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

OFFICE OF THE CHIEF COUNSEL

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Attention:

Dear :

This letter responds to your request for information dated July 07, 2016, and issues raised during our meeting on October 13, 2016. On behalf of the , you requested guidance on categorizing Diabetes Prevention Program (DPP) fees as qualified medical expenses under health savings accounts (HSAs) and flexible spending accounts (FSAs). Our office sent a letter dated August 8, 2016, regarding whether the DPP fees may be reimbursed by HSAs and FSAs. This letter responds to your request for specific guidance regarding whether the DPP fees are qualified medical care under section 213(d) of the Internal Revenue Code. Although we cannot answer your specific question regarding DPP fees, we can provide you with general information regarding the application of section 213.

Section 213(a) allows taxpayers to deduct expenses paid for medical care of the taxpayer[1] to the extent the expenses exceed 10 percent of the taxpayer's adjusted gross income. As relevant here, section 213(d)(1)(A) defines medical care as 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.

[1] Section 213 allows deductions for the taxpayer's spouse or dependent as well. Any reference to expenses of the "taxpayer" herein also includes expenses of the taxpayer's spouse and the taxpayer's dependent.

Under Treasury Regulation section 1.213-1(e)(1)(ii), deductions under section 213 are limited to expenses paid primarily for the prevention or alleviation of a physical or mental defect or illness. An expense qualifies as medical care preventing disease only if there is a present existence or an imminent probability of developing a disease, physical defect, mental defect, or illness. See Daniels v. Commissioner, 41 T.C. 324, 328 (1963); Stringham v. Commissioner, 12 T.C. 580, 584 (1949).

In addition, section 262 and Treasury Regulation section 1.213-1(e)(1)(vi) prohibit taxpayers from deducting personal, family, or living expenses as medical care if the expenses do not fall within the section 213 definition. An expenditure that is merely beneficial to the general health of an individual is personal and is not for medical care under Treasury Regulation section 1.213-1(e)(1)(ii).

Taxpayers should use objective factors to determine whether an expense that is typically personal in nature was incurred by the taxpayer for medical care. Such factors may include:

- The taxpayer's motive or purpose for making the expenditure
- A physician's diagnosis of a medical condition and recommendation of the item as treatment or mitigation
- The relationship between the treatment and the illness
- The treatment's effectiveness
- The proximity in time to the onset or recurrence of a disease.

See, e.g., Havey v. Commissioner, 12 T.C. 409, 412 (1949).

Typically a personal expense will only be considered an expense for medical care if the taxpayer would not have incurred the expense but for the taxpayer’s disease or illness. Jacobs v. Commissioner, 62 T.C. 813, 819 (1974).

Services that have no purpose other than to treat a specific disease, illness, or mental defect may qualify as a deductible medical expense. See, e.g., Rev. Rul. 2002-19, 2002-1 C.B. 778 (holding that the cost of a weight loss program is a deductible medical expense if the program is used to treat a specific disease or ailment); cf. Rev. Rul. 79-151, 1979-1 C.B. 116 (holding that the cost of a weight loss program is not a deductible medical expense if the program is used for improving general health unrelated to a specific disease or ailment).

In short, some things to consider to determine whether DPP fees are deductible as medical expenses are: whether DPP fees are paid for services that are treating the taxpayer’s disease, whether the fees pay for improvement to the taxpayer’s general health such that they might be considered the taxpayer’s personal expense, and, if so,

whether the taxpayer would not have incurred that expense but for the taxpayer's medical condition.

This letter is intended for informational purposes only and does not constitute a ruling under section 2.04 of Rev. Proc. 2017-1, 2017-1 I.R.B. 1, 9, but I hope the information is helpful. If you have any additional questions, please contact at .

Sincerely,

Bridget E. Tombul
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Office of Associate Chief Counsel
(Income Tax & Accounting)