

Control No: TR-32-242-93

**INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM**

Taxpayer's Name:
Taxpayer's Address:

Year Involved:
No Conference Held:
Taxpayer's Identification No:

LEGEND:

A =

B =

Issues:

(1) Whether A, a sole proprietor, is entitled to deduct under section 162(a) of the Internal Revenue Code amounts paid to B, A's spouse and employee, as reimbursement of medical expenses under an employer-provider accident or health plan.

(2) Whether amounts B receives as reimbursement of expenses that B incurs on behalf of B, A, and their dependents are excluded from B's gross income under section 105(b).

Facts:

A operates a consulting business as a sole proprietor and employs B, A's spouse, to perform certain services in connection with the business. B receives compensation for the services B performs and includes the compensation in gross income on the couple's jointly filed federal income tax return. A adopted a written employer-provided accident and health plan that, by its terms, covers all employees of A's business. During the year in question, A reimbursed B, pursuant to the plan, for the expenses of medical care that B incurred on behalf of B, A, and their dependents. You agreed that there is a bona fide employer-employee relationship between A and B.

Law:

Section 162(a) of the code allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business, including reasonable salaries and other compensation for services rendered.

Section 213(a) of the Code allows a deduction for the expenses paid during the taxable year, not compensated by insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse, or a dependent, to the extent that such expenses exceed 7.5 percent of the taxpayer's adjusted gross income. The term "medical care" is defined in section 213 (d).

Section 105(b) of the Code generally allows an employee to exclude from gross income employer-paid reimbursements for the expenses of medical care (as defined in section 213(d)) of the employee and the employee's spouse and dependents.

Rev. Rul 71-588, 1971-2 C.B. 91, holds, that amounts paid by a sole proprietor to his spouse, a bona fide employee of the business, under an accident and health plan covering all employees, are (1) excludable from the employee-spouse's gross income under section 105(b) of the Code and (2) deductible by the employer-spouse as a business expense under section 162(a).

CONCLUSION:

Applying the law to the facts of the present case, the amounts paid to B under the plan as reimbursements for, medical expenses are deductible by A as a business expense under section 162(a) of the Code. Further, B may exclude these amounts from gross income under section 105(b).

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

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