

Internal Revenue Service

Department of the Treasury

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Taxpayer=
Plan =

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This is in reply to your letter dated October 16, 2001 on behalf of Taxpayer. Specifically, you requested rulings that:

(1) Reimbursements received under the Plan by employees of the Taxpayer will be excludable from the gross income of the employees pursuant to section 105(b) of the Internal Revenue Code (the Code); and

(2) The federal tax treatment of welfare benefits received by employees of the Taxpayer under welfare benefit plans other than the Plan will not be affected by reimbursements received under the Plan.

The Taxpayer proposes to adopt the Plan to reimburse employees for a portion of the cost of laser surgery (radial keratotomy). All employees of the Taxpayer who have been in the Taxpayer's employ for at least one year will be participants in the Plan. The Plan does not provide reimbursement for any other expense. No salary reduction amounts are contributed to the Plan and employees may not choose between the benefit offered under the plan and other taxable or nontaxable benefits.

Section 105(a) of the Code provides that amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent that such amounts (1) are attributable to contributions by the employer that are not includible in the gross income of the employee, or (2) are paid by the employer.

Section 105(b) of the Code provides that except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts referred to in section 105(a) if such amounts are paid directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, and his dependents (as defined in section 152).

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Section 105(e) of the Code provides that amounts received under an accident or health plan for employees shall be treated as amounts received through accident or health insurance.

"Medical care" is defined in section 213(d)(1)(A) to include 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 states that medical care includes operations or treatments, including surgery, that affect a portion of the body and that are deemed to be for the purpose of affecting any structure or function of the body. Deductions will be confined to expenses incurred primarily for prevention or alleviation of a physical or mental defect or illness.

Section 1.213-1(e)(1)(iii) of the regulations specifically states that expenditures for eyeglasses and for the acquisition of a seeing eye dog qualify as expenditures for medical care. Under Rev. Rul. 55-261, 1955-1 C.B. 307 and Rev. Rul. 68-295, 1968-1 C.B. 92, maintenance expenses associated with a seeing eye dog are deductible. In addition, expenses for contact lenses and contact lens insurance have been determined to be payments for medical care. Rev. Rul. 74-429, 1974-2 C.B. 83.

Radial keratotomy is a surgical procedure and involves making small incisions in the cornea radiating outward from the central area of the cornea. These incisions cause the cornea to flatten and change the angle of refraction, with the result that incoming light rays focus on, or closer to, the retina. Acuity of vision is thereby improved. Radial keratotomy is, therefore, a surgical procedure that will affect a structure or function of the body and whose purpose is to correct a physical defect. As such, radial keratotomy constitutes medical care under section 213 of the Code.

Based on the documents and information submitted, representations made and authorities cited, we conclude as follows:

(1) Provided the nondiscrimination requirements of section 105(h) of the Code and section 1.105-11 of the regulations are satisfied, amounts paid to employees under the Plan to reimburse expenses for radial keratotomy are excluded from the employees' gross income under section 105(b) of the Code.

(2) Amounts paid under the Plan will have no effect on the federal tax consequences of benefits provided to employees under other welfare benefit plans maintained by the Taxpayer, provided employees do not receive reimbursements in excess of the actual expenses for radial keratotomy.

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This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Harry Beker
Branch Chief, Health and Welfare Branch
Office of Office of Division Counsel/
Associate Chief Counsel
(Tax Exempt and Government Entities)

cc: