

## Part III - Administrative, Procedural, and Miscellaneous

### Health Savings Accounts

Notice 2012-14

#### **PURPOSE**

This notice provides guidance on whether an individual eligible to receive medical services at an Indian Health Service facility is an “eligible individual” with respect to Health Savings Accounts (HSAs) under § 223 of the Internal Revenue Code (the Code).

#### **BACKGROUND**

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added § 223 of the Code to permit eligible individuals to establish HSAs for taxable years beginning after December 31, 2003. The Health Opportunity Patient Empowerment Act of 2006, Pub. L. No. 109-432 (HOPE Act), amended § 223 of the Code effective generally for taxable years after December 31, 2006.

Section 223(c)(1) provides that an eligible individual means, for any month, an individual who is covered by a high deductible health plan (HDHP) on the first day of such month and, generally, is not covered by any other health plan, with certain exceptions. In addition, an eligible individual cannot be claimed as a tax dependent on another person’s tax return and cannot be enrolled in Medicare. Section 223(b)(6) and (7). An eligible individual may establish and make tax-free contributions to an HSA. Notice 2004-2, 2004-1 C.B. 269, Notice 2004-50, 2004-2 C.B. 196, and Notice 2008-59, 2008-29 I.R.B. 123, provide guidance on HSAs.

Indian Health Service (IHS) is a Division within the U.S. Department of Health and Human Services. An “IHS facility” means a facility operated directly by IHS, or by a tribe or tribal organization under the Indian Self-Determination and Education Assistance Act. Eligibility for IHS services is determined under 42 CFR 136.12.

#### **HSA ELIGIBILITY RULES AND IHS FACILITIES**

An individual who is eligible to receive medical services at an IHS facility, but who has not actually received such services during the previous three months, is an eligible individual within the meaning of § 223(c)(1) who may establish and make tax-free contributions to an HSA. However, an individual generally is not an eligible individual if the individual has received medical services at an IHS facility at any time during the previous three months. Notice 2004-2, Q&A-6, provides that the receipt of permitted coverage, such as dental and vision care, or the receipt of preventive care, such as well-baby visits, immunizations, weight-loss and tobacco cessation programs, does not affect an individual’s eligibility.

**REQUEST FOR COMMENTS**

The Treasury Department and the IRS request comments on the eligibility rule described in this Notice. Comments must be submitted by April 30, 2012. All materials submitted will be available for public inspection and copying. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:RU (Notice 2012-14), Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20224. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk, 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:PA:LPD:RU (Notice 2012-14), Room 5203. Submissions may also be sent electronically via the internet to the following email address: [Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov). Include the notice number (Notice 2012-14) in the subject line.

**DRAFTING INFORMATION**

The principal author of this notice is Leslie Paul of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) though other Treasury Department and IRS officials participated in its development. For further information on the submission of comments or the comments submitted, contact (202) 622-7180 (not a toll-free number). For further information on all other provisions of this notice, contact Leslie Paul at (202) 622-6080 (not a toll-free number).