



## **MEMORANDUM**

**TO:** Primary Authorized Agents, Authorized Agents and Finance Contacts for North Dakota University System Employers

**FROM:** North Dakota Public Employees Retirement System

**DATE:** November 14, 2016

**SUBJECT:** **IMPORTANT IRS COMPLIANCE INFORMATION: TAXABILITY OF WELLNESS BENEFITS**

### **IRS Clarification**

Last month, NDPERS provided you with information regarding a recent clarification from the Internal Revenue Service (IRS) which advises that cash payments made to employees for gym memberships and other cash-equivalent incentives (i.e. gift cards and prizes) for participation in a wellness program are taxable income to the employee. This issue was recently addressed in an IRS Chief Counsel Memorandum issued by Stephen Tackney on April 14, 2016 (a copy of which is attached). One of the questions presented in the Memo was whether an employer could exclude from an employee's income cash rewards paid to an employee for participating in a wellness program. In the scenario addressed, an employer provided a wellness program to all of its employees. In addition to some benefits that clearly were not taxable (such as health screenings), the wellness program also allowed participants to earn cash rewards that do not qualify as medical expenses, "such as gym membership fees."

The Memo stated that Section 61(a)(1) of the Internal Revenue Code ("Code") provides that, unless an exception appears elsewhere in the Code, an employee's gross taxable income includes compensation for services, including fees, commissions, fringe benefits, and similar items. Health benefits, such as premiums for health insurance or reimbursements for qualified medical expenses (as generally defined under Code Section 213(d)) are excludable from taxable income under Code Sections 105 and 106. The Memo recognizes, however, that "any reward, incentive or other benefit provided by the medical program that is not medical care as defined under section 213(d) is included in an employee's income, unless excludable as an employee fringe benefit under section 132." Wellness programs that provide employees with de minimis fringe benefits (such as a tee-shirt) would be excludable from income, but the Memo goes on to say:

"the employer payment of gym membership fees that does not qualify as medical care as defined under section 213(d) would not be excludable from the employee's income, even if provided through a wellness plan or program, because the payment or reimbursement of gym fees is a cash benefit that is not excludable as a de minimis fringe benefit. Cash rewards received from a wellness program do not qualify as the reimbursement of medical care as defined under section 213(d) or as an excludable fringe benefit under section 132, and therefore are not excludable from an employee's income."

The Memo concludes that, “if an employee earns a reward of a benefit not otherwise excludible from the employee’s income, such as the payment of gym membership fees, the fair market value of the reward is included in the employee’s gross income under section 61 and is a payment of wages subject to employment taxes under sections 3121(a), 3306(b), and 3401(a).”

Given the Memo’s conclusion, the reimbursement of the gym membership fees through the Dakota Wellness Program is taxable income to those individuals who receive the benefits. The same is true of gift cards and other rewards that are not otherwise excluded from income by a section of the Code, such as those available through the online wellness portal, Novu.

### **Reporting**

Sanford Health Plan is developing a report that will list the amount of wellness benefits received in 2016 by employees and their covered spouses. This includes payments made through the Sanford Health Plan redemption center and fitness center reimbursements. A sample of the report is included. Sanford Health Plan will mail the report to your NDPERS Primary Authorized Agent. This report is developed utilizing the following assumptions:

1. The employer elects to use the special accounting rule (see attached IRS announcement 85-113) whereby the employer treats the value of benefits provided during the last two months of the calendar year as being paid during the subsequent calendar year.
2. The report will include wellness benefit payments made from 1/1/2016 – 10/31/2016, which includes fitness center reimbursements earned at the end of 2015 but paid to the employee in 2016.
3. The employer will report payments made from 11/1/2016-12/31/2016 on the 2017 W-2
4. The employer has elected to report payments made to an employee/spouse based on the employer they are covered with as of 10/31/2016, or at the time the employee’s coverage was ended, instead of reporting payments made to an employee/spouse based on the employer they were covered with at the time each payment was made.

**Sanford Health Plan will also be providing Core Technology Services (CTS) with a file which CTS will be responsible for uploading to the paysheets. After uploads have been completed, the error reports will be emailed to the campuses. The amount will be added to the employee’s taxable gross paid on December 15, 2016. Applicable employment and income taxes will be withheld. CTS will email more detailed instructions to the campuses, including the process for creating a manual paysheet for employees who are terminated.**

### **Future of \$250 Wellness Benefit**

The NDPERS Board held a special meeting on October 11, 2016 to discuss this IRS requirement and its implications for the future of NDPERS wellness incentives. It was decided that in recognition of the IRS requirements, we must take time to determine the effect of this on our members, our employers and our wellness efforts.

**Therefore, in the special meeting, the NDPERS Board determined that the current Dakota Wellness \$250 incentive and required health assessment will be temporarily suspended effective January 1, 2017.** During the temporary suspension, NDPERS and the Board will weigh options with input from our members, employers, and wellness coordinators to determine the options available to continue to allow

wellness incentives for our members. A decision will be made no later than July 1, 2017. During the suspension, the Novu online portal will remain available for use, and we encourage members to continue to engage and track their wellness activities using the portal, however no cash incentives will be provided during that time. We will be forwarding to your NDPERS Primary Authorized Agent an e-mail for distribution to your employees which communicates this information in the near future.

NDPERS is developing processes to solicit ideas, suggestions and comments from our employee and employer participants. Details on this will be shared soon.

If you have any questions, please e-mail to our info account at [ndpers-info@nd.gov](mailto:ndpers-info@nd.gov).