

# **Relief From Retroactive Application of Information Reporting Requirements for Health Flexible Spending Arrangements and Health Reimbursement Arrangements**

## **Notice 2004-16**

This notice provides that certain information reporting requirements of Rev. Rul. 2003-43, 2003-1 C.B. 935, will not apply to payments made pursuant to flexible spending arrangements (FSAs) or health reimbursement arrangements (HRAs) prior to January 1, 2003.

Rev. Rul. 2003-43 generally addresses the issue of whether employer-provided expense reimbursements made through debit cards, credit cards, and other electronic media are excludable from gross income under section 105 of the Internal Revenue Code. Rev. Rul. 2003-43 states that payments made to medical care providers through the use of debit, credit, and stored-value cards are reportable to the Internal Revenue Service by the employer on Form 1099-MISC under section 6041 except to the extent that the exceptions provided in section 1.6041-3 apply.

On December 8, 2003, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, 117 Stat. 2066, (the Medicare Act) was enacted. Section 1203 of the Medicare Act amends the Code by adding a new section 6041(f), which provides that section 6041 will not apply to any payment for medical care (as defined in section 213(d)) made under FSAs (as de-

defined in section 106(c)(2)), or under HRAs that are treated as employer-provided coverage under accident or health plans for purposes of section 106. This amendment is effective for payments made after December 31, 2002.

Pursuant to section 7805(b)(8), the Form 1099 requirement described in Rev. Rul. 2003-43 will be applied without retroactive effect for payments made under FSAs and HRAs prior to January 1, 2003. This action is taken to assure employers and third party administrators that FSA and HRA payments for medical care will not be subject to information reporting prior to the effective date of the amendment to section 6041 in the Medicare Act.

The principal author of this notice is Nancy Rose of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this notice, contact Ms. Rose at (202) 622-4910 (not a toll-free call).

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