

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:2 – GENIN-140013-02

Date:

August 12, 2002

Dear [REDACTED]

In your letter of July 17, 2002, you asked whether medical and legal expenses incurred in connection with a surrogate mother and her unborn child are deductible under § 213 of the Internal Revenue Code. Although your request is not for a formal ruling, we are happy to provide you with general information.

Section 213(a) of the Internal Revenue Code allows a taxpayer to deduct the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse, or the taxpayer's dependents (as defined in § 152), to the extent the expenses exceed 7.5 percent of adjusted gross income. Section 152(a) defines a dependent as (1) an individual listed in the section (2) for whom the taxpayer provided over half of the support for the taxable year.

A surrogate mother is, of course, neither the taxpayer nor the taxpayer's spouse, and typically is not a dependent of the taxpayers. Nor is an unborn child a dependent. *Cassman v. United States*, 31 Fed. Cl. 121 (1994). Thus, medical expenses paid for a surrogate mother and her unborn child would not qualify for deduction under § 213(a).

Under very limited circumstances, legal fees may be allowable as medical care expenses. In *Gerstacker v. Commissioner*, 414 F.2d 448 (6th Cir. 1969), legal expenses incurred to create a guardianship in order to involuntarily hospitalize a medically ill taxpayer were held to be deductible medical expenses because the medical treatment could not otherwise have occurred. However, legal expenses incurred in connection with a surrogate mother are typically not in connection with otherwise-deductible medical care expenses. Thus, the legal expenses likewise would not be deductible under § 213(a).

I hope this information is helpful. Please call [REDACTED] at the number above, if you have any questions.

Sincerely,
Associate Chief Counsel
(Income Tax & Accounting)
By: Thomas D. Moffitt
Branch Chief