

# United States Senate

WASHINGTON, DC 20510-1804

November 30, 2009

IRS Commissioner Doug Shulman  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

Dear Commissioner Shulman:

I write to request information on behalf of constituent consumers and community pharmacies who have requested additional information from you regarding the use of flexible spending account ("FSA") debit cards for qualified medical purchases at community pharmacies.

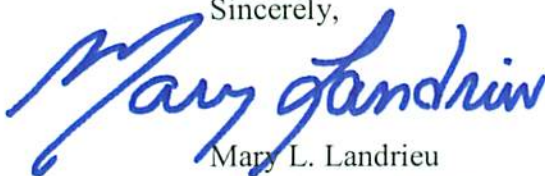
I understand that in an effort to prevent waste, fraud, and abuse the Department of Treasury and the Internal Revenue Service require third party substantiation of qualified expenses for medical care for reimbursement from a FSA. Under current guidance, the IRS allows for this substantiation from pharmacies if: (1) pharmacies use an inventory management system; or (2) the pharmacy certifies that it is registered with a private entity under the so-called "90 Percent Rule." This applies to pharmacies that are able to certify that 90 percent or more of their sales are for prescriptions and other qualified medical items. The use of the "90 Percent Rule" was adopted to allow smaller pharmacies to continue to be able to accept these cards without investing in the costly inventory management systems.

In connection with the guidance that has been issued regarding the "90 Percent Rule," can you clarify under what circumstances the IRS considers qualified medical purchases by consumers from "90 Percent Rule" Pharmacies using FSA debit cards as substantiated under the current applicable guidance?

Thank you for your timely response.

With warm regards, I am

Sincerely,



Mary L. Landrieu  
United States Senator

MLL:clb