

December 21, 2006

President Bush Signs Bill Permitting One Time Rollovers to Health Savings Accounts

Yesterday President Bush signed the Tax Relief and Health Care Act of 2006 (the "Act"). The Act made amendments to the provisions governing flexible spending accounts ("HFSA") and health reimbursement accounts ("HRAs") to permit a qualified health savings account ("HSA") rollover from an HFSA or HRA to an HSA on a one time basis. The amount that may be rolled over is the lesser of the balance in the HFSA or HRA account on September 21, 2006, or as of the date of the distribution. The rollover must be contributed by the employer directly to the HSA before January 1, 2012. The individual from whom the rollover is being made must be eligible to contribute to an HSA at the time of the rollover. The rollover option is not required, but is permissive and can be added to an HFSA or HRA.

If the individual fails to maintain an HSA during the period which begins the month in which the distribution is rolled over to the HSA and ends 12 months later, then that individual will be taxed on the amount rolled over to the HSA in the year in which the rollover begins and will also be subject to an additional 10% tax. The additional tax and the requirement for the income inclusion does not apply if the employee ceases to be eligible to have an HSA due to death or disability. The rollover to an HSA option must be offered to all employees who maintain high deductible health plans ("HDHP").

The Act also changed the date by which the HDHP and HSA contribution limits must be published so that they will be published by June 1 for the next year.

In addition, employers who offer both HFSA and HDHPs will find that for years after December 31, 2006, HFSA coverage during the 2-1/2 month grace period immediately after the end of the plan year will be permissible coverage and not disqualify the individual from contributing to the HSA if the balance in the arrangement at the end of the plan year is zero, or if the individual elects to rollover the HFSA balance to the HSA as described above.

If you have any questions regarding the foregoing, please feel free to contact one of the attorneys listed below.

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