Internal Revenue Service

Number: **200941003**
Release Date: 10/9/2009

Index Number: 213.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B03
PLR-102915-09
Date:
July 01, 2009

TY:

Legend

Taxpayer =
X =
Y =
Date 1 =
Date 2 =
Date 3 =

Dear :

This letter is in reference to a private letter ruling request dated Date 1 that was submitted by your authorized representatives. The letter requested a ruling that expenditures for infant formula be classified as medical care expenses under section 213 (d)(1)(A) of the Internal Revenue Code.

FACTS

On Date 2, Taxpayer had a physician advised double mastectomy to address medical conditions X and Y. On Date 3, Taxpayer gave birth to a healthy child. Due to her double mastectomy, Taxpayer was unable to breastfeed her child and had to purchase infant formula to meet the baby's nutritional needs.

LAW & ANALYSIS

Section 213(a) allows as a deduction the expenses paid during the taxable year for medical care of the taxpayer, spouse or dependent. Under section 213(d)(1)(A), an expense is for "medical care" if it is paid for the diagnosis, cure, mitigation, treatment or prevention of disease.

Section 1.213-1(e)(1)(ii) of the Income Tax Regulations provides that the deduction for medical care expenses will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness. An expense that is merely beneficial to the general health of an individual is not an expense for medical care. Expenditures for "medicines and drugs" are expenditures for medical care. Section 1.213-1(e)(2) provides that the term medicine and drugs includes only items which are generally accepted as falling within the category of medicine and drugs. Such terms shall not include toiletries, cosmetics or sundry items. Amounts expended for these items that are not medicine and drugs are not expenditures for "medical care."

Section 262 provides that, unless otherwise expressly provided by the Code, no deduction is allowed for personal, living or family expenses.

Rev. Rul. 55-261, 1955-1 C.B. 307, holds that the cost of special foods and beverages qualifies as a deductible medical expense if the foods or beverages (a) are prescribed by a physician for alleviation or treatment of a specific illness, (b) are in addition to the taxpayer's normal diet, and (c) in no way are a part of the nutritional needs of the patient, and if a statement as to the particular facts and to the food or beverage prescribed is submitted by a physician. However, when that special food or beverage is taken as a substitute for food or beverage normally consumed by a person to satisfy normal nutritional requirements, the expense is personal and is not deductible as a medical expense.

Rev. Rul. 2002-19, 2002-16 I.R.B. 778, holds that individuals participating in a weight loss program may not deduct the cost of purchasing reduced-calorie diet food because the foods are substitutes for the food the individual would normally consume to satisfy nutritional requirements. Rev. Rul. 2002-19 cites to and restates the holding of Rev. Rul. 55-261.

In Massa v. Commissioner, T.C. Memo 1999-63, aff'd without published opinion 208 F.3d 226 (10th Cir. 2000), the Tax Court found that the petitioner, who suffered from Crohn's disease, failed to establish that his special diet was other than a substitute for a normal diet. The court was not convinced that his diet, although followed for medical reasons, differed from the diet of an ordinarily health conscious individual. The court rejected taxpayers' claims for deductions for special foods which were found to be merely substitutes for foods normally consumed by an individual. The court held that the petitioner was not entitled to a medical expense deduction for his diet. Accord Harris v. Commissioner, 46 T.C. 672 (1966); Estate of Webb v. Commissioner, 30 T.C. 1202, 1213-14 (1958); Collins v. Commissioner, T.C. Memo 1965-233.

In the instant case, Taxpayers' child is a healthy baby. The formula satisfies the baby's normal nutritional needs. Therefore, the infant formula is properly viewed as food that the infant would normally consume and use to satisfy its nutritional

requirements. Unless the formula meets the criteria under Rev. Rul. 55-261, the expense of the formula is a nondeductible personal expense under section 262.

Therefore, the infant formula is properly considered food for the infant, and is not a medical expense as that term is defined under section 213. Accordingly, Taxpayer's request to treat expenditures for infant formula for a healthy infant as a medical expense under section 213 of the Internal Revenue Code is denied.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Christopher F. Kane
Branch Chief, Branch 3
(Income Tax & Accounting)

cc: