

NOT – 147804-08

Part III – Administrative, Procedural and Miscellaneous

Section 105 - Amounts Received Under Accident and Health Plans

Notice 2008-104

PURPOSE

This notice provides additional transition relief with respect to the use of debit cards for medical expense reimbursements at stores with the Drug Stores and Pharmacies merchant category code.

BACKGROUND

Notice 2007-2, 2007-1 C.B. 254, provides that after December 31, 2008, health FSA and HRA debit cards may not be used at stores with the Drug Stores and Pharmacies merchant category code unless: (1) the store participates in the inventory information approval system as described in Notice 2006-69, 2006-2 C.B. 107, or (2) on a store location by store location basis, 90 percent of the store's gross receipts during the prior taxable year consisted of items which qualify as expenses for medical care under § 213(d) (including nonprescription medications as described in Rev. Rul. 2003-102, 2003-2 C.B. 559).

For transactions using debit cards at stores that meet the 90 percent rule described in (2) above, employers must treat all charges to the debit card as conditional (other than copayment matches, recurring expenses, and real-time substantiation as described in Rev. Rul. 2003-43, 2003-1 C.B. 935) pending substantiation of the charges through additional independent third-party information describing the goods or services, the date of the service or sale, and the amount of the charge.

TRANSITION RELIEF

The deadline in Notice 2007-2 is extended by six months so that, after June 30, 2009, health FSA and HRA debit cards may not be used at stores with the Drug Stores and Pharmacies merchant category code unless the requirements of (1) or (2) above are satisfied.

EFFECT ON OTHER DOCUMENTS

Notice 2007-2, 2007-1 C.B. 254 is modified.

DRAFTING INFORMATION

The principal author of this notice is Stephanie L. Caden of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Caden at (202) 622-6080 (not a toll-free call).