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IRS Clarifies Ability of Employers to Recover Mistaken HSA Contributions

Health Savings Accounts (HSAs) are tax-favored accounts that are designed to help eligible individuals participating in a high-deductible health plan save for medical expenses. Both the employer and the employee can contribute to an HSA up to a maximum annual contribution limit. The employee's interest in the HSA balance is nonforfeitable.

Because the HSA balance is nonforfeitable, mistaken contributions to HSAs generally must be corrected prospectively by stopping or adjusting any future contributions. In IRS Notice 2008-59, however, the IRS generally allowed employers to recoup previously made contributions in only two situations. Namely, an employer may request that the HSA trustee return amounts to the employer where the employee was never an eligible individual or the amount exceeded the maximum contribution allowed.

Recently, the IRS Office of the Chief Counsel released an information letter clarifying the ability of employers to recover mistaken HSA contributions. Information Letter 2018-0033 (December 28, 2018) stated that the situations set forth in IRS Notice 2008-59 were not intended to be an exclusive list. Rather, if the employer has clear documentary evidence demonstrating an administrative or process error, the employer may ask the financial institution to return the amounts to the employer, as long as the parties are put in the same position that they would have been had the error not occurred. Examples of such correctible errors include:

- Contributions among employees with similar names were confused;
- An amount was withheld and deposited into an employee's HSA that is greater than the employee's HSA election;
- Duplicate payroll transmittals resulted in double HSA contributions for a pay period;
- An employee's change in payroll election was not timely processed; or
- Mathematical errors were made in determining the HSA contribution.

The Information Letter also advises employers to maintain documentation to support their assertion that a mistaken contribution occurred. In addition, as a matter of procedure, the financial institution may also request to view the documentation prior to sending the funds back to the employer.