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IRS Announces that COVID-19 Related Personal Protective Equipment Qualifies as a Medical Expense – Group Health Plans, Health FSAs and HRAs May Need to Be Amended as a Result

By John B. Waters

On March 26, 2021, in Announcement 2021-7, the IRS notified taxpayers that amounts paid for personal protective equipment, such as masks, hand sanitizer and sanitizing wipes, for the primary purpose of preventing the spread of COVID-19 (COVID-19 PPE) are treated as amounts paid for medical care under § 213(d) of the Internal Revenue Code (Code). This Announcement has the following ramifications:

- To the extent not compensated by insurance or otherwise, such expenditures will qualify as deductible medical expenses provided that the taxpayer's total medical expenses exceed 7.5 percent of his or her adjusted gross income.
- Such expenditures are also eligible to be paid or reimbursed under health flexible spending arrangements (Health FSAs), Archer medical savings accounts (Archer MSAs), health reimbursement arrangements (HRAs), or health savings accounts (HSAs). However, amounts paid or reimbursed under a Health FSA, Archer MSA, HRA, HSA or any other health plan, cannot be deducted as medical expenses when filing annual taxes.
- To the extent existing group health plans, including health FSAs and HRAs, do not provide for COVID-19 PPE expenses to be reimbursed, such plans may be amended pursuant to the Announcement to provide for reimbursement of COVID-19 PPE expenses incurred for any period beginning on or after January 1, 2020, and such an amendment will not be treated as causing a failure of any reimbursement to be excludable from income under Code § 105(b) or as causing a Code § 125 cafeteria plan to fail to meet the requirements of § 125. Group health plans may be amended pursuant to the Announcement if (1) the amendment is adopted not later than the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective; (2) no amendment with retroactive effect is adopted after December 31, 2022; and (3) the plan is operated consistent with the terms of the amendment, including during the period beginning on the effective date of the amendment through the date the amendment is adopted.

For more information on this topic and how Roetzel attorneys can assist you, please contact any of the attorneys below.

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