



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM **Update #19** **June, 2013**

IRS Legal Memorandum Addresses Tax Deductibility of PCOR Fees

The IRS has issued a legal memorandum stating that health insurers and self-insured health plan sponsors can deduct patient-centered outcomes research (PCOR) fees as ordinary and necessary business expenses.

The memorandum explains that Code § 162(a) allows a deduction for all ordinary and necessary business expenses incurred in carrying out a trade or business. Based on established case law, an expense is “ordinary” if it is “normal, usual, or customary” in the taxpayer’s trade or business and “necessary” if it is “appropriate and helpful” in the taxpayer’s business, but it need not be absolutely essential. The memorandum concludes that PCOR fees constitute an ordinary and necessary business expense paid or incurred in carrying on a trade or business and, therefore, are deductible under Code § 162(a). It also notes that there is no statutory provision specifically providing that PCOR fees are nondeductible. In contrast, some fees and taxes imposed under health care reform, such as the employer shared responsibility penalty tax (which takes effect in 2014) and the excise tax on high-cost health coverage (effective in 2018), are specifically made nondeductible under other provisions of the Code.

This guidance provides insight into how the IRS will apply Code § 162(a) to PCOR fees. Also note, the DOL previously indicated that PCOR fees generally are not permissible plan expenses under ERISA, since by law they are imposed on the plan sponsor and not the plan. Therefore, plan assets (e.g., trust assets or participant contributions) should not be used to pay the fees since ERISA’s prohibited transaction rules prohibit plan assets from being used to offset employer obligations. But according to this IRS memorandum, plan sponsors and insurers may get a potential tax deduction by treating these fees as ordinary and necessary business expenses.

To view a copy of the IRS memorandum: <http://www.irs.gov/pub/irs-utl/AM2013-002.pdf>

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