

FBMC BENEFITS ALERT 2007-01

To	All Clients & Friends of FBMC	Date	01/19/07
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Re	Debit Card Transition Relief Under IRS Notice 2007-2		

Looking back to the first electronic payment card ruling (Rev. Rul. 2003-43), the use of a debit card to auto-substantiate eligible HRA and health FSA expenses was “limited to physicians, pharmacies, dentists, vision care offices, hospitals, and other medical care providers” and service providers with specific merchant category codes (MCCs) related to health care. This immediately excluded using the debit card at merchants (such as Wal-Mart, grocery stores, etc.) with *non*-health care related merchant category codes even though medical care items, prescriptions and over-the-counter drugs and medications could be purchased at their stores.

In IRS Notice 2006-69, the IRS and Treasury demonstrated that public comments had been heard to permit merchants with *non*-health care related merchant category codes to also be allowed the use of electronic payment cards at their locations to auto-substantiate eligible HRA and health FSA medical expenses. In order to level the playing field and ensure that similar substantiation requirements were being followed by these merchants, the IRS described an “inventory information approval system” (IIAS) in this notice that each such merchant had to put in place. Many such merchants were unable to implement an IIAS within the time line given in the notice.

In IRS Notice 2007-2, the IRS and Treasury granted more time for merchants with *non*-health care related merchant category codes to set up an IIAS. Specifically:

- *on or before December 31, 2007*, health FSA or HRA debit cards may be used for medical expense reimbursements at all supermarkets, grocery stores, discount stores, and wholesale clubs. In addition, the debit card may be used with mail order vendors and web-based vendors that sell prescription drugs even if they don't have a merchant category code (MCC) related to health care.
- *after December 31, 2007*, however, “health FSA or HRA debit cards may not be used at any store, vendor or merchant that does not have health care related merchant category codes unless the store, vendor or merchant has implemented an...[IIAS]...”
- *after December 31, 2008*, health FSA or 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 IIAS, or (2) on a store location by store location basis, 90% of the store's gross receipts during the prior taxable year consisted of qualifying medical expenses.

Note that Employers (and their designated Benefits Administrators) must continue to substantiate all debit card charges and take IRS-approved corrective measures (including “pay and chase”) to recover reimbursements made for expenses not eligible under Code Sec. 213(d) or the Employer's plan(s).

It's not likely that the IRS will allow merchants more time beyond the transition relief in Notice 2007-2.

Additional Information

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