

The nonforfeitability requirement generally means that no restrictions may be imposed on contributions made to an HSA. An HSA trust or custodial agreement must not contain a provision that restricts HSA distributions to pay or reimburse the account holder's qualified medical expenses only.

An employer generally cannot recoup from an employee's HSA any portion of the employer's contribution to the employee's HSA. However, an employer may recoup its HSA contributions if they were made to the account of an employee who was never HSA-eligible or if the contributions were erroneously made in excess of the annual maximum statutory contribution limit (for 2009, \$3,000 for employees with self-only HDHP coverage, and \$5,950 for employees with family HDHP coverage; for 2010, \$3,050 for self-only and \$6,150 for family). If the employer doesn't recover the amounts by the end of the taxable year, they will be taxed to employees for the year during which they were contributed. Employers may not recoup their contributions to employees' HSAs in any situations other than the two limited situations just described. For example, an employer may not recover contributions that it made erroneously to the HSA of the wrong employee. Furthermore, an employer cannot recoup amounts it contributes after an employee ceases to be HSA-eligible.

#### **h. Tax Treatment of HSA Contributions**

All HSA contributions made by or on behalf of eligible individuals within the contribution limits are entitled to tax-favored treatment, although the specifics vary depending upon the source of the contribution.

An account holder who makes a contribution to his or her HSA may take an above-the-line deduction for contributions made. The amounts will reduce the individual's adjusted gross income, making the contributions deductible whether or not the individual elects to itemize deductions.

An employer, a family member, or any other individual or entity may make HSA contributions on an eligible individual's behalf. Contributions made by anyone other than an employer are deductible by the HSA holder (but not necessarily by the contributor) in computing adjusted gross income (i.e., as an above-the-line deduction).

Employer HSA contributions generally are deductible by the employer as ordinary and necessary business expenses, and are excludable from an employee's gross income (provided they don't exceed statutory limits). Employer HSA contributions also are not subject to income or employment tax withholding if, at the time of the contribution, it is reasonable to believe that the contribution will be excludable from the employee's gross income. Any contribution made by an employer to the HSA of a non-employee (e.g., a spouse of an employee or any other individual), including salary reduction contributions made through a cafeteria plan, must be included in the employee's gross income and wages for employment tax purposes.

#### **i. When Must HSA Contributions Be Made?**

HSA contributions for a taxable year may be made in one or more payments, so long as they are not made before the tax year begins (or before the HSA is established) and are not made later than the original filing due date (without extensions) for the individual's tax return for that year. For calendar year taxpayers, the deadline for contributions to an HSA is generally April 15 following the year for which the contributions are made.

## **j. What Happens If Too Much Is Contributed to an HSA?**

HSA contributions made by (or on behalf of) an individual (e.g., an employer's contributions to an employee's HSA) are not deductible to the extent that they exceed the individual's maximum contribution limit or are made by or on behalf of an individual who is not an eligible individual. All such amounts are "excess contributions," and they are subject to a 6% excise tax.

The excise tax can be avoided if the excess contributions for a taxable year (and the attributable net income) are distributed to the HSA holder before the last day prescribed by law (including extensions) for filing the holder's federal income tax return for the taxable year (for calendar-year taxpayers, generally, the following April 15). The 6% excise tax is cumulative and continues into future years if the excess contribution for any given taxable year is not timely distributed.

## **k. Rollovers and Transfers From Other Accounts**

HSAs may accept contributions in the form of rollovers or transfers from other accounts, specifically rollovers and transfers from other HSAs and Archer MSAs, rollovers of "qualified HSA distributions" from health FSAs and HRAs, and direct transfers of "qualified HSA funding distributions" from traditional IRAs or Roth IRAs.

- **Rollover Contributions:** Rollover contributions may be made, in cash or in kind, to an HSA from another HSA or from an Archer MSA without being subject to the annual contribution limitations. A rollover contribution is any amount distributed from an HSA (or Archer MSA) to an HSA holder that is then deposited into an HSA for the benefit of that individual within 60 days after the distribution is received. Rollovers may be made only once every 12 months.
- **Qualified HSA Distributions From HRAs and Health FSAs:** For only a limited time (i.e., from December 20, 2006 to December 31, 2011), qualified HSA distributions meeting specific criteria may be directly rolled over, tax-free, from HRAs or health FSAs into HSAs. Only one qualified HSA distribution is allowed per HRA or health FSA of an individual and the individual must have had a positive (i.e., greater than \$0) balance on September 21, 2006 in his or her HRA or health FSA.

Qualified HSA distributions may be made from general-purpose HRAs and health FSAs with grace periods, as well as from HSA-compatible HRAs and health FSAs (e.g., limited-purpose HRAs or health FSAs). Qualified HSA distributions are treated as rollover contributions to HSAs, and thus, they are not deductible and they do not count against the general or catch-up HSA contribution limit.

The individual for whose benefit the qualified HSA distribution is made must have HDHP coverage as of the first day of the month during which the qualified HSA distribution occurs, and must otherwise be an HSA-eligible individual. If the individual is not HSA eligible on the first day of the month in which the qualified HSA distribution occurs or if the individual fails to remain HSA eligible during the remainder of the relevant "testing period" (for reasons other than death or disability), the amount of the rollover will be included in his or her gross income and subject to an additional 10% tax. The testing period