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About Mitchell Williams

Providing strategic counsel on a variety of sophisticated legal matters for 55 years, the attorneys of Mitchell Williams bring together decades of diverse professional experience and extensive relationships to offer clients in Arkansas and across the United States the most comprehensive services and solutions possible.

As progressive leaders in the legal community, we work as advocates and partners to help companies meet the complex business needs required to succeed in today's challenging economic climate. The firm employs 76 attorneys from offices in Arkansas, Texas, and New York.

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Effective January 1, 2010, the Internal Revenue Service establishes the manner and method for the payment of excise taxes for certain uncorrected operational failures under Group Health Plans, HSAs, and Archer MSAs.

In a recently issued Treasury Regulation, the Internal Revenue Service issued rules effective January 1, 2010, for the reporting and paying of excise taxes imposed for certain violations under group health plans, Health Savings Accounts, and Archer Medical Savings Accounts. Persons subject to this reporting requirement are:

- Employers who sponsor group health care plans subject to any the following (collectively referred to as the "certain requirements")
 - o COBRA
 - o HIPAA portability, access, and renewability provisions
 - o Genetic Information Nondiscrimination Act ("GINA")
 - o Mental Health Parity
 - o Newborns' and Mothers' Health Protection Act
 - o Michelle's Law
- Insurance companies, third-party administrators, and HMOs responsible for providing benefits under a group health plan;
- Employers who fail to make the comparable contributions under a Health Savings Account ("HSA"), and;
- Employers who fail to make the comparable contributions required under an Archer Medical Spending Account ("Archer MSA").

The persons liable for any of these excise taxes are required to report the failures and the corresponding tax liability on a newly promulgated Form 8928 which is currently available only in its draft form. See: <http://www.irs.gov/pub/irs-dft/f8928--dft.pdf>

There is NO excise tax liability or the corresponding reporting requirement when any violations of the certain requirements under a group health plan are corrected within 30-days after the responsible person has or should have had knowledge of the failure. The applicable provisions of the Internal Revenue Code impose upon the responsible person the duty to exercise reasonable diligence to discover such failures.

While there are exceptions for payment of the excise taxes imposed for violations of the comparable contributions to an HSA or Archer MSA, the liable party must successfully demonstrate to the Secretary of the Treasury that such violation was (1) not willful but due to reasonable cause and (2) that the excise tax would be excessive in relation to the failure. The newly issued regulations do not provide a process for the liable party to seek the waiver.

These regulations impose the obligations upon employers and other responsible persons to (1) implement a process of reasonable diligence to identify any failures of those certain requirements under a group health plan; (2) to correct the failures as prescribed by regulation within 30-days of discovery, or to report and pay the applicable excise taxes for any failures which were not timely corrected or not detected by reasonable diligence; and (3) make comparable contributions to HSAs and Archer MSAs.

For a full copy of the pertinent regulations see: <http://edocket.access.gpo.gov/2009/pdf/E9-21225.pdf>.