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August 13, 2025

Via Electronic Delivery

Mr. Peter G. Basica
360 Advantage LLC
1330 Avenue of the Americas, 23rd Floor
New York, NY 10019

Re: Federal Tax Treatment of the 360 Advantage Plan

Dear Mr. Basica:

At your request, this letter sets forth our opinion regarding the federal tax treatment under the Internal Revenue Code (“Code”) of the 360 Advantage Plan (the “Plan”), which offers clinically validated, progressive digital therapeutic support for conditions including diabetes, weight management, hypertension, and other chronic illnesses.

This opinion is based on our review of the Plan’s structure and the applicable provisions of the Internal Revenue Code, the corresponding regulations, IRS guidance, the Affordable Care Act (“ACA”), and relevant judicial interpretations. The conclusions expressed herein are dependent on the accuracy of the facts provided and the state of the law as of the date of this opinion.

I. SUMMARY OF THE PLAN

The Plan is structured as a multi-year digital health benefit offered to eligible employees and their dependents through your Company’s Internal Revenue Code §§ 106 and 125 arrangements. It is further administered through a Self-Insured Medical Reimbursement Plan (“SIMRP”) and is designed to comply with the ACA and relevant federal tax laws.

Unlike traditional health programs limited to static, short-duration interventions, the Plan employs progressive, clinically proven digital therapeutics that adapt to participants over time. For example, the diabetes support track is not a 12-week course but rather a lifelong support framework, with



annually updated content, individualized guidance, and changing therapeutic touchpoints based on participant needs and progress.

II. MATERIALS RELIED UPON

This opinion relies on the following:

- Plan summary materials and plan documentation;
- Draft and final employee communication materials;
- Sample employee enrollment and consent forms;
- Internal Revenue Code §§ 106, 125, 213;
- IRS guidance related to cafeteria plans and medical reimbursements;
- ACA statutory requirements and implementing regulations.

We have assumed that all documents provided are accurate and complete as of the date hereof and that the Plan is operated in a manner consistent with the materials reviewed.

III. ASSUMPTIONS AND REPRESENTATIONS

In rendering this opinion, we have relied on certain factual representations made by the Company and its representatives, and we have assumed, without independent verification, the following:

1. **Accuracy of Documents:** All documents provided to us—including plan documents, employee communications, enrollment forms, and related materials—are true, correct, and complete, and accurately reflect the terms and administration of the Plan.
2. **Consistent Operation:** The Plan is and will continue to be operated in a manner consistent with the terms of the documents provided and with applicable law.
3. **Participant Eligibility:** All individuals receiving benefits under the Plan are bona fide employees (or eligible dependents) of the employer and are properly enrolled under the terms of the Plan and the applicable Section 125 Cafeteria Plan.
4. **Nature of Benefits:** The digital therapeutics and related services provided under the Plan constitute “medical care” as defined in Section 213(d) of the Internal Revenue Code, and the Plan is not intended to—and does not—provide general wellness or non-medical lifestyle services.
5. **Cafeteria Plan Compliance:** The employer maintains a properly adopted and administered Section 125 Cafeteria Plan that meets all applicable requirements under the Internal Revenue Code and associated Treasury regulations.
6. **No Material Misrepresentations:** No material facts have been withheld, misstated, or omitted that would alter the conclusions expressed herein.



7. **Stability of Law:** There have been no changes in the relevant law, guidance, or judicial interpretation as of the date of this opinion that would materially affect our analysis.
8. This opinion assumes that the SIMRP reimburses *only substantiated medical expenses as defined in § 213(d)*—not wellness, lifestyle, fitness-related, or general health costs—and that no reimbursements are made for expenses previously paid on a pre-tax basis through a Section 125 cafeteria plan or otherwise. Any such amounts would be treated as taxable wages.
9. This opinion further assumes that the SIMRP’s claims and appeals procedures comply with *29 C.F.R. § 2560.503-1* (the Department of Labor’s ERISA claims-procedure regulation).
10. This opinion assumes that the SIMRP does not reimburse premiums for individual-market insurance policies nor otherwise function as an *Employer-Payment Plan*, in accordance with IRS Notices 2013-54 and 2015-17.

This opinion is also based upon our understanding that the Plan is not intended to serve as a substitute for Minimum Essential Coverage under the Affordable Care Act and is offered as a supplemental benefit.

IV. LEGAL ANALYSIS

A. IRC § 106 – Employer-Provided Coverage under Accident or Health Plans

Section 106(a) of the Code excludes from gross income the value of coverage provided to an employee under an accident or health plan provided by the employer. The Plan’s structure as an employer-sponsored health plan meets this definition.

To the extent that the digital therapeutics provided under the Plan qualify as “medical care” under § 213(d)—which includes expenses for the diagnosis, cure, mitigation, treatment, or prevention of disease—the associated costs may be excluded from income under § 106.

B. IRC § 125 – Cafeteria Plan Elections

The Plan is available under your Company’s Section 125 Cafeteria Plan, allowing employees to elect pre-tax salary reductions to pay for eligible benefits. To the extent employees contribute to the Plan on a pre-tax basis, such contributions are not included in gross income, provided the Cafeteria Plan meets the requirements of § 125 and applicable nondiscrimination rules.

C. SIMRP (Self-Insured Medical Reimbursement Plan)

The SIMRP component allows for direct reimbursement of medical expenses incurred by eligible participants. Based on your materials, the SIMRP is designed to reimburse only § 213(d) medical care expenses, and does not operate as a disqualifying health Flexible Spending Account (FSA). Therefore, the benefits should be excludable from gross income under §§ 105 and 106.



D. Affordable Care Act (ACA) Considerations

The Plan is not intended to substitute for major medical coverage and is designed to operate in compliance with ACA requirements. You have confirmed that the Plan is offered as a supplemental benefit and is not represented as providing Minimum Essential Coverage. The Plan is thus not subject to ACA employer mandate penalties or marketplace reporting requirements.

E. IRS Chief Counsel Advice Memorandum 202323006 (May 9, 2023)

In May 2023, the IRS issued the Chief Counsel Advice Memorandum 202323006, which addresses fixed-indemnity “wellness” plans that allow employees to make pre-tax salary reductions under a Section 125 plan and then receive unconditional cash payments—often as high as \$1,000 per month—for minimal wellness activities that are not tied to actual, unreimbursed medical expenses. The IRS concluded such payments are includable in gross income and subject to FICA and income tax withholding because they fail to satisfy the requirements of § 105(b) and do not qualify for exclusion under § 104(a)(3).

In contrast, the 360 Advantage Plan is *not* a fixed-indemnity policy and does not distribute unconditional cash benefits. The SIMRP component of the Plan strictly reimburses only actual, substantiated § 213(d) medical expenses or offsets employee contributions toward group health plan premiums. Reimbursement requires third-party substantiation prior to payment, and eligibility is conditioned on enrollment in group Minimum Essential Coverage (MEC). Plan documentation and marketing materials expressly prohibit lump-sum cash incentives unrelated to medical expenses and clarify that any non-medical incentive would be treated as W-2 wages.

To further safeguard compliance, 360 Advantage implements:

- Third-Party Substantiation – 360 Advantage establishes proper payroll deductions consistent with § 125 and prohibits excess reimbursements beyond the documented contribution level.
- Prohibition on Unconditional Cash Rewards – Plan materials prohibit wellness-only payments unless tied to unreimbursed § 213(d) expenses.
- Premium Reimbursements Treated as Medical Care – Any offset of employee group-plan premiums qualifies under § 213(d) and is documented through payroll.
- FICA & W-2 Coding – Payroll processes automatically shift non-qualified payments to taxable wage categories.
- Annual Compliance Audit – The Plan’s operations are benchmarked annually against the standards set forth in CCA 202323006.

Accordingly, because every tax-free dollar under the 360 Advantage SIMRP™ is tied to actual, unreimbursed § 213(d) medical care expenses or documented premium contributions, the Plan



satisfies the exclusions that were missing in the fixed-indemnity arrangements analyzed in IRS CCA 202323006 and avoids the corresponding tax and wage risks.

F. IRS News Release IR-2024-65 (March 6, 2024)

In March 2024, the IRS issued News Release IR-2024-65, warning employers and vendors that personal expenses for general health and wellness are *not considered “medical care” under § 213(d)* and therefore cannot be reimbursed on a tax-favored basis under FSAs, HSAs, HRAs, or MSAs. The IRS emphasized that health-spending plans reimbursing non-medical expenses are not qualified arrangements—and if a plan is not qualified, *all* payments, including those for actual medical care, become includible in income.

This guidance further confirms the compliance integrity of the 360 Advantage SIMRP. Because the Plan reimburses only substantiated § 213(d) medical care (and/or offsets group health premium contributions), it avoids the risks IR-2024-65 flags. Operational safeguards—such as eligibility requirements, third-party substantiation, proper coding of non-qualified payments, and annual compliance audits—keep the Plan squarely within IRS expectations.

V. LIMITATIONS

This opinion is based on the state of the law and facts as presented on the date hereof. It assumes the Plan will continue to operate as described. Any material deviation from the assumptions or changes in applicable law, IRS guidance (e.g., wellness, HRA, or Employer-Payment Plan rules), or Plan operations may materially affect the conclusions expressed herein.

This opinion is limited to federal income tax law and does not address potential implications under ERISA, COBRA, HIPAA, or state tax laws unless specifically stated. We also assume that all necessary disclosures and enrollment procedures are properly administered.

VI. CONCLUSION

Based on and subject to the foregoing, and assuming:

1. The SIMRP reimburses only substantiated § 213(d) medical expenses, and no expenses are reimbursed that were previously paid pre-tax (including via a § 125 Cafeteria Plan);
2. The Plan’s automatic substantiation mechanisms (e.g., debit card, recurring charges, IIAS) comply with Rev. Rul. 2003-43 and Notice 2006-69, rather than relying on outdated or inappropriate authorities such as Notice 2002-45;
3. The SIMRP’s claims and appeals procedures fully comply with 29 C.F.R. § 2560.503-1; and



4. The SIMRP does not reimburse individual-market premiums or function as an Employer-Payment Plan (in compliance with Notices 2013-54 and 2015-17);

It is our opinion that:

1. The value of benefits received under the Plan is excludable from employees' gross income under § 106 of the Code;
2. Employees may pay for any elective portion of the Plan on a pre-tax basis under § 125;
3. Medical reimbursements issued through the SIMRP, to the extent they are limited to § 213(d) qualified expenses, are excludable from income under §§ 105 and 106; and
4. The Plan, as structured and administered according to the materials provided and assumptions herein, complies with the relevant ACA provisions applicable to supplemental or ancillary health Plan.
5. The Plan is not a fixed indemnity policy and does not provide unconditional cash benefits; therefore, IRS CCA 202323006 does not apply. The Plan's model restricts tax-free reimbursements to actual, substantiated § 213(d) medical care and treats any non-qualified amounts as taxable wages.
6. IRS News Release IR-2024-65 reinforces the compliance of the Plan, as it targets unsubstantiated wellness reimbursements. The Plan's operational model avoids this risk by ensuring that all reimbursements are for clearly documented § 213(d) medical care.

THERE IS, OF COURSE, NO GUARANTEE THAT THESE POSITIONS WILL BE SUSTAINED IN LITIGATION.

We express no opinion as to any other matter or tax consequence not specifically addressed herein. Our opinions are effective as of the date hereof; we assume no responsibility for revising them to account for later changes in law, regulation, or Plan operations.

This opinion represents the legal judgment of counsel and is not binding on any regulatory agency or court. It has been furnished to the Company at the request of Peter Basica, Founder and Chairman of 360 Smarter Administration Inc. and Managing Member of 360 Advantage LLC, and is rendered solely for the Company's information; it may not be relied upon by any other party or for any other purpose without our prior written consent.

Should you have any questions regarding the foregoing, please don't hesitate to contact me by telephone or electronic mail. I remain,

Respectfully Yours,



Alexander Paykin, Esq.

