



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

OFFICE OF THE CHIEF COUNSEL

June 22, 2016

Number: **2016-0050**  
Release Date: 9/30/2016

CONEX-118184-16

UIL: 125.00-00

The Honorable Tim Kaine  
United States Senator  
121 Russell Road, Suite 2  
Abingdon, VA 24210

Attention:

Dear Senator Kaine:

I apologize for the delay in responding to your inquiry of March 16, 2016, on behalf of your constituent, . asked if we could help her with issues involving her health flexible spending arrangement (health FSA). She explained a discrepancy over the amount of reimbursement and denial of a claim she submitted to her former employer's health FSA.

Section 125 of the Internal Revenue Code sets forth rules under which cafeteria plans may allow employees a choice between taxable and nontaxable benefits without resulting in any gross income to the employee. Section 125 cafeteria plans and health FSAs offered through section 125 must satisfy specific requirements. If a plan does not meet the section 125 requirements, the choice between taxable benefits (such as salary) and nontaxable benefits (such as reimbursements for medical expenses) results in gross income to the employee, regardless of what benefit an employee elected. See proposed regulation section 1.125-1(b)(1).

Under the proposed regulations for health FSAs, the maximum amount of reimbursement from the health FSA must be available at all times during the period of coverage. In particular, under rules we frequently refer to as the uniform coverage rules, the maximum amount of reimbursement at any particular time during the period of coverage may not relate to the amount an employee has contributed to the health FSA at any particular time prior to the end of the plan year. See the uniform coverage rules for health FSAs under proposed regulation, section 1.125-5(d)(1).

Following the uniform coverage rules, a health FSA generally may not reimburse medical expenses an employee gets after he or she stops participating in the health FSA. This includes, for example, termination of employment (unless the health FSA is subject to COBRA continuation requirements and the participant elects COBRA continuation). Moreover, a health FSA may include a deadline for submitting a claim for reimbursement for the plan year. The FSA must provide any deadline in a uniformed and consistent manner with respect to all participants. See proposed regulations section 1.125-1(f).

Based on the information provided with your inquiry, it appears \_\_\_\_\_ timely incurred the medical expense. However, the background information she provided did not show the applicable deadline of the health FSA for submitting a claim for reimbursement. If the January claim submission was timely under the rules of the health FSA, the health FSA must reimburse the claim up to the amount elected for the year (\$2,500) and may not limit the reimbursement to the amount of salary reduction at the time \_\_\_\_\_ terminated employment. However, if the claim submission was not timely under the rules of the health FSA, the plan may deny the reimbursement.

A health FSA that fails to follow its plan rules may violate the Employee Retirement Income Security Act (ERISA) rules for health plans, which the Department of Labor enforces. If the health FSA is following its rules but those rules violate the requirements under section 125 for cafeteria plans, all elections under the cafeteria plan may potentially result in income to employees.

Based on the background information, if either of the above situations exists, we would not make any determinations. However, we would provide this information to our appropriate IRS operating division as a referral. As noted in the instructions for Form 3949-A, submitters will not receive a status or progress update on the referral due to privacy rules under Internal Revenue Code section 6103.

I hope this information is helpful. If you have 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)