



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Geoff Davis  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Davis:

This letter responds to an inquiry from you and several of your colleagues dated October 9, 2009. You asked whether amounts paid for private umbilical cord blood banking services are deductible.

Individuals may deduct expenses paid during a taxable year for their medical care or for the medical care of a spouse or dependent, to the extent that the expenses exceed 7.5 percent of adjusted gross income. Medical care means, in relevant part, the diagnosis, cure, mitigation, treatment, or prevention of disease. Section 213 of the Internal Revenue Code.

Relying on the legislative history of section 213, courts have interpreted "cure, mitigation, and treatment" as actions that address an *existing or imminently probable* disease, physical or mental defect, or illness. Jacobs v. Commissioner, 62 T.C. 813, 818 (1974); Stringham v. Commissioner, 12 T.C. 580, 584 (1949), *aff'd per curiam*, 183 F.2d 579 (6<sup>th</sup> Cir. 1950). The "imminent probability" standard enunciated by the courts requires a proximate and immediate link between the expenditure and a disease threatening the taxpayer.

Cord blood contains stem cells that doctors may use to treat disease. Thus, expenses for banking cord blood to treat an existing or imminently probable disease may qualify as deductible medical expenses. However, banking cord blood as a precaution to treat a disease that might possibly develop in the future does not satisfy the existing legal standard that at a minimum a disease must be imminently probable.

We understand that you have proposed legislation, H.R. 1718, the Family Cord Blood Banking Act, that would allow a medical expense deduction for the costs of all umbilical cord blood banking services. Such a statutory change to section 213 would provide greater certainty about the deductibility of expenditures for umbilical cord blood banking services.

I hope this information is helpful. I am sending a similar letter to your colleagues.  
Please contact \_\_\_\_\_ at \_\_\_\_\_ or me at \_\_\_\_\_ if we can  
assist you further.

Sincerely,

GEORGE J. BLAINE  
Associate Chief Counsel  
(Income Tax & Accounting)