

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:ITA:B02
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Date:
May 16, 2019

TY: year ending

LEGEND

Taxpayer =

Date1 =

X =

Y =

Dear :

This ruling letter is in response to a letter dated Date1, requesting that certain genetic testing services and resultant reports constitute medical care for purposes of § 213(d)(1)(A) of the Internal Revenue Code.

FACTS and REPRESENTATIONS

Taxpayer represents the following:

Taxpayer has a healthcare flexible spending account (FSA), and seeks to use the FSA to purchase genetic testing services and resultant reports offered by X. In order to use the FSA to purchase the items and services, Taxpayer is seeking a determination that the services and reports described below that are offered by X are medical care as defined in § 213(d).

X offers a version of its services that includes reports on an individual's ancestry and health. Taxpayer requests a ruling that the retail price of the services and reports relating only to health (health services) plus the price of the DNA collection kit constitute

medical care under § 213(d). Taxpayer is not seeking a ruling whether the reports relating to ancestry are medical care.

A purchaser of X's ancestry and health services receives a DNA collection kit, which is used to collect a DNA sample from the individual and is sent to X for genetic testing. Once received by X, the sample is sent to be tested by a third party laboratory through a process called genotyping. The genetic information collected from the laboratory is then sent to X to be analyzed. From the data, for its health services, X generates reports which provide an individual with the results from the laboratory and general information regarding Y. The goal of the health services is to give individuals a "deeper understanding of their health risks" and to encourage individuals to provide the information to a healthcare provider for additional testing, diagnosis, or treatment.

X's services and reports may be purchased
The health services

LAW and ANALYSIS

Section 213(a) allows a taxpayer to deduct expenses paid for medical care of the taxpayer to the extent the expenses exceed 10 percent of the taxpayer's adjusted gross income. As relevant here, § 213(d)(1)(A) provides that "medical care" is for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.

Section 1.213-1(e)(1)(ii) of the Income Tax Regulations provides that medical care includes medical, laboratory, surgical, dental, and other diagnostic and healing services.

However, § 262 and § 1.213-1(e)(1)(vi) prohibit taxpayers from deducting personal, family, or living expenses if the expenses do not fall within the § 213 definition of medical care. An expenditure that is merely beneficial to the general health of an individual is personal and is not for medical care. Section 1.213-1(e)(1)(ii) of the Income Tax Regulations. For example, ordinary education is not medical care. Section 1.213-1(e)(1)(v)(a) of the Income Tax Regulations.

Revenue Ruling 54-457, 1954-2 C.B. 100, holds that when a university charges a student a lump-sum fee that includes medical care as well as other expenses, the portion of the charge that is allocable to medical care is considered a proper medical expense deduction if there is a breakdown showing the amount of the fee that is allocable to medical care or such information is readily available from the university. Therefore, if non-medical items or services are provided, for purposes of § 213, the price paid must be allocated between items and services that are medical care and are not medical care.

Revenue Ruling 71-282, 1971-2 C.B. 166, holds that the fee paid for storage of medical information in a computer data bank is an amount paid for medical care expense because the information facilitates the diagnosis of disease.

Revenue Ruling 2007-72, 2007-72 C.B. 1154, states that the term “diagnosis” encompasses the determination that a disease may or may not be present, and includes testing of changes to the function of the body that are unrelated to disease. The revenue ruling concludes that amounts paid by individuals for diagnostic and similar procedures and devices, such as a full-body scan performed without a physician’s recommendation and on an individual not experiencing symptoms of an illness or disease and a pregnancy test that tests the healthy functioning of the body, qualify as medical care.

X’s health services contain items that are considered medical care under § 213(d), such as the genotyping, and not medical care, such as the reports that provide general information to an individual. As a result, Taxpayer must allocate the price paid for the DNA collection kit and health services between the medical and non-medical items and services to determine what is medical care under § 213(d).

CONCLUSION

On the basis of our analysis of the facts and representations provided, because ancestry services, a non-medical service, must be purchased with health services, we conclude that

the price of the DNA collection kit must be allocated between the ancestry services and the health services using a percentage (cost of the health services / total cost of ancestry plus health services).

As to the health services, the taxpayer may use a reasonable method to value and allocate the cost of the health services between services that are medical care (such as the testing at the laboratory) and non-medical services or items (such as the reports that provide general information on a test result).

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. Specifically, no opinion is expressed regarding the value that the taxpayer places on its items and services for the allocation between medical care and non-medical items and services.

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

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.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Bridget Tombul
Branch Chief, Branch 2
(Income Tax & Accounting)
Office of Associate Chief Counsel

cc: