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Refer Reply To:
CC:ITA:4 – PLR-113378-01
Date:
June 25, 2001

LEGEND:

B =
X =

Dear

You requested a private letter ruling on behalf of *B* in your letter of March 1, 2001.

ISSUES:

1. Are amounts expended by *B* for the tests described below expenses for medical care under § 213(d) of the Internal Revenue Code?
2. May *B* exclude reimbursements from her medical flexible spending account for the cost of the tests described below?

CONCLUSIONS:

1. The costs of medical diagnosis tests qualify as medical care expenses under § 213(d)(1)(A). The tests described below qualify, with one exception.
2. We cannot rule on this issue because the IRS has designated § 125 cafeteria plans a no-rule area.

FACTS:

B participates in a medical flexible spending plan (the “medical FSA”) that is part of a cafeteria plan sponsored by her employer under § 125. The medical FSA qualifies as an accident or health plan under § 105. During the plan’s annual open enrollment period, *B* elected to contribute to her medical FSA through salary reduction contributions an amount sufficient to reimburse her for expenses incurred for every

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screening test that *X* offered for either *B* or her spouse during the 2001 plan year, the period of coverage to which the salary reduction contributions relate.

X conducted all the tests listed below on *B* and her spouse in 2001. *B* has not been otherwise reimbursed for such expenses and does not intend to claim the expenses incurred for the performance of the tests as a deduction on her income tax return for the calendar year 2001. *B* will be entitled to reimbursement through her medical FSA for the expenses for the tests if the tests are considered "medical care" under § 213.

The tests evaluate risk factors for and aid in the detection of heart attack, stroke, diabetes, osteoporosis, thyroid conditions, cancer, and many other diseases and adverse health conditions. *B* requested a ruling on the following tests:

- Ankle Brachial Index
- Abdominal Aortic Aneurysm
- Carotid Ultrasound Scan
- Thyroid Ultrasound Scan
- Body Composition
- Blood and Pulse Pressure
- Oxygen Saturation
- Lung Capacity Screening Test
- Hearing Screening
- Vision Screening
- Urine Analysis
- Osteoporosis Screening Test (women only)
- Complete Blood Count with Differential (blood study)
- Chemistry Panel (blood study)
- H Pylori Screen (blood study)
- Lipid Panel (blood study)
- Cholesterol Screen (blood study)
- C-Reactive Protein (blood study)
- Fibrinogen (blood study)
- Homogysteine (blood study)
- Thyroid Stimulating Hormone Screen (blood study)
- T Uptake, T4, T7. Thyroid Studies (blood studies)
- CEA Test for pancreatic, liver, bladder and colon cancer (blood study)
- CA- 125 Test (blood study)
- Prostate Cancer Screen (PSA blood study)
- Fasting Glucose Screen (blood study)
- Hepatitis C Screen (blood study)
- CT Heart Calcification Scan
- CT Lung Scan
- Nutrition Panel and Iron Studies
- Diabetes Hemoglobin A1 c

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- Lupus Screen
- Lupus Level II (Double-stranded DNA)
- Hemochromatosis
- Gout Screen (Uric Acid)
- Rheumatoid Arthritis Screen (Rheumatoid Factor)
- Sickie Cell Disease
- Hormone Blood Studies Package:
 - Estrogen (Estradiol)
 - Follicle Stimulating Hormone (FSH)
 - Testosterone
 - Luteinizing Hormone
 - Prolactin
- "Take-Home" Screening Kits Screening kits that individuals use at home that aid in the detection of conditions such as colon cancer, Hepatitis C, and HIV.

ANALYSIS:

Medical Care Expenses. A deduction is allowed by § 213(a) for uncompensated medical care expenses of the taxpayer, spouse, or a dependent. Medical care is defined in § 213(d)(1)(A) as including 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 term "diagnosis" is not defined in the statute or the regulations and therefore takes its common meaning of any procedure to determine the presence of a disease or a dysfunction of the body. To be deductible as a medical expense, there must be a direct or proximate relationship between the expense and the diagnosis. *Havey v. Commissioner*, 12 T.C. 409, 412 (1949). Based on the purpose and description provided for the tests, it appears that each procedure is very closely followed by a report that furthers diagnosis of the patient's medical condition. Based on this representation, we agree that each of these procedures is for medical diagnosis, and the cost qualifies as a medical care expense.

B also requested a ruling on DNA collection and storage expenses. An individual may elect to have his or her DNA collected and stored so that the individual can use the DNA when genetic tests are developed for conditions such as breast cancer and Alzheimer's and Parkinson's disease. We cannot rule on this because *B* has not represented when or whether the DNA will actually be used for medical diagnosis. The collection and storage of DNA is not medical care by itself. To be deductible under § 213, an expense must be incurred primarily for the prevention or alleviation of a physical or mental defect or illness, under § 1.213-1(e)(1)(ii) of the Income Tax Regulations.

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Treatment of Reimbursements. The IRS has designated § 125 cafeteria plans as an area in which rulings or determination letters will not be issued. Section 3.01(13) of Rev. Proc. 2001-3, 2001-1 I.R.B. 113, states that the IRS will not rule on whether amounts used to provide accident and health benefits under §§ 105 and 106 are includible in the gross income of participants when the benefits are offered through a cafeteria plan. Because a medical FSA is part of a cafeteria plan, the IRS will not rule on whether expense for tests may be reimbursed from an FSA or whether those expenses are excludible from gross income.

CAVEATS:

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

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

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

Sincerely,
Robert A. Berkovsky
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure