Spending Down a Health Reimbursement Account

Quick-Away: Only medical expenses can be reimbursed through an employer-sponsored health reimbursement account (HRA.) A cash payment from such an account, after the account participant's death, or at any other time, will disqualify the sponsor's entire HRA for all other participants, and thus cause all reimbursements paid from that HRA plan to be taxable. However, reimbursements for the decedent's dependent's medical expenses are a major exception to this general rule.

Background: Only medical expenses can be reimbursed through a health reimbursement account (HRA.) [IRC 213(d).] Not only is the HRA prohibited from paying cash-outs to the participants or others, so is any arrangement outside the HRA. For example, a cash death benefit paid under a separately sponsored program (outside the HRA) where that death benefit is related in any way to the decedent's remaining unused HRA balance, is prohibited; the death benefit paid by the employer would disqualify the entire HRA for all other plan participants and result in the taxation of all reimbursements made from the HRA.

Surviving Dependents: Even though a HRA cannot be cashed out, it can permit post-death *spend-downs* from the balance of the decedent's HRA to pay for qualifying medical expenses of the participant's surviving spouse, tax dependents, and his/her qualifying children, collectively called *qualifying beneficiaries*. However, the HRA must have a provision that expressly permits this post-death spend-down provision. Such a permissible provision must also comply with the Tax Code's antidiscrimination rules, which means that the reimbursement plan's post-death spend-down provision must be available to all HRA participants, not just the highly compensated participants. [IRC Notice 2015-87.]

COBRA Rights: If the HRA plan sponsor is subject to COBRA continuation coverage benefits, then the *qualified beneficiaries* will lose this HRA coverage due to any COBRA qualifying event, e.g., the participant's death, and those *qualified beneficiaries* must be offered the opportunity to continue their HRA coverage for the COBRA-prescribed period, regardless of whether the plan sponsor's HRA includes the post-death spend-down feature.

Conclusion: The rules that pertain to an HRA are different from a health savings account (HSA), which permit the payment of the HSA account balance after the account owner's death, but the account balance must be paid within one year of the HSA-owner's death, and that distribution will be taxable as ordinary income, except that a HSA can be inherited and continue to be used by the HSA- owner's surviving spouse.

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