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Department of the Treasury
Washington, DC 22204

Person to Contact:

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CC:ITA:B2
PLR-107243-24
Date:
October 11, 2024

In re:

LEGEND

Taxpayers	=
Taxpayer A	=
Taxpayer B	=
1	=
2	=
3	=
4	=
State	=
Date	=
Year 1	=

Dear :

This letter ruling responds to a private letter ruling submission dated April 1, 2024, requesting a ruling on the deductibility of medical and related costs and fees arising from in vitro fertilization (IVF) procedures, gestational surrogacy, and related items.

FACTS

Taxpayers are a heterosexual married couple legally married in State. Taxpayer A was diagnosed with 1 in Year 1 and has additional related diagnoses of 2, 3, and 4. 1 requires Taxpayer A to take medication that is contraindicated in pregnancy and has a documented history of being detrimental to pregnancy. As such, Taxpayers will use a pregnancy surrogate and *in vitro* fertilization ("IVF") with Taxpayer B's sperm and a

donated egg from a third party. As stated in the ruling request, Taxpayers seek a ruling under § 213 of the Internal Revenue Code (Code) that would authorize deductions for costs and fees related to the following:

· Medical expenses directly attributed to both spouses;

· Egg donor related costs;

· Medical expenses of sperm donation;

· Sperm freezing;

· IVF medical costs (expenses of embryo creation and storage)

· Childbirth expenses related for the surrogate;

· Surrogate medical insurance related to the pregnancy;

· Legal and agency fees for the surrogacy; and

· Any other medical expenses arising from the surrogacy.

We held the conference of right on Date and considered additional information provided by Taxpayers after the conference in this ruling letter.

LAW AND ANALYSIS

Section 213(a) allows a taxpayer to deduct expenses paid for medical care of the taxpayer, spouse, or dependent (defined in § 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)), to the extent the expenses exceed 7.5 percent of the taxpayer's adjusted gross income and were not compensated for by insurance or otherwise. Section 152(a) defines a dependent as a qualifying child, including a child of the taxpayer. Section 152(c)(2)(A).

Section 213(d)(1)(A) provides that medical care includes amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body. Medical care also includes amounts paid for insurance covering medical care. Sections 213(d)(1)(B) and (D).

Several courts have rejected the deduction of expenses for reproductive technologies, like IVF and surrogacy procedures, as medical care under § 213 when the taxpayer, spouse, or dependent, did not personally use the technologies and/or have an underlying disease necessitating the use of the technologies. See, e.g., Morrissey v. United States, 871 F.3d 1260, 1271 (11th Cir. 2017); Longino v. Commissioner, T.C. Memo. 2013-80, aff'd, 593 Fed. Appx. 965 (11th Cir. 2014); Magdalin v. Commissioner,

T.C. Memo. 2008–293, aff'd without published opinion, 2009 WL 5557509 (1st Cir. 2009). The United States Court of Appeals for the First Circuit, in affirming the Tax Court in Magdalin, explained that *in vitro* fertilization and placement of the resulting embryos in unrelated gestational carriers "affected the bodies of the gestational carriers who … were not the taxpayer's dependents." Magdalin, 2009 WL at 5557509. See also Morrissey v. United States, 226 F. Supp. 3d 1338, 1341-42 (M.D. Fla. 2016) (observing that § 213 is limited to medical care of taxpayer, taxpayer's spouse, or a dependent, and "expenses paid for medical procedures performed on … third-party egg donors and surrogates cannot be deducted").

Here, Taxpayer A has been diagnosed with 1, 2, 3, and 4, and must therefore take medication that is contraindicated in pregnancy and has a documented history of being detrimental to pregnancy. The use of assisted reproductive technologies will not directly and literally affect the structure or function of Taxpayer A's own body but will instead affect the structure or function of a third-party, the pregnancy surrogate. Most expenses paid to effectuate a surrogate pregnancy through assisted reproductive technologies are not expenses paid for the medical care of the taxpayer, the taxpayer's spouse, or dependent and are not deductible as medical expenses because they do not meet this basic requirement of § 213(a)(1).

As such, payments related to the following products and services involving assisted reproductive technologies not being performed on taxpayers are not deductible under § 213: egg donor costs, egg retrieval, sperm freezing, IVF medical costs, legal and agency fees for the surrogacy, childbirth expenses related to the surrogate pregnancy, surrogate medical insurance related to the pregnancy, and other medical costs and fees effectuating and arising from the surrogate pregnancy.

Subject to the gross income limitation, however, the costs or fees paid for medical care, including involving assisted reproductive technologies directly attributable to taxpayers, such as sperm donation from Taxpayer B, are deductible medical expenses under § 213.

CONCLUSION

Based on the facts and representations submitted, the Service concludes that the costs and fees related to assisted reproductive technology, such as childbirth expenses for the surrogate pregnancy, medical insurance related to the surrogate pregnancy, egg donation, and other procedures effectuating surrogacy, not being performed directly on the Taxpayers or that are directly related to the surrogate pregnancy do not qualify as deductible medical expenses under § 213. Medical costs and fees of assisted reproductive technologies and other medical care directly attributable to Taxpayers are deductible within the limitations of § 213, including for sperm donation.

The ruling contained in this letter is based on information and representations submitted by Taxpayers and accompanied by a penalty of perjury statement executed by an

appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

We are sending a copy of this letter to the appropriate operating division director.

Sincerely,

/s/ Robert A. Martin

Robert A. Martin
Branch Chief, Branch 2
Office of Associate Chief Counsel
Income Tax & Accounting

cc: