

## Part III – Administrative, Procedural, and Miscellaneous

### Expenses Treated as Amounts Paid for Medical Care

Notice 2024-71

#### SECTION 1. PURPOSE

This notice provides a safe harbor under section 213 of the Internal Revenue Code for amounts paid for condoms.

#### SECTION 2. BACKGROUND

Section 213 allows an individual taxpayer an itemized deduction for expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse, or the taxpayer's dependent, to the extent that such expenses exceed 7.5 percent of the taxpayer's adjusted gross income.

Section 213(d) provides, in relevant part, that the term "medical care" means amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body. Section 1.213-1(e)(1)(ii) of the Income Tax Regulations provides that deductions for medical care expenses under section 213 are limited to expenses "incurred primarily for the prevention or alleviation

of a physical or mental defect or illness” and do not include deductions for expenses that are merely beneficial to an individual’s general health.

Amounts treated as expenses for medical care under section 213(d) are eligible to be paid or reimbursed under a health flexible spending arrangement (health FSA), Archer medical savings account (Archer MSA), health reimbursement arrangement (HRA), or health savings account (HSA). However, if an amount is paid or reimbursed under a health FSA, Archer MSA, HRA, HSA, or any other health plan or otherwise, it is not a deductible expense under section 213.

The determination of whether an expense is incurred for the prevention of disease, or other form of medical care under section 213(d), depends upon the facts and circumstances. Stringham v. Commissioner, 12 T.C. 580, 584 (1949). Thus, depending on the specific facts and circumstances, amounts paid for condoms may or may not be considered medical expenses under section 213(d).

### SECTION 3. SAFE HARBOR

The Treasury Department and the IRS will treat amounts paid for condoms as amounts paid for medical care under section 213(d).

### SECTION 4. APPLICATION OF SAFE HARBOR

Because amounts paid for condoms are treated as expenses for medical care under section 213(d), if the other requirements of section 213(a) are met (for example, if a taxpayer’s total medical expenses exceed the 7.5-percent adjusted gross income limitation and are not compensated for by insurance or otherwise), then amounts paid by the taxpayer for condoms for the taxpayer, the taxpayer’s spouse, or the taxpayer’s dependent are deductible as expenses for medical care under section 213.

Additionally, because amounts paid for condoms are treated as expenses for medical care under section 213(d), the amounts are also eligible to be paid or reimbursed under a health FSA, Archer MSA, HRA, or HSA. However, if an amount paid for condoms is paid or reimbursed under a health FSA, Archer MSA, HRA, HSA, or any other health plan or otherwise, it is not a deductible expense under section 213.

#### SECTION 5. DRAFTING INFORMATION

The principal authors of this notice are Elizabeth Choi and Amy S. Wei of the Office of Associate Chief Counsel (Income Tax & Accounting). However, additional personnel in the Office of Chief Counsel and at the Treasury Department participated in the development of this notice. For additional information, contact Branch 3 of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 317-5100 (not a toll-free call).