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IRS Concludes Lactation Supplies Are Tax Deductible Medical Expenses

The Internal Revenue Service issued an announcement stating that amounts spent on breast pumps and other devices to assist lactation can qualify as deductible medical expenses and that amounts reimbursed for these expenses under flexible spending arrangements, health reimbursement arrangements, or health savings accounts are not income to the taxpayer.

Background

When an individual withdraws money from a flexible spending arrangement (FSA), health reimbursement arrangement (HRA), or health savings account (HSA), the withdrawn amount is not taxable income if it is used to reimburse a qualified medical expense under Internal Revenue Code Section 213(d).

In a 2009 letter, the IRS concluded that the cost of purchasing or renting a breast pump and related equipment would not constitute medical care expenses for FSA purposes. The IRS reasoned that the Code's definition of medical expense did not include goods or services that, while beneficial to general health, do not prevent or treat a disease. As a consequence, the IRS concluded, the cost of purchasing or renting a breast pump or related equipment would not come within Code Section 213(d)'s definition of medical care expense.

Announcement 2011-14

In [Announcement 2011-14](#), the IRS reversed its 2009 position, concluding that breast pumps and supplies that assist lactation constitute medical care expenses under Code Section 213(d) and thus are reimbursable expenses for purposes of FSAs, HRAs, or HSAs.

BUCK COMMENT. *The IRS decision reflects a public policy trend in favor of supporting breast feeding mothers. Under the Patient Protection and Affordable Care Act, employers must provide a private place, other than a restroom, that can be used by an employee to express breast milk. Under the law, only companies with fewer than 50 employees can claim that the requirement imposes an undue hardship.*

The IRS plans to revise Publication 502: *Medical and Dental Expenses* which provides a list of medical expenses that are covered and that are not covered under Section 213(d).

BUCK COMMENT. *The Announcement does not include an effective date. In addition, it does not expressly preclude retroactive application of the new rule. As a consequence, it appears that an employee could retroactively seek reimbursement from an FSA, HSA, or HRA (if the HRA already defines eligible expenses as those under Code Section 213(d)) to cover expenses related to breast pumps and lactation supplies if the claims period is still open.*

Conclusion

Employers will want to communicate this new IRS position to their employees. Buck's consultants are available to answer any questions you might have and assist with employee communications regarding the changed IRS policy.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.