



IRS Provides Specific Examples of Mistakes for Which Employer Can Request Return of HSA Contributions

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Quick Facts:

- The Internal Revenue Service (IRS) issued Office of the Chief Counsel Information Letter 2018-0033 (Letter 2018-0033), which provides details on certain situations that allow an employer to request the return of Health Savings Account (HSA) contributions made on behalf of its employees.
- Letter 2018-0033 expands upon previous guidance regarding the recovery of HSA contributions found in IRS Notice 2008-59.
- Letter 2018-0033 further confirms that where there is clear documentary evidence showing there was an administrative or process error, the employer may request the return of the contributed amounts – with any correction placing the parties in the same position as if the error had never occurred.

The IRS recently released Letter 2018-0033 which provides several examples that clarify prior IRS guidance regarding employers requesting the return of erroneous employee HSA contributions.

Letter 2018-0033 clarifies prior guidance outlined in IRS Notice 2008-59, which described certain limited circumstances when an employer may recoup contributions made to an employee's HSA despite rules generally prohibiting such recoveries. Letter 2018-0033 explains that the IRS did not intend for Notice 2008-59 to be an exhaustive list of exceptions, and further provides that, where there is clear documentary evidence demonstrating an administrative or process error, an employer may request that a financial institution return these amounts to the employer. Any such correction must put the affected parties in the same position in which they would have been had the error not occurred.

Letter 2018-0033 specifically identifies the following types of errors that would allow such a correction:

- An amount withheld and deposited in an employee's HSA for a pay period is greater than the amount shown on the employee's HSA salary reduction election.
- An unintended employer contribution to an employee's HSA is transmitted due to accessing an incorrect spreadsheet, or because employees with similar names are confused for each other.
- An amount that an employee receives as an HSA contribution is incorrectly entered by a payroll administrator (whether by the employer or a third party) causing the incorrect amount to be withheld and contributed.
- An employee receives a second HSA contribution due to duplicate payroll file transmissions.

- An employee receives an incorrect HSA contribution due to a change in employee payroll elections not being processed timely (so that amounts withheld and contributed are greater or less than what the employee elected).
- An employee receives an incorrect HSA contribution because the amount is calculated incorrectly, such as when an employee elects a total amount for the year that is allocated by a payroll system over an incorrect number of pay periods.
- An employee receives an incorrect HSA contribution because the decimal position is set incorrectly, resulting in a contribution greater than intended.

The IRS cautions that employers should maintain documentation to support their assertion that a correctable erroneous contribution occurred.

Though Letter 2018-0033 merely clarifies prior guidance, employers should benefit from having specific examples of common administrative or process mistakes that frequently occur when administering HSAs.

If you have any questions about Letter 2018-0033 or HSAs in general, please contact a member of your Frenkel Benefits consulting team.

Please be aware that this does not represent legal or tax advice and is only Frenkel's interpretation of the laws, regulations and statutes. It is highly recommended that you seek the advice of your legal and tax professional as to the applicability of this information to your particular situation.