



OFFICE OF
CHIEF COUNSEL

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

May 23, 2009

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CONEX-122436-09

UIL: 213.00-00

Attn:

Dear _____ :

I am responding your letter of March 30, 2009, to Commissioner Douglas H. Schulman about the treatment of costs associated with breast pumps and related equipment. You recommend that the Service allow the costs of breast pumps and related equipment to be reimbursable under a tax favored health care flexible spending account (FSA).

In general, funds from an FSA are to be used for medical care. The Internal Revenue Code defines medical care to include the diagnosis, cure, mitigation, treatment or prevention of disease. Medical care includes medicine and drugs, but does not include goods or services that are merely beneficial to general health and do not mitigate or treat a disease. Under current law, therefore, the cost of purchasing or renting a breast pump and related equipment would not come within the definition of a medical care expense for FSA purposes, even though the mother's usage of the breast pump may have the health benefits mentioned in your letter.

It is not within the authority of the Internal Revenue Service to classify breastfeeding equipment as medical care in contravention of current law. A change to the Internal Revenue Code must be made by Congress.

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I hope this information is helpful. If you have additional questions, please
contact me or _____ at _____ .

Sincerely,

Christopher F. Kane
Branch Chief, Branch 3
(Income Tax & Accounting)