



One Minute Memo™

Reservists Don't Have to Use or Lose Their Health Flexible Spending Accounts

The Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act") permits plan sponsors to amend their plans to allow certain members of a reserve component to take a Qualified Reservist Distribution (QRD) from their health flexible spending accounts ("health FSAs"). QRDs are an exception to the rule that a health FSA may not make distributions other than reimbursements of substantiated medical expenses and that any unused balances will be forfeited. The IRS recently issued additional guidance for sponsors of cafeteria plans and health FSAs desiring to implement these QRDs.

Eligible Reservists. QRDs may be made to individuals ordered or called to active duty for a period of 180 days or more, or for an indefinite period, even if an individual is ordered or called to active duty prior to June 18, 2008 (the effective date of the HEART Act). Plan sponsors must receive a copy of the employee's order or call before making a QRD to determine that the employee has been ordered or called to active duty for an eligible length of time. If an order or call specifies a period that is less than 180 days, a QRD may not be made, but subsequent calls or orders that increase the total period of active duty to at least 180 days may enable an employee to receive a QRD at a later time.

Amounts Distributable. Plan sponsors may establish procedures for requesting a QRD and must specify how many QRDs may be made during the same plan year. In addition, a plan may specify that the amount available as a QRD will be: 1) the entire amount elected for the health FSA for the plan year, minus any reimbursements received as of the date of the request, 2) the amount contributed

to the health FSA as of the date of the request, minus any reimbursements received as of the date of the request, or 3) any other amount not exceeding the amount described in option one. If a plan does not specify the amount available as a QRD, then option two shall apply. An employer must pay the QRD no later than 60 days after the request has been made. Employees must be allowed to submit claims up until the date of their QRD request, but a plan may refuse claims submitted after that date.

Taxation. Employers should report the QRD on Form W-2 as wages for the year in which the QRD is paid to the employee. A QRD is also subject to employment taxes.

Effective Date. Plan sponsors may begin issuing QRDs, provided that they amend their plans by December 31, 2009. Amendments must be retroactive to the date of the first QRD paid under the plan, but may not be effective any earlier than June 18, 2008. Any QRDs made after December 31, 2009 must be in compliance with the plans' terms then in effect.

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