



**Department of the Treasury
Internal Revenue Service
Small Business/Self-Employed**

Date:

February 4, 2025

Taxpayer ID number (last 4 digits):

Form:

1040

Tax periods ended:

;

Person to contact:

Contact telephone number:

Release Number: 202518023

Release Date: 5/2/2025

LEGEND

UIL: 213.00-00

Taxpayer A =

Taxpayer B =

Year 1 =

Year 2 =

Year 3 =

Date A =

Date B =

Date C =

Date D =

Dear :

On Date A, you submitted a request to the District Director having jurisdiction of your federal income tax returns, for a determination letter on the deductibility of your unreimbursed expenses for in vitro fertilization (IVF) and gestational surrogacy as medical expenses under IRC Section 213. In your submission, you represented yourselves as a heterosexual married couple. On Date B, you submitted a copy of the surrogacy agreement. On Date C, you provided supplemental information relating to your request including your representation that you will file, or have already filed, a joint Form 1040 federal income tax return for each of Years 1 through 3. You are requesting a determination letter regarding the deductibility of these expenses for all three years to the extent the expenses exceed 7.5% of your adjusted gross income for each such year.

Our determination

We approve a deduction under IRC Section 213 for the following medical expenses related to your IVF procedures: screenings; fertility medication and treatment; and egg and sperm retrieval, for Years 1 through 3, provided that: (1) the medical expenses, in each such year in which the deduction is sought, exceed 7.5 percent of your adjusted gross income; (2) you are married to each other at the end of each such taxable year in which the deduction is sought, and (3) you will file an amended joint Form 1040 for Years 1 and 2, and an original joint Form 1040 for Year 3,

to claim this deduction. Based on the information you submitted, we determine that the egg and sperm retrieval procedures affect the structures of your bodies and accordingly, the expenses for those procedures are deductible as medical care under IRC Section 213(a) and (d)(1)(A).

We deny a deduction under IRC Section 213 for any expenses you incurred related to the gestational surrogacy. This includes, but is not limited to: (1) pre-transfer testing costs for the gestational carrier; (2) medications and procedure costs for embryo transfers; (3) embryo transfer fees to reimburse the gestational carrier for pain and suffering of each embryo transfer attempt; (4) embryo storage fees; (5) deductibles and co-pays for the gestational carrier's health insurance coverage; (6) the cost for life insurance and an accidental death and dismemberment policy on the gestational carrier's life; (7) the cost for the delivery of the child being carried by the gestational carrier; (8) legal fees to establish parentage; and (9) base reimbursements to the gestational carrier for the care and support of the fetus, for discomfort, pain, suffering, and inconveniences, and for pre-pregnancy, pre-birth, and post-birth expenses. You cannot deduct your expenses directly for the identification, compensation, and medical care of a gestational carrier and you cannot deduct your reimbursement of the gestational carrier's related expenses. These expenses were not incurred for your medical care or for that of a dependent as required under IRC Section 213(a).

Description of your request

You told us that due to your preexisting health condition, carrying a pregnancy to term poses a high risk of uterine rupture for you. Therefore, you engaged the services of a gestational carrier to carry your biological child to term. You requested that the expenses of the IVF procedure and the expenses of the gestational surrogacy be allowed as your expense of medical care under IRC Section 213.

You incurred expenses for IVF, using your eggs and your husband's sperm, and for gestational surrogacy in Years 1 through 3. The fertilized egg, i.e., an embryo, was transferred to a third-party gestational carrier to carry the embryo to term. For Year 1, you filed a joint federal income tax return. However, you did not claim a deduction under IRC Section 213 on that return for the IVF or gestational surrogacy expenses because you are awaiting a determination by the IRS as to the deductibility of these expenses. Similarly, you filed a joint federal income tax return for Year 2 but did not claim a deduction on that return under IRC Section 213 for the IVF or gestational surrogacy expenses because you are awaiting a determination by the Service as to the deductibility of these expenses. You have not filed your return for Year 3 because it is not due until Date D.

Basis for our determination

IRC Section 213(a) provides that "[t]here shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent ... to the extent that such expenses exceed 7.5 percent of adjusted gross income." IRC Section 213(d)(1)(A) provides that the term, "medical care," means 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.

Other conditions that apply to this determination

- This determination only applies to those expenses described in the above paragraph, headed, "Our Determination."
- You must attach a copy of this determination to your amended joint Form 1040 filed for Years 1 and 2 (to take the deductions permitted under this determination).
- You must attach a copy of this determination to your original joint Form 1040 filed for Year 3.
- This determination is directed only to the taxpayer(s) requesting it. IRC Section 6110(k)(3) provides that it may not be used or cited as precedent.
- You cannot rely on the conclusions in this letter if the facts you provided have changed substantially. You must report any significant changes in this matter to the IRS at:

Internal Revenue Service
Small Business/Self-Employed
Attention Ms. Mia T. Sylve
Area Director
Field Examination,

- You should keep adequate records to substantiate your medical expenses with the IRS if necessary.

We will make this determination letter available for public inspection after deleting personally identifiable information as required by IRC Section 6110(c). We have enclosed: (1) Letter 437, Notice of Intention to Disclose – Rulings, and (2) a copy of the letter that shows our proposed deletions. If you disagree with our proposed deletions, follow the instructions set forth in Letter 437 to notify us. If you agree with our deletions, you do not need to take further action. Please keep a copy of this Determination Letter and the enclosed Letter 437 for your records.

If you have any questions, you may contact the person whose name and telephone number are shown at the top of page 1 of this letter.

Sincerely,

Mia T. Sylve
Area Director
Field Examination,
Small Business/Self-Employed

Enclosures:(2)

1. Letter 437, Notice of Intention to Disclose.
2. Copy of the determination letter with proposed deletions.