



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Jim Bridenstine
Member, U.S. House of Representatives
2448 East 81st Street, Suite 5150
Tulsa, OK 74137

Attention:

Dear Representative Bridenstine:

We received your inquiry dated January 7, 2016, on behalf of your constituent, _____, about the use of a flexible spending arrangement (FSA). Specifically, he asked about the ability to use a health FSA to pay for health insurance.

Under the proposed Income Tax Regulations, individuals may not use a health FSA for insurance premiums, even if paid with after-tax dollars. As stated in those proposed regulations at section 1.125-5(k)(4), "A health FSA is not permitted to treat employee's premium payments for other health coverage as reimbursable expenses." This has been a consistent rule for health FSAs since we issued the first proposed regulations.

_____ refers to language in Publication 502, *Medical and Dental Expenses*, and Publication 969, *Health Savings Accounts and Other Tax-Favored Health Plans*, which describes medical and dental expenses that generally qualify for a deduction. As noted, page 16 of Publication 969 states:

Qualified medical expenses are those specified in the plan that would generally qualify for the medical and dental expenses deduction. These are explained in Publication 502. (emphasis added)

However, page 17 of Publication 969 contains additional language clarifying whether certain medical and dental expenses qualify for a deduction. Page 17 of Publication 969 states:

You cannot receive distributions from your FSA for the following expenses. Amounts paid for health insurance premiums.

This language is consistent with language in section 1.125(k)(4) of the proposed Income Tax Regulations, which provides that a health FSA may not be used for insurance premiums.

I hope this information is helpful. If you have any questions, please call me at
or at .

Sincerely,

Christine Ellison, Acting Chief,
Health and Welfare Branch,
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)