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Employee Benefits | Life Insurance | Risk Management

TO: Clients of Sitzmann Morris & Lavis Insurance Agency

RE: Conflicting Rulings on Exchange Subsidies

Yesterday afternoon, the U.S. Circuit Court of Appeals in the District of Columbia (D.C. Circuit) published its opinion in [*Halbig v. Burwell*](#) prohibiting the ability of the federal government to provide insurance premium subsidies through income tax credits to participants in the federally run Exchanges. A three-judge panel came down with a 2-1 decision prohibiting the subsidies. This decision has no impact on Covered California or any other state-sponsored Exchange on their ability to provide premium subsidies.

Today a Fourth Circuit Court of Appeals in Virginia ruled unanimously 3-0 that subsidies are permitted for participants in federal Exchanges ([*King v. Burwell*](#)).

The Sixth Circuit also is considering a similar challenge and its decision has been expected to be issued any day.

Key Provisions:

In the *Halbig* case the plaintiffs argued that the language of the ACA itself states that the subsidies shall be available to those enrolled through an Exchange established by the state. From the inception of the law, a substantial number of professionals have argued that the providing of subsidies is limited to state Exchanges. The lower courts (federal District Court) ruled in favor of the federal Exchanges' abilities to provide subsidies by looking behind the written provision and citing the "intent of the law." The D.C. Circuit has overturned the lower court ruling.

In the King case, the Fourth Circuit ruling says that the rule issued by the Internal Revenue Service was “a permissible exercise of the agency’s discretion.”

What’s Next: In the D.C. Circuit ruling, the White House has announced it intends to seek an “en banc” hearing by all judges sitting on the D.C. Circuit. We expect the ruling will be stayed pending final resolution. This means that nothing will change at this time and the state Exchanges will continue to award subsidies.

The conflicting rulings also mean we can expect the matter to go to the Supreme Court of the United States (SCOTUS). Although not a certainty, most SCOTUS watchers expect the Court to uphold the D.C. Circuit ruling, with advice to Congress (specifically the U.S. Senate) to provide a technical correction. We can expect a final decision no sooner than June 2015.

We will provide you with more detail as it becomes available. As always, contact your SML Account team if you have any questions.

The information provided in this legislative update for our clients and colleagues is for general guidance only and is not intended to be, and does not constitute, tax or legal advice. We recommend that you consult with your tax and legal advisors for the interpretation or application of any laws for your particular circumstances and situation.