

NEWS ALERT

EMPLOYEE BENEFITS



IRS Says COVID-19 PPE Expenses Are Deductible or Reimbursable Tax-Free

By Melanie N. Aska and Ere M. Sharp | April 8, 2021

Just think of the many dollars you spend on face masks, hand sanitizers and sanitizing wipes to help you and your family prevent the spread of the coronavirus disease (COVID-19). It all adds up very quickly and can make a noticeable dent in your household budget.

On March 26, 2021, the IRS issued Announcement 2021-7, which provides the welcome news that amounts paid by an individual taxpayer for such COVID-19 personal protective equipment (PPE) are to be treated as “amounts paid for medical care” under Section 213(d) of the Internal Revenue Code.

COVID-19 PPE Expenses May Be Deductible. This means that amounts paid by an individual taxpayer for COVID-19 PPE for use by the taxpayer or by the taxpayer’s spouse or dependents that are not paid for by insurance or otherwise are deductible under Code Section 213(a), provided that the taxpayer’s total medical expenses exceed 7.5% of adjusted gross income (AGI).

Or, COVID-19 PPE Expenses May Be Paid or Reimbursed, Tax-Free. This also means that COVID-19 PPE expenses are eligible to be paid or reimbursed, tax-free, under health flexible spending arrangements (health FSAs), health reimbursement arrangements (HRAs), health savings accounts (HSAs) and Archer medical savings accounts (Archer MSAs). But, because IRS rules prohibit taxpayers from “double-dipping”, COVID-19 PPE expenses that have been paid or reimbursed, tax-free, from any of these arrangements cannot also be deducted.

Employers May Need to Amend Their Plan Documents. Employers whose group health plan documents (such as health FSA and HRA plan documents) do not expressly prohibit the payment or reimbursement of COVID-19 PPE expenses (most plan documents probably fall into this category) will not have to be amended to expressly permit such payments or reimbursements.

However, employers who wish to permit payment or reimbursement of COVID-19 PPE expenses but whose plan documents expressly prohibit such payments or reimbursements (such plan documents are probably rare) will need to amend those documents. Any such plan amendment may provide for payment or reimbursement of COVID-19 PPE expenses incurred for any period beginning on or after January 1, 2020. The IRS will not treat any such plan amendment as jeopardizing the tax-free nature of such payments or reimbursements or as causing any Code Section 125 cafeteria plan (which often include health FSAs as component plans) to fail to meet applicable legal requirements.

Employers that need to amend their plan documents must adopt plan amendments no later than the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective, but no plan amendment with retroactive effect may be adopted after December 31, 2022. (For example, an employer that sponsors a plan with a calendar plan year and that wishes to amend the plan to permit payment or reimbursement of COVID-19 PPE expenses incurred on or after January 1, 2021 would have to adopt that plan amendment no later than December 31, 2022.) In addition, the plan must be operated consistently with the terms of any retroactive plan amendment during the period beginning on the amendment's effective date through the date the employer adopts the amendment.

Employers Will Need to Review and Update Employee Communications. Employers whose plans will pay or reimburse COVID-19 PPE expenses also will need to review and update to the extent necessary all employee-facing materials (for example, summary plan descriptions (SPDs), employee handbooks, websites and claim reimbursement request forms) to enable employees to begin submitting their claims for such expenses.

Employers Will Need to Contact Third-Party Administrators. Employers whose plans will pay or reimburse COVID-19 PPE expenses also will need to contact their plans' third-party administrators (including claims administrators) to ensure that the administrators' participant communications have been updated and their systems have been geared up to correctly process participants' claims for COVID-19 PPE expenses.

If you have any questions about IRS Announcement 2021-7 or how it might affect your business, please contact Melanie N. Aska, Counsel, at 617-457-4131 or maska@murthalaw.com or Erik M. Sharp, Partner, at 203-772-7772 or esharp@murthalaw.com.

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