

## XXIV.O. Table of Common Expenses, Showing Whether They Are "Employment-Related"

Cafeteria Plans

### O. Table of Common Expenses, Showing Whether They Are "Employment-Related"

**Administration Tip.** In order to demonstrate that plan administrators are being reasonable, uniform, and consistent in their interpretation of what's reimbursable and what's not, we recommend keeping a table of how different types of expenses are

The following table describes whether various expenses qualify as employment-related expenses under Code §21 for purposes of reimbursement by a DCAP—that is, whether the expenses may be for the care of one or more qualifying individuals to enable the employee (and his or her spouse, if applicable) to be gainfully employed. (See subsections D through G for details.) The Table consists of three columns. We list various expenses in Column 1. In Column 2, we indicate whether the expense is likely to be a potentially qualifying expense or one that does not qualify. In Column 3, we provide additional comments and special rules based on IRS regulations, Tax Court cases, informal remarks by IRS officials, and other guidance. For items for which there is no official guidance, our comments are based on our interpretation of available guidance. For more details, see the Key to Using the Table.

#### Cautions Regarding Use of the Table

*Terminology.* An expense qualifies for reimbursement by a DCAP only if it is for care provided to a qualifying individual (or a qualifying child or qualifying relative) and the applicable requirements must also be met). Our use of the terms "qualifying individual," "qualifying child," and "qualifying relative" as used in the Table is only if the person satisfies the applicable requirements. Because of the shorthand in the Table, the context may presume that "qualifying child" or "qualifying individual" means a child or individual who is a qualifying child or qualifying individual. See subsection G for details of who is a qualifying individual.

*Additional Restrictions Apply.* Confirming that an expense is an employment-related expense under the Table does not mean that the expense is reimbursable—other legal requirements must also be met (including those in Code §129 and in Prop. Treas. Reg. §§1.129-1 through 1.129-6 for claims substantiation, etc.). These requirements are summarized in a short checklist in subsection B and are discussed in detail in subsections C through N. Note also that some items in the Table might not be reimbursable under a DCAP if the Table contains exclusions, restrictions, or other limitations or requirements.

*Caution re Use of Publication 503.* On occasion, the Table makes reference to IRS Publication 503 (Child and Dependent Care Expenses), usually in circumstances where no other source was readily available. However, administrators should use Publication 503 only with caution. (See subsection D.)

*Consult Other Subsections.* The statements under Column 3 are intended to briefly highlight general principles. For a full understanding of how to determine whether an expense is employment-related, consult subsections D through G.

*Guidelines Only.* Note that the designations in the Table are simply intended as guidelines—every claim presents its own unique facts and circumstances.

issues. Ultimately, it is the plan administrator's responsibility to make a determination about each expense, based on the facts and circumstances.

### Key to Using the Table

Each expense in the Table has been identified in Column 2 as a "potentially qualifying expense" or "not a qualifying expense." These designations are the views of EBIA and are not always based on official guidance—reasonable minds can differ on the matter. The plan administrator will have to develop its own list of appropriate designations and decide how to use them in substantiating claims on experience.

*Potentially Qualifying Expense.* These are expenses that qualify for reimbursement by a DCAP if they are employment-related, if they are for the care of one or more qualifying individuals and enable the participant and spouse to be gainfully employed. There must be appropriate substantiation that the expense is employment-related.

*Not a Qualifying Expense.* These are expenses in one of the following two categories:

- Expenses that are generally known to be incurred primarily for personal purposes and are not employment-related. These expenses almost never qualify for reimbursement from a DCAP. Expenses in this category theoretically could qualify in an extremely rare case where the participant can overcome a strong presumption of nonqualification and prove that, based on the facts and circumstances and taking into account the prevailing IRS guidance, the expense is employment-related.
- Expenses for which reimbursement is not allowed under statutory or regulatory provisions, even if they might seem employment-related (for example, care provided by an employee's child under age 19 cannot be reimbursed under a DCAP).

See subsections D through G for details of which expenses are employment-related.

**Why Aren't Any Expenses in the Table Identified as Qualifying Expenses?** While the table of common expenses that qualify for reimbursement for medical care in Section XX identifies certain items and services as "qualifying expenses," none of the expenses in this Table are identified as "qualifying expenses." That's because most dependent care expenses are inherently dual-purpose—that is, they can only be reimbursed by a DCAP if they enable the participant and spouse to be gainfully employed. See subsections D through G for details.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>After-school care or extended day programs (supervised</b>	Potentially qualifying expense	Will qualify if used to enable the employee and spouse to be gainfully employed. * These programs generally are not educational in nature. Their primary purpose is to care for children while parents are at work. However, educational expenses (e.g., tuition) won't qualify. See subsection F.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
activities for children after the regular school program)		
Agency fee	Potentially qualifying expense	Will qualify if it is an expense that must be paid in order to obtain the related care. However, the fee should not be reimbursed until care is provided. Fees that are forfeited (e.g., because the employee selects a different provider) will not qualify. See subsection F.4 for further discussion, including whether such fees should be prorated (e.g., over the duration of the agreement with the provider).

\* \* Treas. Reg. §1.21-1(d)(5); *Brown v. Commissioner*, 73 T.C. 156 (1979); IRS Information Letter 2000-0246 (Sept. 7, 2000).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
Application fee	Potentially qualifying expense	Will qualify if it is an expense that must be paid in order to obtain the related care. However, the fee should not be reimbursed until care is provided. Fees that are forfeited (e.g., because the employee selects a different provider) will not qualify. See subsection F.4 for further discussion, including whether such fees should be prorated (e.g., over the duration of the agreement with the provider).
Assisted living		See <b>Custodial care</b> and <b>Elder care</b> .
Au pair	Potentially qualifying expense	Amounts paid to an au pair to care for a qualifying individual may qualify as dependent care assistance expenses. In addition, an up-front fee paid to employ the au pair may qualify as a child-care expense if it is an expense that must be paid in order to obtain the related care, but it

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
		should not be reimbursed until care is provided. See subsection F.4 for further discussion, including whether such fees should be prorated (e.g., over the duration of the agreement with the provider).
<b>Babysitter (inside or outside participant's household)</b>	Potentially qualifying expense	Will qualify unless the babysitter is (1) under age 19 and is the employee's child, stepchild, or eligible foster child; (2) an individual for whom the employee or spouse can claim a deduction on IRS Form 1040; (3) the employee's spouse; or (4) a parent of the employee's under-age-13 qualifying child. * However, the cost of a babysitter while an employee and spouse go out to eat is not normally a work-related expense and generally won't qualify. † See subsection F.2.
<b>Backup or emergency care</b>	Potentially qualifying expense	Will qualify if used to enable the employee and spouse to be gainfully employed and other applicable conditions are met. See subsection F.2.
<b>Bartender</b>	Not a qualifying expense ‡	See subsection F.12.
<b>Before-school care or extended day programs (supervised activities for children before the regular school program)</b>	Potentially qualifying expense	Will qualify if used to enable the employee and spouse to be gainfully employed. a These programs generally are not educational in nature. Their primary purpose is to care for children while parents are at work. However, educational expenses (e.g., tuition) won't qualify. See subsection F.
<b>Boarding school</b>	Potentially qualifying expense	Generally won't qualify. But see subsection F.5; see also <b>Overnight camp</b> .
<b>Camp</b>		See <b>Day camp</b> and <b>Overnight camp</b> .

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Chauffeur</b>	Not a qualifying expense <b>b</b>	See subsection F.12.
<b>Child of employee under age 19, amounts paid to</b>	Not a qualifying expense <b>c</b>	See subsection F.11 and <b>Relative</b> .
<b>Child of employee age 19 or over, amounts paid to</b>	Potentially qualifying expense	Will qualify only if neither the employee nor the spouse can claim an exemption for the child. <b>d</b> See subsection F.11, as well as the discussion in subsection M regarding claims substantiation issues and restrictions on election changes when the caregiver is a relative. See also <b>Relative</b> .

\* Code §129(c); Treas. Reg. §1.21-4(a). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Payments to Relatives or Dependents."

† IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Working or Looking for Work."

‡ Treas. Reg. §1.21-1(d)(3).

a Treas. Reg. §1.21-1(d)(5); *Brown v. Commissioner*, 73 T.C. 156 (1979).

b Treas. Reg. §1.21-1(d)(3).

c Code §129(c).

d Code §129(c).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Child support payments</b>	Not a qualifying expense	See subsection F.1.
<b>Classes (music,</b>	Not a qualifying	Such expenses are primarily educational in nature. See

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
dance, swimming, etc.)	expense	subsection F.5. But see <b>Day camp</b> .
<b>Clothing</b>	Potentially qualifying expense	Won't qualify if charged separately from dependent care expense. * Small amounts may qualify if incidental to and inseparably a part of the dependent care (e.g., a T-shirt included with preschool care). † See subsection F.3.
<b>Cook</b>	Potentially qualifying expense	Generally won't qualify. However, amounts paid for the services of a cook may be expenses for household services (and thus possibly may qualify) if a part of those services is provided to the qualifying individual. ‡ Expenses for such services are likely to be closely scrutinized by the IRS. See subsection F.12 and <b>Household services</b> .
<b>Custodial care</b>	Potentially qualifying expense	Will qualify only if (1) the primary purpose of the care is the individual's well-being and protection; (2) the person receiving the care is a qualifying individual; and (3) the qualifying individual (other than a qualifying child under age 13) regularly spends at least eight hours each day in the employee's household. a See subsections F.10 and G.2. Note that long-term care insurance cannot be offered under a cafeteria plan. b See the discussion of long-term care expenses in Section XX. See also <b>Elder care</b> and <b>Sick-child facility</b> .
<b>Day camp</b>	Potentially qualifying expense	The cost of a day camp or a similar program to care for a qualifying individual may qualify, even if the day camp specializes in a particular activity (e.g., soccer or computers). c See subsection F.8. But see <b>Overnight camp</b> . Separate equipment or similar charges (e.g., a laptop rental fee for a computer camp) won't qualify. Also, summer school expenses are considered primarily for education rather than for care and won't qualify. See <b>Tuition expenses</b> and subsection F.5. Note that, depending on the circumstances, a day camp may be considered a dependent care center. See <b>Dependent care</b>

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
		center.
<b>Dependent care center</b>	Potentially qualifying expense	Will qualify if the center meets the requirements of Code §21(b)(2)(C), including compliance with all applicable laws and regulations. <b>d</b> See subsection F.2. Note that, depending on the circumstances, a day camp may be considered a dependent care center. See <b>Day camp</b> .
<b>Deposit</b>	Potentially qualifying expense	Will qualify if it is an expense that must be paid in order to obtain the related care. However, the fee should not be reimbursed until care is provided. A deposit that is forfeited (e.g., because the employee selects a different provider) won't qualify. See subsection F.4 for further discussion, including whether such fees should be prorated (e.g., over the duration of the agreement with the provider).

\* Note, however, that while not official guidance, the Federal Flexible Benefits Plan Frequently Asked Questions (as visited Sept. 7, 2015), list clothing as an ineligible expense (perhaps on the assumption that it was a separate charge).

† Treas. Reg. §1.21-1(d)(1). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Care of a Qualifying Person."

‡ Treas. Reg. §1.21-1(d)(3).

a Code §21(b)(2)(B).

b Code §125(f).

c Treas. Reg. §1.21-1(d)(7); IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Care of a Qualifying Person: Camp"; Instructions to IRS Form 2441. The IRS may scrutinize child-care expenses for summer camps and similar recreational activities. See *Zoltan v. Commissioner*, 79 T.C. 490 (1982). Note, however, that *Zoltan* was decided before Congress enacted the prohibition on overnight camp expenses.

d Treas. Reg. §1.21-1(e)(2). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Care of a Qualifying Person."

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Disabled qualifying child under age 13</b>	Potentially qualifying expense	The requirement that at least eight hours per day be spent in the employee's household in order for care provided outside the employee's household to qualify for reimbursement does not apply to a qualifying child under age 13, whether or not the qualifying child is incapable of self-care. * See subsections F.10 and G.2. Any care provided outside the household, however, must enable the employee and spouse to be gainfully employed, and other restrictions must still be met. See, for example, <b>Boarding school</b> and <b>Overnight camp</b> .
<b>Educational expenses-kindergarten</b>		See <b>Kindergarten</b> .
<b>Educational expenses-preschool/nursery school</b>		See <b>Preschool/nursery school</b> .
<b>Elder care</b>	Potentially qualifying expense	Will qualify only if (1) the primary purpose of the care is the individual's well-being and protection; (2) the person receiving the care is a qualifying individual; and (3) the qualifying individual (other than a qualifying child under age 13) regularly spends at least eight hours each day in the employee's household. † Elder day care will often qualify, ‡ but around-the-clock care in a nursing home will not. See subsections F.10 and G.2. Note that long-term care insurance cannot be offered under a cafeteria plan. a See the discussion of long-term care expenses in Section XX. See also <b>Custodial care</b> .
<b>Extended day care</b>		See <b>After-school care</b> and <b>Before-school care</b> .
<b>Entertainment</b>	Potentially qualifying expense	Won't qualify if charged separately from dependent care expense. Small amounts may qualify if incidental to and inseparably a part of the dependent care. b See subsection F.3.



Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>FICA and FUTA taxes of day-care provider</b>	Potentially qualifying expense	Will qualify if the overall expenses of the care provider qualify. <a href="#">c</a>
<b>Food</b>	Potentially qualifying expense	Won't qualify if charged separately from dependent care expense. Small amounts may qualify if incidental to and inseparably a part of the dependent care (e.g., lunch included with preschool care). <a href="#">d</a> See subsection F.3.
<b>Gardener</b>	Not a qualifying expense <a href="#">e</a>	See subsection F.12.

\* Code §21(b)(2)(B).

† Code §21(b)(2)(B).

‡ IRS Frequently Asked Questions (as visited Sept. 9, 2015).

a Code §125(f).

b See Treas. Reg. §1.21-1(d)(1). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Care of a Qualifying Person."

c Treas. Reg. §1.21-1(d)(9). See also *Perry v. Comm'r*, 92 T.C. 470 (1989) (allowing dependent care tax credit for taxpayer's payment of provider's share of FICA taxes).

d Treas. Reg. §1.21-1(d)(1). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Care of a Qualifying Person." See also *Zoltan v. Commissioner*, 79 T.C. 490 (1982). Note, however, that *Zoltan* was decided before Congress enacted the prohibition on overnight camp expenses. See subsection F.8.

e Treas. Reg. §1.21-1(d)(3).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Hold-the-spot fee</b>	Potentially qualifying expense	A gray area. These are fees charged by a provider to "hold a spot" for a qualifying individual during a period when care

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
		<p>is not needed (e.g., while an older child is home during a parent's maternity leave). Might qualify under the rules for indirect expenses if it must be paid in order to obtain care from the provider when care is needed again (e.g., when the parent returns to work). However, the fee should not be reimbursed unless and until care with the provider is resumed; if the child does not return to the same provider, the fee won't qualify. * See subsection F.4 for further discussion, including whether such fees should be prorated (e.g., over the duration of the agreement with the provider). See also <b>Deposit</b>.</p>
<b>Housecleaning services</b>	Not a qualifying expense	<p>Won't qualify where the housecleaning services do not have any component of child care as part of the duties. † See subsection F.12. But see <b>Household services</b> and <b>Housekeeper</b>.</p>
<b>Household services-e.g., housekeeper, maid, cook</b>	Potentially qualifying expense	<p>Generally won't qualify, except where attributable in part to care of a qualifying individual. ‡ See also <b>Bartender, Chauffeur, Gardener, Maid, Cook, Security system</b>, and subsection F.12. Expenses for such services are likely to be closely scrutinized by the IRS.</p>
<b>Housekeeper</b>	Potentially qualifying expense	<p>Generally, won't qualify. However, amounts paid for the services of a housekeeper whose duties include caring for a qualifying individual may be expenses for household services (and thus may qualify). a Expenses for such services are likely to be closely scrutinized by the IRS. See subsection F.12 and <b>Household services</b>.</p>
<b>Incidental expenses-e.g., extra charges for special activities</b>	Potentially qualifying expense	<p>Won't qualify if charged separately from dependent care expense. May qualify if incidental to and inseparably part of the dependent care. b See subsection F.3.</p>
<b>Kindergarten</b>	Not a qualifying	<p>Such expenses are primarily educational in nature, whether</p>

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
	expense	half- or full-day, private or public school, state-mandated, or voluntary. <b>c</b> See subsection F.5. But see <b>After-school care</b> and <b>Before-school care</b> .
<b>Late fees</b>	Potentially qualifying expense	Probably will qualify if for late pickup (i.e., the fee is charged to care for the child because the child was picked up late)-the payment still relates directly to care of the child. Probably won't qualify if for late payment (i.e., the fee is charged because the parent paid the child-care bill late)-the payment doesn't relate directly to care of the child. <b>d</b> See subsection F.2.
<b>Lessons (music, dance, swimming, etc.)</b>	Not a qualifying expense	Such expenses are primarily educational in nature. See subsection F.5. But see <b>Day camp</b> .
<b>Long-term care expenses</b>		See <b>Custodial care</b> and <b>Elder care</b> .
<b>Looking for work (care that enables the employee or spouse to look for work)</b>	Potentially qualifying expense	Will qualify if the person is actively looking for work. <b>e</b> However, a person who does not find a job and has no earned income for the year will not be able to exclude the expenses from income. <b>f</b> See subsections E.1, E.2, and I.

\* Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, July 31, 2009 ECFC Annual Symposium.

† *Knutson v. Commissioner*, 60 T.C.M. 540 (1990).

‡ Treas. Reg. §1.21-1(d)(3).

a Treas. Reg. §1.21-1(d)(3).

b *Brown v. Commissioner*, 73 T.C. 156 (1979).

c Treas. Reg. §1.21-1(d)(5).

d See the Federal Flexible Benefits Plan Frequently Asked Questions (as visited Sept. 7, 2015), which list late pickup fees as an eligible expense, and late payment fees as an ineligible expense.

e Treas. Reg. §1.21-1(d)(1). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Working or Looking for Work."

f IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Working or Looking for Work."

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Maid</b>	Potentially qualifying expense	Generally won't qualify. However, amounts paid for the services of a maid may be expenses for household services (and thus possibly may qualify) if a part of those services is provided to the qualifying individual. * Expenses for such services are likely to be closely scrutinized by the IRS. See subsection F.12 and <b>Household services</b> .
<b>Nanny</b>	Potentially qualifying expense	Will qualify to the extent that the amounts paid are attributable to the care of a qualifying individual and to household services attributable in part to care of a qualifying individual. See subsection F.2. See also <b>Au pair</b> and <b>Registration fees</b> .
<b>Nursery school</b>		See <b>Preschool/nursery school</b> .
<b>Nursing home</b>		See <b>Elder care</b> .
<b>Overnight camp</b>	Not a qualifying expense	Expenses for overnight camps are not employment-related expenses. † See subsection F.8. But see <b>Day camp</b> .
<b>Parent of employee's under-age-13 qualifying child, amounts paid to</b>	Not a qualifying expense ‡	See subsection F.11. See also <b>Relative</b> .
<b>Part-time employment (payments to</b>	Potentially qualifying expense	If the employee is required to pay for care on a periodic (e.g., weekly or monthly) basis that includes both work and nonwork days, payments for periods that include both work

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
provider for periods when employee works part-time)		and nonwork days will qualify in full. Otherwise, expenses must be allocated between work and nonwork days. <b>a</b> See subsection E.
Placement fees for finding a dependent care provider	Not a qualifying expense	Probably won't qualify-such fees would not seem to be required in order to obtain care. See subsection F.4.
Prepaid fees for care	Potentially qualifying expense	Won't qualify to the extent that the dependent care services have not been provided. <b>b</b> Will qualify after the services to which the fees relate have been provided, if the services otherwise qualify as employment-related expenses. <b>c</b> See subsection K.1. Full or partial payment for dependent care services at the time of registration (e.g., because a summer camp is popular) won't qualify until care is provided. <b>d</b> See <b>Deposit</b> . Fees that are forfeited (e.g., because the employee selects a different provider) won't qualify.

\* Treas. Reg. §1.21-1(c)(3).

† Code §21(b)(2)(A); Treas. Reg. §1.21-1(d)(6). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Care of a Qualifying Person."

‡ Treas. Reg. §1.21-4(a)(4). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Payments to Relatives or Dependents."

**a** Treas. Reg. §1.21-1(c)(2)(iii).

**b** Treas. Reg. §1.125-6(a)(4)(i). Note also that, while not official guidance, the Federal Flexible Benefits Plan Frequently Asked Questions (as visited Sept. 7, 2015), list payment for services not yet provided (payment in advance) as an ineligible expense.

**c** Informal, nonbinding remarks of IRS representatives, ABA Joint Committee on Employee Benefits, meeting with IRS and Department of Treasury officials, Q/A-5 (May 7, 2004) (as visited June 5, 2013).

**d** Treas. Reg. § 1.21-1(d)(11). See also the Federal Flexible Benefits Plan Frequently Asked Questions (as visited Sept. 7, 2015), which provide an example regarding registration fees. Note that this document is not official guidance.

Expense	Is Expense a Qualifying Expense	Comments and Special Rules
<b>Preschool/nursery school</b>	Potentially qualifying expense *	See subsection F.5.
<b>Recreation</b>	Potentially qualifying expense	Won't qualify if charged separately from dependent care expense. Small amounts may qualify if incidental to and inseparably a part of the dependent care. † See subsection F.3.
<b>Registration fee</b>	Potentially qualifying expense	Will qualify if the fee must be paid in order to obtain care. However, the fee should not be reimbursed until care is provided. Fees that are forfeited (e.g., because the employee selects a different provider) won't qualify. ‡ See subsection F.4 for further discussion, including whether such fees should be prorated (e.g., over the duration of the agreement with the provider).
<b>Relative, amounts paid to</b>	Potentially qualifying expense	Will qualify unless the relative is (1) under age 19 and is the employee's child, stepchild, or eligible foster child; (2) an individual for whom the employee or spouse can claim an exemption on IRS Form 1040; (3) the employee's spouse; or (4) a parent of the employee's under-age-13 qualifying child. a See subsections F.2 and F.11, as well as the discussion in subsection M regarding claims substantiation issues and restrictions on election changes when the caregiver is a relative.
<b>Security system for the home</b>	Not a qualifying expense	The costs of a home security system to care for a child are not the type of household services that Congress had in mind as qualifying for tax-favored treatment. b See subsection F.12.
<b>Self-employment expenses incurred in connection with</b>	Potentially qualifying expense	Will qualify to the extent that they are incurred for dependent care. c See subsections E.1 and E.3.

Expense	Is Expense a Qualifying Expense	Comments and Special Rules
<b>Services provided outside U.S.</b>	Potentially qualifying expense	Will qualify if the services are for care, enable the employee and spouse to be gainfully employed, and otherwise meet the requirements for reimbursement, even if received from a foreign care provider who does not have and is not required to obtain a U.S. TIN. See Section XXV.
<b>Sick-child facility</b>	Potentially qualifying expense	Probably will qualify when incurred to enable the employee to go to work when the qualifying individual is ill-i.e., when the primary purpose is dependent care. See subsection F.7.

\* † Treas. Reg. §1.21-1(d)(5). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Care of a Qualifying Person: Example 1."

† † Treas. Reg. §1.21-1(d)(1). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Care of a Qualifying Person." See also *Zoltan v. Commissioner*, 79 T.C. 490 (1982). Note, however, that *Zoltan* was decided before Congress enacted the prohibition on overnight camp expenses. See subsection F.8.

‡ † Treas. Reg. §1.21-1(d)(11); informal, nonbinding remarks of IRS representatives, ABA Joint Committee on Employee Benefits, meeting with IRS and Department of Treasury officials, Q/A-5 (May 7, 2004) (as visited June 5, 2013).

a † Code §129(c); Treas. Reg. §1.21-4(a). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Payments to Relatives or Dependents."

b † Priv. Ltr. Rul. 8437055 (June 11, 1984).

c † Treas. Reg. § 1.21-1(c)(1).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Sick employee (payments to provider for periods when sick employee stays home)</b>	Potentially qualifying expense	If the absence is considered short and temporary and the caregiving arrangement requires the employee to pay for care during the absence, then a payment for a period that includes the absence will qualify for reimbursement in full; other absences generally won't qualify. * An absence of up to two consecutive weeks is considered short and

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
		temporary; whether a longer absence qualifies will depend on facts and circumstances. See subsection E regarding when an absence is short and temporary; see subsection F.4 regarding payments required to hold a spot in order for a qualifying individual to receive care when the employee returns to work from an absence that does not qualify as short and temporary.
<b>Spouse of employee, amounts paid to</b>	Not a qualifying expense †	See subsection F.11. See also <b>Relative</b> .
<b>Summer day camp</b>		See <b>Day camp</b> .
<b>Summer school</b>	Not a qualifying expense	Such expenses are primarily educational in nature. ‡ See subsections F.5 and F.8. But see <b>After-school care</b> and <b>Before-school care</b> .
<b>Transportation expenses</b>	Potentially qualifying expense	Will qualify if for transporting a qualifying individual to or from a place where care is provided and the transportation is furnished by a dependent care provider. Otherwise, such expenses generally are not considered to be for care, but might qualify if part of the dependent care charge (i.e., if incidental to and inseparably a part of the dependent care). <b>a</b> See subsections F.7 and G.3. Note that the IRS closely scrutinizes child-care expenses involving foreign travel. <b>b</b> For example, expenses have been disallowed for a grandmother's travel to the U.S. under suspicious circumstances. <b>c</b>
<b>Tuition expenses</b>	Not a qualifying expense	Such expenses are primarily educational in nature. See subsection F.5. But see <b>After-school care</b> and <b>Before-school care</b> .
<b>Tutoring</b>	Not a qualifying	Such expenses are primarily educational in nature. <b>d</b> See



Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
programs	expense	subsections F.5 and F.8.
Unemployment (care that enables employee or spouse to look for work)		See <b>Looking for work-expenses incurred to enable employee to look for work.</b>

\* Treas. Reg. §§1.21-1(c)(2)(i) and (ii).

† Treas. Reg. §1.21-4(a)(3). See also IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Payments to Relatives or Dependents."

‡ Treas. Reg. §1.21-1(d)(7)(i).

▲ Treas. Reg. §1.21-1(d)(8). IRS Publication 503 (Child and Dependent Care Expenses), "Work-Related Expense Test: Care of a Qualifying Person."

■ *Zoltan v. Commissioner*, 79 T.C. 490 (1982). Note, however, that *Zoltan* was decided before Congress enacted the prohibition on overnight camp expenses. See subsection F.8.

● *Singh v. Comm'r*, T.C. Summary Opinion 2001-160 (2001). See Section XXV for further details.

◆ Treas. Reg. §§1.21-1(d)(7)(i) and 1.21-1(d)(12), Example 5.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
Vacation (payments to provider for periods when employee is on vacation)	Potentially qualifying expense	If the absence is considered short and temporary and the caregiving arrangement requires the employee to pay for care during the absence, then a payment for a period that includes the absence will qualify for reimbursement in full. * Other absences generally won't qualify. † See subsection E regarding when an absence is short and temporary; see subsection F.4 regarding payments required to hold a spot in order for a qualifying individual to receive care when the employee returns to work from an absence that does not qualify as short and temporary.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Volunteer work (care that enables employee or spouse to volunteer)</b>	Not a qualifying expense	Won't qualify if the volunteer work is unpaid or for nominal pay. † See subsection E.4.

\* Treas. Reg. §1.21-1(c)(2)(ii).

† Treas. Reg. §1.21-1(c)(2)(i).

‡ Treas. Reg. §1.21-1(c)(1).