

Making SHOP an Attractive Option for Small Employers: Tax and Other Strategies



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Pre-ACA Tax Advantages



- Through various mechanisms, employers could contribute to the cost of coverage with tax-free dollars
- Employees could pay their share of premiums with pre-tax dollars *if* their employer offered a cafeteria plan
 - All employees were better off being offered pre-tax payment through their employer

Pre-ACA Small Employer Tax Strategies



- **Traditional group coverage**
 - High regulatory costs
 - Lack of employee choice
- **Premium-only cafeteria plans for individual insurance purchase**
 - Raises HIPAA issues
- **Health reimbursement arrangements**
 - Solely employer funded
 - Creates a group health plan

Example of Savings from a Premium-Only Cafeteria Plan



- Employer with 25 employees who paid \$5,000 each for health insurance premiums would save \$9,563 per year (based on 7.65% payroll tax rate)
- Assuming annual premium of \$5,000, each employee would save between \$283 and \$2425 per year

HRAs



- **Typically used by employers in one of two ways:**
 - As part of a consumer-driven health plan
 - To subsidize individual insurance purchase as part of a defined contribution model

- **Must be:**
 - Solely funded by the employer
 - Nondiscriminatory
 - Comply with all relevant group health plan regulations

What Changes in 2014?



- Cafeteria plan rules
 - ACA specifically provides that exchange-based coverage can be purchased through a cafeteria plan only where a qualifying employer provides its employees “the opportunity to enroll through such an Exchange in a qualified health plan in a ***group market.***”
 - Employers no longer appear to have the premium-only option for individual coverage

What Changes in 2014?



- **HRAs**
 - HRAs are group health plans, and under ACA, group health plans must comply with a number of rules, including a prohibition on lifetime and annual limits
 - HHS & DOL have solicited comments regarding whether stand-alone HRAs will be permitted beginning in 2014

What Changes in 2014?



- **Premium tax credits**
 - Available to individuals with household income $\leq 400\%$ FPL, who are not offered affordable employer coverage that offers minimum value
 - *For the first time, some employees will be better off NOT being offered employer coverage*
- **Limited employer tax credits for a maximum of two years**
- **Individual mandate**

Post-ACA Small Employer Tax Strategies?



- Traditional group coverage
 - Through the exchange, or self-insure
- ~~Premium only cafeteria plans for individual insurance purchase~~
- ~~Health reimbursement arrangements?~~
- Drop any form of employer coverage
 - For some small employers, premium tax credits will make this a compelling choice
- Become an exchange-participating employer, utilizing a cafeteria plan for the employee's share of the premium and offer employees plan choice

Will the Small Business Tax Credit Help?



- **ACA Small Business Tax Credit**
 - Fewer than 25 workers
 - Average wages of less than \$50,000
 - Cover 50 % of premiums.
 - Credit of up to 35 percent of HI cost
- **GAO Report (May, 2012)**
 - In 2010, credit claimed by 170,300 employers, far short of estimates

ACA Small Business Tax Credit in 2014



- **Eligible small businesses will have substantially less incentive to claim credit**
 - Premium subsidies on individual exchange
 - Employees subject to mandate
- **SHOP Exchange will be unlikely to compete successfully for small businesses with predominantly low-income employees**

Target Market for SHOP Exchange



- **Small Businesses with relatively high-income employees**
 - Disproportionate tax benefits from group coverage
 - Little impact on mandate or subsidy eligibility
- **Key options for high-income, small businesses in 2014**
 - SHOP exchange
 - Self-insurance

Potential Draw of Self-Insured Plans



- Stop loss insurance is getting cheaper and easier for small businesses.
- Self insurance offers exemptions from state mandates, MLR requirement, EHBs, premium taxes
- Self insurance offers opportunity to benefit from low-risk profile

How can SHOP Exchange compete?



- **Focus on facilitating defined contribution model**
 - Authorized & mandated (by reg) for SHOP exchanges
 - ACA authorizes cafeteria plans for this purpose
- **Selling points of defined contribution model vs self insurance**
 - No risk for employers
 - Employee choice
 - Exchange can eliminate bureaucracy and transactions costs for small employers

How can SHOP Exchange Promote a DC Model?



- **HHS Proposed Regulation requires SHOP exchanges to perform premium and billing aggregation**
- **Additional Services**
 - Display net employee contributions
 - Provide required ERISA disclosures
 - Provide off-the-shelf cafeteria plan documents
 - Prepare Form 5500s
 - Process change of status requests