



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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CC:ITA
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Dear _____ :

You requested a ruling that egg donor fees and legal expenses related to obtaining a willing egg donor are deductible as medical care expenses under ' 213(a) of the Internal Revenue Code in your letter dated February 13, 2005. We cannot provide you with a formal ruling because you neither followed the procedures of Rev. Proc. 2005-1 to apply for a ruling nor enclosed the required user fee. However, I am happy to provide you with general information.

One can take an itemized deduction for personal medical care expenses (as well as those of one's spouse or dependent) paid during the taxable year. The law limits the deduction to the amount by which one's total medical expenses exceed 7.5 percent of one's adjusted gross income for that year. One cannot deduct expenses reimbursed by insurance or otherwise. One can deduct only expenses incurred primarily for medical care. Medical care includes amounts paid for the "diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting a structure or function of the body." [Sections 213(a) and 213(d)(1)(A) of the Internal Revenue Code, and Section 1.213-1(e)(1)(ii) of the Income Tax Regulations.]

Fertility is a function of the body, and treatment to overcome infertility is within the definition of Amedical care@above. Obtaining an egg or embryo to be inserted into the taxpayer-s body is medical care of the taxpayer. See Rev. Rul. 79-189, 1973-1 C.B. 139, holding that surgical, hospital, laboratory, and transportation expenses paid by a donor and a prospective donor in connection with a kidney transplant operation are deductible medical expenses for the years in which paid. Thus, surgical, hospital, laboratory, and transportation expenses paid by or on behalf of a donor or a prospective donor in connection with an egg or embryo transplant operation are deductible medical expenses for the years in which paid.

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. If the legal fees are required for a medical procedure, they may be included in medical care expenses.

I hope this information is helpful. Please call

call) if you have any questions.

(not a toll-free

Sincerely,

Thomas D. Moffitt
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)