







**BACK TO TOP**

» **RETIREE HEALTH CARE WAIVER NOT TAXABLE INCOME**

PLANSPONSOR.com - May 15, 2009

The Internal Revenue Service (IRS) has ruled that an arrangement under which employees could give up the right to get retiree health benefits in exchange for a higher future pay rate does not represent a taxable event.

That holding came in a private letter ruling, which only directly affects the individual taxpayer requesting the IRS opinion; the taxpayer is not identified in the publicly released document.

According to the IRS document, the employer's retiree health insurance program gives employees a chance within 15 days of starting work to waive retiree health care in exchange for a future pay increase. Electing the pay hike does not change the pay rate for employee services already performed.

Harry Beker, branch chief, health and welfare branch, Office of Division Counsel/Associate who wrote the IRS letter, cited Section 1.451-2(a) of the Income Tax Regulations. That provision indicates that income, although not actually reduced to a taxpayer's possession, is constructively received by him in the taxable year during which it is credited to his account, set apart for him or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given.

Beker said, however, that income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

The bottom line, according to Beker: employees working for the company requesting the private letter ruling are not to be considered as having received taxable income.

To view the IRS document, click [here](#).

**BACK TO TOP**

» **US PRESCRIPTION DRUG USE FELL IN 2008, STUDY SAYS**

Washington Post - May 13, 2009

Prescription drug use in the U.S. fell last year, although total spending on drugs increased as prices rose sharply on brand-name products, pharmacy benefits manager Medco Health Solutions said Wednesday.

Medco said the overall decline in prescriptions was the first in a decade. The company, which handles drug benefits covering about 60 million people, said total prescription use was down because few new drugs were launched last year, former blockbuster drugs like Zyrtec became available without a prescription, and some drugs faced safety issues that led to decreased use.

Total spending grew 3.3 percent, Medco said, mainly due to greater use of "specialty" drugs, which often treat chronic or complex illnesses. The strongest growth came from diabetes drugs, and use of specialty treatments for cancer, along rheumatological disease, seizure disorders and antiviral drugs also increased. The average price of brand-name pharmaceuticals rose more than 8 percent in 2008, the fastest increase in five years.

Drugmakers tend to raise the price of a product as the date of its patent expiration approaches. After the key patents supporting a drug expire, generic versions usually reach the market and are available for a fraction of the price.

Several drugmakers cited higher prices in their first-quarter earnings reports. Bristol-Myers Squibb, which makes the anti-clotting drug Plavix, said higher prices were responsible for half its revenue growth in the first quarter of 2009.

Medco projects prescriptions will rise no more than 1 percent in 2009 and in 2010 as well. But it believes higher prices will lift total spending by 3 to 5 percent this year and 4 to 6 percent next year.

Revenue from specialty drugs rose almost 16 percent for the year. Medco said growing use of low-cost generic drugs reduced the growth in total spending: 64 percent of all prescriptions were filled with generic drugs. Medco and other pharmacy benefits managers make a larger profit when generic drugs are substituted for brand-name ones. They encourage health plans to develop ways to increase use of generics and 90-day mail-order prescriptions.

**BACK TO TOP**

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