

The requirements are strict for a business owner to obtain a full deduction for payment of his or her own health insurance premiums and to avoid severe penalties for running afoul of the requirements imposed by the IRS¹ on payment and reporting of health insurance premiums for S Corporation shareholders. These rules apply to S Corporation shareholders, and except for the W-2 reporting rules, also to LLC owners, partnerships and self-employed individuals.

The **good news** is that with proper treatment the payment of a business owners' individual or family health insurance premiums can result in a **FULL DEDUCTION** on his or her individual tax return and not be limited or eliminated as an itemized deduction. This can result in income tax savings of 10% to 37% of the premiums paid and this beneficial deduction should not be forfeited. The bad news is there are a lot of rules that must be followed to qualify for the deductions. Moreover, starting in 2020, upon the establishment of a qualified Individual Coverage Health Reimbursement Arrangement, small employers may once again reimburse employees for individual health insurance coverage policies.



Our team is here to help guide you through the things you must do in order to legally obtain that tremendous tax deduction. Below are some of the major "do's and don'ts" for the small business owner with one (owner only) to fifty employees.



Do obtain qualified healthcare coverage, either via an insurance agency or via the healthcare marketplace (www.healthcare.gov), because it is required by law. Although the penalty was eliminated starting in 2019, the ACA requirement to possess qualified health care coverage or an exemption has not been repealed and is still required by U.S. law. Make sure you carefully compare the features, benefits, network providers (primary physician, specialists, hospitals, clinics, labs, ancillary services and pharmacies), restrictions, limits and costs from several policies at several companies.



Do report on W-2 (and the quarterly payroll tax returns) the qualified S Corporation shareholder premium payments or lose the ability to fully deduct your healthcare coverage, and have it eliminated or severely restricted as an itemized deduction. To be qualified the plan must be a group plan or, if and only if the shareholder is the only employee, an individual plan whose premiums are paid directly by the business.

¹ 2014 Affordable Care Act, 2016 21st Century Cures Act, 2017 Tax Cuts and Jobs Act and IRS Notices 2017-67, 2015-17 and 2008-1



Don't reimburse employees for health insurance premiums paid *UNLESS* you have an employer established an "Individual Coverage Health Reimbursement Arrangement (ICHRA)," or face a

\$100 per person per day penalty! In 2015 under the Affordable Care Act, reimbursements of employees for health insurance was prohibited and a steep penalty that could cost a business \$36,500 PER EMPLOYEE PER YEAR in penalties. In 2017 the rules were eased slightly to allow such reimbursements if the employer *formally established* an arrangement that met *four specific, limited requirements*.

Effective for 2020, a much less restrictive set of rules was established that will help small and large employers provide health insurance without having to shop for a group plan. However, such reimbursement to some or all employees for health coverage must be part of qualified, written plan that meets the IRS nondiscrimination and other requirements and needs to be drafted by a knowledgeable health benefits expert or attorney, adopted by the employer and distributed to employees.



Don't worry about employer required coverage penalties if you have less than 50 employees. If you are slightly over that threshold, analysis of full and part time employees will be required. If you are clearly over the threshold, you better establish a qualified employer sponsored health insurance plan or face some stiff penalties.



Do establish a BUSINESS/GROUP plan and not one or more individual plans or set up an ICHRA as discussed above. In order for a business to deduct the premiums paid for non-owner employees and avoid penalties, the health coverage must be a group policy unless the business is a solitary owner-sole employee business or has established an "Individual Coverage Health Reimbursement Arrangement."



Don't discriminate when you offer health insurance to employees. Although a business with less than 50 employees is not required to offer coverage to its employees, if it does offer coverage it does fall under the healthcare act rules and the coverage must not be discriminatory, offering the same benefits to *all employee classes*. As a practical matter, what this means is that a small business can't provide piecemeal coverage, insuring some employees and not insuring others.



Do consider your children, both the advantages and costs of extending the benefit to dependent and non-dependent children under 27 years of age.



Don't allow a gap in coverage, either in a policy renewal or change, or your coverage may be insufficient or useless.



Don't report on 1120-S Schedule K-1 or Form 1099 the payment of premiums for an owner's qualified health insurance plan. Nor can you neglect reporting it at all and expect to deduct the premiums paid. For an S Corporation it must be on Form W-2 and for a partnership it must be on 1065 Schedule K-1.



Don't treat coverage from a spouse's employer plan as deductible health insurance premiums for your small business. Unfortunately, if your spouse has a plan for which you are eligible to participate, you are not able to establish a separate qualified plan nor deduct your contributions toward coverage as business health insurance premiums.



Do disclose all known major ailments and pre-existing conditions to prevent cancellation of all coverage or denial of claim for omitting important information. Although it might increase your premium or cause some limitations, it's better to have coverage you are certain about than to be unpleasantly surprised later and face large, unexpected costs.



Don't reimburse or otherwise tie employees' compensation to the purchase of Health

HealthCare.gov

Marketplace or other individual coverage. Except when the strict requirements of a formally adopted and IRS compliant Section 105 Health Reimbursement Plan are met or a small employer has established a "qualified small employer health insurance arrangement," directly reimbursing a non-group plan (either pre or post employment taxes) won't qualify for tax benefits and may result in an onerous fine.



Don't procrastinate. Although starting in 2019 the costly tax penalties have been eliminated, delaying still puts you in violation of the "toothless" law as well as increases risk of an uncovered costly medical incident. You may need to consult with a licensed insurance agent for assistance with coverage and with us for potential benefits and traps. Open enrollment for Health Marketplace plans generally runs from November 1 through December 15, with special enrollments permitted during the remainder of the year.



Do consider Health Savings Accounts and other tax provisions such as Archer Medical Savings Accounts, Health Reimbursement Arrangements, Flexible Spending Accounts and Section 125 Cafeteria Plans in conjunction with health insurance coverage to optimize management of health care costs.

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