

IRS Offers Guidance for Health FSA Withdrawals by Military Reservists

The HEART Act, enacted by Congress in June, 2008, amended the tax rules for cafeteria plans to permit withdrawals by certain military reservists from health care flexible spending accounts (FSAs) that are unrelated to reimbursement of health care expenses. Under this statute, if these withdrawals (called qualified reservist withdrawals, or QRDs) are available under the employer's cafeteria plan, a military reservist is eligible to withdraw funds from his or her health care FSA if he or she is called to active duty for a period of at least 180 days or for an indefinite period. The withdrawal request must be made after the call to active duty is received and not later than the end of the plan year (or grace period relating to the plan year) during which the call is received. The IRS has now provided additional guidance to facilitate these QRDs. Notice 2008-82 includes the following highlights.

- An employer is not required to offer QRDs under its cafeteria plan.
- If QRDs are offered, the cafeteria plan or health care FSA must be amended to provide for them. Generally, the plan must be amended before QRDs can be made. A transition rule, however, allows plan amendments made by December 31, 2009 to authorize QRDs retroactively beginning any time on or after June 18, 2008.
- A health care FSA may (but is not required to) allow a withdrawal of the entire amount elected for the FSA for the plan year, minus any previous reimbursements, even if all or a portion of that amount has not yet been contributed by the employee or the employer.
- If a balance remains in the health care FSA following a QRD, the FSA may either permit the reservist to continue to submit health care claims for reimbursement or terminate the reservist's right to submit claims for the remainder of the plan year.
- A QRD is taxable income for the reservist, and is subject to FICA and FUTA.

If you have questions or would like additional information about qualified reservist distributions, please feel free to contact Brian Dougherty at 215-587-5919 or bdougherty@postschell.com.

Disclaimer: this E-flash does not offer specific legal advice, nor does it create an attorney-client relationship. You should not reach any legal conclusions based on the information contained in this E-flash without first seeking the advice of counsel.