



CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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The Honorable Tom Harkin
United States Senator
210 Walnut Street, Room 733
Des Moines, IA 50309

UIL: 6432.00-00

Attention:

Dear Senator Harkin:

This letter responds to your inquiry dated August 17, 2009, on behalf of your constituent, . asked about the COBRA premium assistance provision in the American Recovery and Reinvestment Act of 2009 (ARRA).

Under the ARRA premium assistance provision, certain individuals who are eligible for COBRA continuation health coverage have to pay only 35 percent of the otherwise applicable premium. For COBRA coverage under Federal law, which an employer must provide to qualifying individuals, the employer is reimbursed for the other 65 percent of the premium by means of a payroll tax credit. Under ARRA, for COBRA coverage under State law, the insurer is reimbursed for the other 65 percent of the premium by means of a payroll tax credit.

describes a situation in which a small employer must provide COBRA coverage under Federal law. However, because of a reduction in the employer's business, the employer does not have the funds to pay the other 65 percent of the premium and may have to terminate its group health insurance. asked whether the employer could transfer the 65 percent payment liability to the insurance company as if the employer were not subject to Federal COBRA.

The law determines whether an employer must provide COBRA coverage under Federal law. We do not have the authority to make the insurance company, rather than the employer, liable for providing coverage.

Nonetheless, 's inquiry suggests a possible misunderstanding of the availability of reimbursement for the other 65 percent of the premium by means of a

payroll tax credit. He said the employer does not have sufficient payroll taxes from which he could recover the 65 percent of the premium he paid. However, if the 65 percent premium amount the employer paid (and the resulting payroll tax credit) exceeds the employer's payroll tax liability, we treat the excess as a tax overpayment that we refund to the employer. Thus, the employer is reimbursed for the premium amount paid even if that amount exceeds its payroll tax liability.

I hope this response is helpful. If I can be of further assistance, please contact me at () or of my staff at () .

Sincerely,

Nancy J. Marks
Division Counsel/Associate Chief Counsel
(Tax Exempt & Government Entities)