COMPLIANCE POSITIONING

How *SIMERP* differs from commonly scrutinized structures.

A plain-language read on how the Self-Insured Medical Expense Reimbursement Program sits inside well-established provisions of the Internal Revenue Code — and avoids the pitfalls the IRS has explicitly cautioned against.

CONTEXT

Over the past two decades, the IRS and the Department of Labor have issued repeated warnings about benefit program designs that expose employers and employees to unintended tax liabilities. Problematic structures often involve **circular cash flows**, **untethered fixed payments**, or attempts to **exclude the same dollars from taxation twice**. Because of these similarities in terminology and marketing, SIMERP (Self-Insured Medical Expense Reimbursement Program) has occasionally been confused with such arrangements. This document clarifies how SIMERP operates under well-established provisions of the Internal Revenue Code and avoids the pitfalls the IRS has explicitly cautioned against.

FOR REFERENCE

What the IRS has scrutinized.

01 Circular Payments / Wage Recharacterization

Some programs reduce employee wages pre-tax and then reimburse the same amounts post-tax, without any connection to genuine medical expenses. The IRS has identified these as **"sham transactions"**, treating the reimbursements as taxable income and exposing both employer and employee to FICA liability.

02 Fixed Indemnity Plans

In **IRS CCA 202323006**, the IRS clarified that fixed indemnity or "wellness indemnity" payments (cash paid to employees regardless of actual medical expense) must be treated as taxable wages.

03 Double Dipping

Earlier schemes attempted to reimburse employees for insurance premiums that had already been paid pre-tax under a §125 cafeteria plan. This effectively excluded the same dollars twice, which is expressly prohibited.

SIMERP'S POSITION

How SIMERP differs.

A Grounded in §105(b)

IRC §105(b) allows employer reimbursements for medical care expenses to be excluded from an employee's gross income, as long as the expenses qualify under §213(d). In SIMERP, reimbursements are tied specifically to **§213(d)-compliant medical benefits** such as telehealth, prescriptions, primary care, and counseling. The plan itself substantiates that benefits provided are qualified — no employee receipt submission required.

B No untethered cash

SIMERP does not distribute cash stipends or lump-sum payments. All reimbursements are tied to defined, pre-approved §213(d) medical benefits — directly addressing the IRS's concern in CCA 202323006 about payments unlinked to medical care.

C Participatory wellness framework

The program is designed under **42 U.S.C. §300gg-4(j)(3)(C)**, which permits participatory wellness programs to provide defined benefits without requiring employees to meet health outcomes. This reinforces compliance with ACA wellness program requirements.

D No double dipping

SIMERP does not reimburse premiums paid pre-tax. Instead, it pairs a compliant **§125 salary reduction** with a **§105(b) non-taxable reimbursement** to deliver medical and wellness services. Premiums are paid post-tax, preventing any double exclusion.

WHY THIS MATTERS

SIMERP is distinct from the structures the IRS has criticized.

SIMERP is distinct from the types of arrangements the IRS has criticized because it:

- Does not provide cash stipends to employees.
- Does not reimburse pre-tax premiums.
- Provides only bona fide §213(d) medical benefits.
- Operates under the statutory framework of §105(b) and ACA participatory wellness program rules.

Closing note

We respect and appreciate the IRS's role in issuing guidance such as CCA 202323006. These memoranda serve to protect both employers and employees by drawing a clear line between abusive designs and compliant benefit programs. SIMERP aligns with that mission by ensuring its structure delivers cost-effective, compliant benefits while avoiding the risks highlighted in past enforcement actions.

REGULATORY COMPLIANCE & LEGAL FOUNDATIONS

The program is designed to comply with the Internal Revenue Code, including:

- **IRC §§ 105(b), 106(a), 213(d), 125, 104(a)(3), 1.105-11(i)**
- **ERISA, HIPAA, and ADA** regulations

Wellness plan guidelines under the **Affordable Care Act (ACA)**, specifically:

- **42 U.S.C. §300gg-4(j)(3)(c)** — Participatory wellness activity requirement

It is also structured in light of **IRS Memorandum 202323006**, which warns against fixed indemnity wellness structures. This plan avoids taxable events by using a compliant **WIMPER model** (Wellness Incentive Medical Plan with Employer Reimbursement).

SUMMARY OF KEY TAX CODE REFERENCES

- **Wellness:** IRC §106(a), §213(d), §105(b), ERISA, HIPAA, ADA
- **Medical:** IRC §213(d), ACA
- **Pre-tax:** IRC §106(a), §213(d), §125
- **Post-tax:** IRC §105(b), §213(d), 1.105-11(i), 104(a)(3)