an eligible individual with family HSA-qualified coverage on December 1, 2008. His maximum HSA contribution is the greater of $6,700 ($5,800 family coverage contribution + $900 catch-up contribution) or $558.33 [(1/12 x $5,800) + (1/12 x $900)].
- David's testing period begins on December 1, 2008 and ends on December 31, 2009.

Notice 2008-52

Example 6:

Elaine (age 35), has HSA-qualified self-only coverage only for the months of May, June, and July 2008.

Results:

- The maximum HSA contribution limit does not apply to Elaine for 2008 because she is not an eligible individual on December 1, 2008.
- Elaine's contribution limit for 2008 is $725 (3/12 x $2,900).

Notice 2008-52

Example 7:

Henry (age 46) enrolls in HSA-qualified family coverage on January 1, 2008. He contributes $5,800 to an HSA on January 1, 2008. On July 31, 2008, Henry loses his HSA-qualified coverage. On December 15, 2008, he withdraws from the HSA $2,416.67 (5/12 x $5,800), plus $45 earnings attributable to the **$2,416.67** [note error in guidance].

Results:

- Henry ceases to be an eligible individual on August 1, 2008. Because he is not an eligible individual on December 1, 2008, the full contribution limit does not apply and there is no applicable testing period.
- Henry's HSA contribution limit for 2008 is $3,383.33 (7/12 x $5,800). Because he contributed $5,800, $2,416.67 is an excess contribution but is not subject to the 6% excise tax because he withdrew the excess contribution and earnings attributable to the excess contribution by the due date for filing his 2008 federal income tax return.
- Henry must report the $45 withdrawn earnings as gross income on his 2008 federal income tax return.
- $2,416.67 is not include in gross income or subject to the 10% penalty for distributions not used for qualified medical expenses because he withdrew an excess contribution.

Notice 2008-52

Example 8:

Gary (age 38) enrolls in HSA-qualified family coverage on January 1, 2008. Gary gets divorced and changes his coverage to self-only on September 1, 2008. He retains that coverage through December 31, 2008. Gary contributes $4,833.33 [(8/12 x $5,800) + (4/12 x $2,900)] to an HSA for 2008. Gary loses his HSA-qualified coverage on January 1, 2009.

Results:

- Gary is an eligible individual for all 12 months in 2008.
- Because Gary has self-only HSA-qualified coverage on December 1, 2008, his contribution limit is the greater of $2,900 or $4,833.33 [(8/12 x $5,800) + (4/12 x $2,900)].
- The testing period for his 2008 HSA contributions ends on December 31, 2009. Because Gary ceases to be an eligible individual during the entire testing period, some of his contribution may need to be included in gross income and subject to the additional 10% penalty in 2009.
- However, Gary’s contribution of $4,833.33 is not greater $4,833.33, so he does not have to include any amount in gross income nor pay any additional penalty in 2009.

Notice 2008-52

Example 9:

Julian (age 25) enrolls in HSA-qualified self-only coverage on June 1, 2008. On July 1, 2008, he contributes $2,900 to an HSA. Julian maintains his HSA-qualified coverage through January 31, 2009. On February 2, 2009, he withdraws $1,208.33 from his HSA. The funds withdrawn are not used for qualified medical expenses.

Results:

- Because Julian has self-only HSA-qualified coverage on December 1, 2008, his full contribution limit for 2008 is the greater of $2,900 or $1,691.67 (7/12 x $2,900).
- The testing period for his 2008 HSA contributions ends on December 31, 2009. Because Julian ceases to be an eligible individual during the testing period, he must include $1,208.33 ($2,900 - $1,691.67) in his gross income and pay the 10% penalty ($120.83) in 2009.
- Since the $1,208.33 withdrawn from the HSA is not used for qualified medical expenses and is not a withdrawal of an excess contribution, Julian must also include an additional $1,208.33 in his gross income and pay another 10% penalty.
- In total, he must include $2,416.66 ($1,208.33 + $1,208.33) in gross income and an additional tax of $241.66 ($120.83 + $120.83) in 2009.

Notice 2008-52

Example 10:

Julie (age 27) has HSA-qualified self-only coverage that begins January 1, 2008 and maintains her coverage through December 31, 2009. She receives medical benefits from a Department of Veterans Affairs facility in January 2008.

Results:

- Julie is not eligible to contribute to an HSA for January, February, March, or April 2008.
- Because she is an eligible individual with self-only HDHP coverage on December 1, 2008, Julie's full contribution limit for 2008 is the greater of $2,900 or $1,933.33 (8/12 x $2,900).

Notice 2008-52

Example 11:

Kevin (age 32) has HSA-qualified self-only coverage that begins January 1, 2008 and maintains his coverage through December 31, 2009. He receives medical benefits from a Department of Veterans Affairs facility in January 2008 and again in October 2008.

Results:

- Kevin is only eligible to contribute to an HSA for May through September 2008.
- The full contribution limit does not apply to Kevin for 2008 because he is not an eligible individual on December 1, 2008.
- Kevin cannot contribute more than $1,208.33 (5/12 x $2,900) for 2008.

Notice 2008-52

Example 12:

Velma (age 64) enrolls in HSA-qualified family coverage on April 1, 2008. She contributes $6,700 to an HSA for 2008 on April 1, 2008. Velma turns age 65 and enrolls in Medicare effective March 24 2009.

Results:

- Because Velma is an eligible individual with HSA-qualified family coverage on December 1, 2008, her contribution limit for 2008 is the greater of $6,700 ($5,800 + $900 catch-up contribution) or $5,025 [(9/12 x $5,800) + (9/12 x $900)].
- The testing period for her 2008 HSA contributions ends on December 31, 2009. Because she ceases to be an eligible individual during the testing period, Velma must include $1,675 ($6,700 - $5,025) in her gross income and pay the 10% penalty ($167.50) in 2009.
- Velma can contribute $1,529.85 [(2/12 x $5,950) + (2/12 x $1,000)] to her HSA for 2009.

Notice 2008-52

Example 13:

Velma (age 64) enrolls in HSA-qualified family coverage on April 1, 2008. She contributes $6,700 to an HSA for 2008 on April 1, 2008. On February 15, 2009, she becomes disabled. Velma then turns age 65 and enrolls in Medicare effective March 2009.

Results:

- Because Velma is an eligible individual with HSA-qualified family coverage on December 1, 2008, her contribution limit for 2008 is the greater of $6,700 ($5,800 + $900 catch-up contribution) or $5,025 [(9/12 x $5,800) + (9/12 x $900)].
- The testing period for her 2008 HSA contributions ends on December 31, 2009. Because Velma ceases to be an eligible individual due to becoming disabled, no amount is required to be included in her income or is subject to penalty in 2009.
- Velma can contribute $1,529.85 [(2/12 x $5,950) + (2/12 x $1,000)] to her HSA for 2009.

Notice 2008-52

Example 14:

Paul and Martha (both age 40), are a married couple that enroll in HSA-qualified family coverage on December 1, 2008 but are not eligible in any other month in 2008. On December 1, 2008, Paul contributes $2,900 to his HSA and Martha contributes $2,900 to her HSA. On June 1, 2009, Martha switches to HSA-qualified self-only coverage but remains an eligible individual through December 31, 2009. Paul ceases to be an eligible individual in June 2009.

Results:

- Paul and Martha are eligible individuals with HSA-qualified family coverage on December 1, 2008. Their combined contribution limit for 2008 is the greater of $5,800 or $483.33 (1/12 x $5,800).
- The testing period for their 2008 HSA contributions ends on December 31, 2009.
- Because Martha remains eligible individual during the testing period, none of her $2,900 contribution is included in her gross income and she is not subject to any tax penalty in 2009.
- Paul must include $2,658.33 ($2,900 – $241.67) in his gross income plus pay a 10% tax penalty ($265.83) in **2009** [note error in guidance].

Notice 2008-52

Example 15:

Paul and Martha (both age 40), are a married couple that enroll in HSA-qualified family coverage on December 1, 2008 but are not eligible in any other month in 2008. On December 1, 2008, Paul contributes $0 to his HSA and Martha contributes $5,800 to her HSA. On June 1, 2009, Martha switches to HSA-qualified self-only coverage but remains an eligible individual through December 31, 2009. Paul ceases to be an eligible individual in June 2009.

Results:

- Paul and Martha are eligible individuals with HSA-qualified family coverage on December 1, 2008. Their combined contribution limit for 2008 is the greater of $5,800 or $483.33 (1/12 x $5,800).
- The testing period for their 2008 HSA contributions ends on December 31, 2009.
- Because Martha remains eligible individual during the testing period, none of her $5,800 contribution is included in her gross income and she is not subject to any tax penalty in 2009.
- Since Paul did not make a contribution for 2008, he does not have to include any amount in his gross income or 10% tax penalty in 2009.

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