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Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:IT&A:01
PLR-112051-21

In Re: PLR-112015-21

Date:
July 15, 2022

Legend

Taxpayer =
Taxable Year =
Product =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
W =
X =
Y =

Dear :

This letter responds to a request of Date 1 for a private letter ruling under § 213(d) of the Internal Revenue Code. Specifically, Taxpayer requested a determination that the cost of Product is an expense for medical care under § 213(d).

FACTS

The Internal Revenue Service received Taxpayer's request relating to Taxable Year on Date 2. Taxpayer and Taxpayer's spouse filed a joint federal income tax return for Taxable Year on Date 3.

Taxpayer is on the cash method of accounting and has a calendar taxable year .

Taxpayer purchased Product during Taxable Year for Taxpayer's infant, who, at the time, was five months old and qualified as Taxpayer's dependent (as defined under § 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof). Product is neither medicine nor a drug but rather food. Product may be purchased on Product manufacturer's website and at retail stores.

Taxpayer represents that Product is specifically formulated to be safe for an infant's consumption while providing the infant with a specific amount of X. Taxpayer represents that the early introduction of X, through consumption of Product, reduces the risk of W in the future for the infant. Taxpayer purchased Product upon the recommendation of the infant's doctor though Product may be purchased without a doctor's prescription. When Taxpayer purchased Product, the infant had no known illness caused by W nor an imminent probability of one.

Taxpayer did not deduct the cost of Product on Taxpayer's joint federal income tax return for Taxable Year.

We advised Taxpayer's authorized representative that we were tentatively adverse to the ruling request. On Date 4, we held a conference of right with Taxpayer's representative. On Date 5, Taxpayer submitted post-adverse conference written information. On Date 6, Taxpayer submitted additional written information. On Date 7, we reaffirmed our adverse determination to Taxpayer's authorized representative. Taxpayer's representative informed us that Taxpayer wants an adverse ruling letter.

RULING REQUESTED

Taxpayer requests a ruling that the cost of Product is an expense for medical care under § 213 of the Code.

LAW AND ANALYSIS

Section 262(a) provides that except as otherwise provided, no deduction shall be allowed for personal, family, or living expenses. Thus, food is ordinarily a personal expense and nondeductible by virtue of § 262. Section 213 does not recharacterize medical expenses as nonpersonal; it merely carves out a limited exception from § 262 for those expenses which fall within its exception. Thus. §§ 262 and 213 must be read

in conjunction to determine the deductibility of any medical expense, particularly when the expense relates to food.

Section 213 (a) allows a taxpayer to deduct expenses paid for medical care during the calendar year of the taxpayer, his spouse, or a dependent (as defined under § 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) subject to the adjusted gross income percentage for the taxable year.

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. The medical expense deduction has historically been construed narrowly. Atkinson v. Commissioner, 44 T.C. 39, 49 (1965). Deductions for medical care have been confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness. Section 1.213-1(e)(1)(ii) of the Income Tax Regulations.

Revenue Ruling 55-261, 1955-1 C.B. 307, holds, in part, that generally, the cost of special food does not qualify as a medical expense. However, in special cases, depending upon the particular facts presented, if the prescribed food is taken solely for the alleviation or treatment of an illness, is in no way a part of the nutritional needs of the patient, and a statement as to the particular facts and to the food prescribed is submitted by a physician, the cost of such food may be deducted as a medical expense. Revenue Ruing 55-261 does not support a favorable ruling on Taxpayer's facts because the infant did not have an illness, and the Product has nutritional value apart from its represented benefits in preventing W.

Revenue. Ruling 55-261 is in accord with the case law addressing food as a medical expense. The Tax Court has held that the additional costs of obtaining medically required foods that alleviate an existing medical condition are deductible as expenditures for medical care. Randolph v. Commissioner, 67 T.C. 481, 488 (1976) (citing Cohen v. Commissioner, 88 T.C. 387 (1962)); Von Kalb v. Commissioner, T.C. Memo.1978–366, acq. in result only, 1979-66 (Feb. 27, 1979). However, the costs of foods that meet the normal dietary needs of an individual are not deductible medical expenses. Harris v. Commissioner, 46 T.C. 672, 673 (1966); Estate of Webb v. Commissioner, 30 T.C. 1202, 1213–1214 (1958); Massa v. Commissioner, T.C. Memo 1999-63, aff'd without published opinion 208 F. 3d 226 (10th Cir. 2000); Collins v. Commissioner, T.C. Memo.1965–233. See also, Rev. Rul. 2002-19, 2002-16 I.R.B. 778 (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 foods the individual would normally consume to satisfy nutritional requirements). Revenue Ruling. 2002-19 cites to, and restates, the holding of Rev. Rul. 55-261.

In cases holding that the cost of a special diet is deductible under § 213, the deductible amount is limited to the excess of the cost of the special diet over the cost of a normal diet. Nehus v. Commissioner, T.C. Memo.1994–631, aff'd. without published opinion 108 F.3d 338 (9th Cir.1997); Crawford v. Commissioner, T.C. Memo.1993-192.

Specifically, the excess cost of specially prepared foods designed to treat a medical condition over the cost of ordinary foods which would have been consumed but for the condition is an expense for medical care. Randolph, 67 T.C. at 489; Cohn v. Commissioner, 38 T.C. 387, 391 (1962); Von Kalb v. Commissioner, T.C. Memo. 1978-366. A taxpayer must prove what the taxpayer spent for the special diet and what the taxpayer would spend for food to satisfy normal nutritional needs. Flemming v. Commissioner, T.C. Memo. 1980-583.

CONCLUSION

Based on the facts and representations submitted, we conclude the cost of Product is not an expense for medical care under § 213 of the Code.

The ruling contained in this letter is based on information and representations submitted by Taxpayer 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 the ruling, it is subject to verification on examination.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the provisions of the power of attorney currently on file with this office, a copy of this letter is being sent to your authorized representative. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely,

/s/

Office of the Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:

For § 6110 Purposes

cc: