



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 13 2012

OFFICE OF
AIR AND RADIATION

Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
United States Treasury Department
P.O. Box 7604
Ben Franklin Station
Washington, DC 2044

Attn: CC:PA:LPD:DRU

RE: Information Letter Request

Dear Mr. Wilkins:

The purpose of this letter is to request the Internal Revenue Service (IRS) identify indoor radon testing and mitigation costs as an eligible medical expense within Health Spending Accounts (HSAs). As the Environmental Protection Agency's Assistant Administrator for Air and Radiation, I have teamed with the senior leadership at the Department of Health and Human Services (HHS), the Department of Housing and Urban Development (HUD) and six other agencies to lead a cross-agency effort to reduce the public health risks from exposure to radioactive radon gas in the nation's homes and schools. This initiative, known as the Federal Radon Action Plan, is aimed at reducing the estimated 21,000 lung cancer deaths that result every year in the United States from exposure to indoor radon. This request is one of many strategies being pursued in the Federal Radon Action Plan (http://www.epa.gov/radon/action_plan.html).

Lung cancer deaths due to radon are largely preventable. The simplest risk reduction tool available is the installation of a modest-cost mitigation system. Over one million of these systems are now in place across the nation and it is a straightforward and well-proven technology. Clearly defining and articulating radon testing and mitigation costs as an eligible medical care expense within Health Spending Accounts would help to save lives and avoid the high health care costs of cancer treatment.

STATEMENT OF FACTS

Radioactive radon gas is a naturally occurring and common invisible and odorless indoor air pollutant. Radon is estimated to cause 21,000 lung cancer deaths every year in the United States. Today, an estimated seven million U.S. homes have a radon level requiring abatement.

EPA's primary statutory authorities for addressing radon related risks are the Toxic Substances Control Act¹ (TSCA) and the Superfund Amendments and Reauthorization Act² (SARA).

Radon is the second leading cause of lung cancer in our nation after smoking. Among non-smokers, it is the leading cause of lung cancer. In 1992 EPA established an action level for radon of 4 picocuries per liter of air (pCi/L). EPA and the U.S. Surgeon General recommend that all homes be tested and mitigated when the radon level is 4 pCi/L or more. Nationally, about one in fifteen homes is estimated to have a radon level of 4pCi/L or higher.

EPA also recommends homeowners seriously consider mitigating their homes for radon levels between 2–4 pCi/L. The main reason for this latter recommendation is that the 21,000 radon-related deaths result from long-term exposure to radon levels below 4 pCi/L, and the less radon there is in the air, the lower the risk of contracting lung cancer. EPA also recommends that homes are tested post-abatement and periodically thereafter to ensure that radon levels remain low and that the abatement system is working properly.

There are many factors that influence the cost of radon abatement, including state regulations, the availability of radon services providers, competition, travel costs, building size, and materials and techniques used in construction, among others. The cost in today's market to mitigate the average home can range from a low of \$750 to a high of \$2,500 or more.

Radon testing and abatement costs should be properly and consistently treated under the provisions of 26 CFR §1.213 generally. The health maintenance costs of residential radon testing and abatement should be fully deductible expenses and treated the same way lead paint abatement is under Health Care Flexible Spending Accounts. Furthermore, radon is not mentioned in key public Internal Revenue Service publications. For example, we believe that radon should be included in appropriate IRS publications, such as Publication 502 on Medical and Dental Expenses.

INFORMATION LETTER REQUESTED

EPA requests an interpretation on the deductibility, as (preventative) medical care, of the costs for residential radon testing and abatement or mitigation. It is the agency's belief that the costs of residential radon testing and abatement should be fully deductible medical care expenses. Radon should be treated in the same way that lead in paint abatement expenses are in current IRS Health Spending Accounts (HSA) regulations, policy and guidance.

The agency also asks that the requested letter clarify the status of whether radon expenses are exempt from any type of capital expense calculation. Radon abatement systems generally do not have significant enough value to be accounted for in a residential valuation (appraisal).

Presuming the IRS does issue the requested Information Letter on radon EPA suggests changes in related Treasury documents:

- 1-Include a definitional change under §213-1(e)(ii) of the Internal Revenue Code.

2-Add the following language to Internal Revenue Service Publication 502, "Medical and Dental Expenses" under "What Medical Expenses are Eligible?"

"Radon Testing and Abatement: You can include in medical expenses the cost of testing for radon and mitigating radon in your home to prevent high levels of radon from accumulating indoors, thus reducing the risk of lung cancer from exposure to indoor radon for all occupants of the home."

3-Add the following or similar language to Internal Revenue Service Publication 502, "Medical and Dental Expenses" under "Capital Expenses", by substituting the last bullet and paragraph with the following:

"Radon abatement: Reasonable costs to accommodate a home to a disabled condition are considered medical care, along with radon abatement costs to reduce risk of lung cancer. Additional costs for personal motives, such as for architectural or aesthetic reasons, are not medical expenses."

Edits to Internal Revenue Service Publication 502 and other Internal Revenue Service publications, as appropriate, will clarify for the health plan administrators of FSAFEDS and other Health Care Flexible Spending Accounts and tax-favored health plans, as well as for tax preparers and taxpayers, that radon testing and abatement are eligible medical expenses.

ANAYLSIS

As do many other federal agencies, EPA participates in the Federal Flexible Spending Account Program (FSAFEDS), administered by the U.S. Office of Personnel Management. Within the FSAFEDS menu of "Eligible Expenses Juke Box," radon abatement is included as a "Potentially Eligible Expense*."

The asterisked footnote from the eligible expense column entry reads,

"*Please note, all "potentially eligible health care expenses" require a letter of medical necessity from your health care provider in order to be considered eligible for reimbursement. The letter must include the diagnosis or symptoms for which you, your spouse, dependent or adult child through age 26 are being treated, along with specific information on how the product or service is intended to alleviate symptoms or improve function. Submitting a LMN for your claim does not guarantee that the expense will be reimbursed. You must submit a new LMN each year if the medical condition persists – they cannot be approved indefinitely."

Furthermore, in the "Additional Information" column is the statement:

"If a physician requires radon abatement in your home due to a medical condition caused or aggravated by an unacceptable level of radon, some expenses may be eligible. However, if the home's value is increased due to the abatement, some or all of the expenses may not be

reimbursable. Use the Capital Expense Worksheet to determine how much of the expense is eligible.”³

The preceding FSAFEDS example would appear to: (1) require the claimant to first have been diagnosed with lung cancer; and, (2) produce a valid letter of medical necessity (LMN). It would appear that only then can a claim be considered as an eligible expense. The principle of prevention is not mentioned or even implied. Radon abatement is a preventive measure, not a treatment. Abatement significantly reduces the risk of radon-related lung cancer, and the associated health care costs. In effect, the current wording would require lung cancer as a prerequisite in order to have a radon abatement expense be eligible. In addition, the costs of radon tests are ineligible. Radon testing costs can range about \$25 to \$250 or more, depending on the device used, purpose of the test and whether conducted by a professional or consumer.

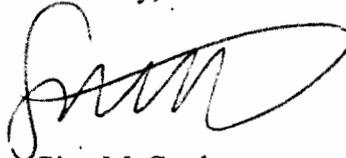
The FSAFEDS language reflects the lack of understanding about radon in the absence of uniform guidance. Making radon testing and abatement costs an eligible expense has great potential for reducing the number of radon-related lung cancers, and the nation’s annual radon-related health care costs. Recently, the Health and Human Services (HHS) Assistant Secretary for Health, Dr. Howard Koh, estimated the cost of a life-year-lost to lung cancer at \$50,000, far more than the average cost of a residential radon abatement system.

CONCLUSION

It is very important to the agency that the Internal Revenue Service make it as clear as possible that radon risk reduction costs are deductible as medical care expenses. With an estimated 21,000 people dying every year from radon-induced lung cancer, the federal government should take responsible measures to save lives. Radon-related lung cancer is largely preventable and at-risk homes can easily be identified through testing. Presuming the abatement system is maintained, an abated home benefits all subsequent occupants.

My staff has worked closely with Treasury and IRS staff to prepare this letter and appreciate the advice and guidance we received, particularly from Senior Level Counsel Donna Crisalli and her staff. We very much look forward to your reply. If you have questions regarding this request, please contact Mike Flynn, Director, Office of Radiation and Indoor Air (202.343.9320, Flynn.Mike@epa.gov). Thank you.

Sincerely,



Gina McCarthy
Assistant Administrator

cc: Donna M. Crisalli, IRS
Thomas D. Moffitt, IRS
Janet McCabe, DAA, OAR-EPA
Mike Flynn/Director, OAR/ORIA-EPA
David Rowson/Director, ORIA/IED-EPA

¹ Title III, Indoor Radon Abatement (IRAA), 15 U.S.C. §2661 et seq., P.L. 100-551, October 28, 1988.

² Title IV, Radon Gas and Indoor Air Quality Research Act, 42 U.S.C. §9601 et seq., P.L. 96-510, October 17, 1986.

³ Accessed November 5th 2012 at <https://www.fsafeds.com/fsafeds/eligibleexpenses.asp#R>.

Supplemental information for reference:

The U.S. Surgeon General's National Radon Health Advisory
<http://www.surgeongeneral.gov/news/2005/01/sg01132005.html>

The World Health Organization Radon Handbook
<http://www.who.int/mediacentre/news/notes/2005/np15/en/index.html>

The Federal Radon Action Plan
http://www.epa.gov/radon/action_plan.html

The U.S. EPA Radon Website
<http://www.epa.gov/radon/index.html>

The EPA Radon Risk Assessment
http://www.epa.gov/radon/risk_assessment.html