IRS Ruling on Genetic Testing Services as Medical Care

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In a private letter ruling ("PLR") released August 16, 2019, the IRS ruled that a taxpayer can allocate the cost of a DNA collection kit and related health services between non-medical ancestry services and health services that are medical care for tax purposes. Thus, a portion of the cost could be reimbursed by a health flexible spending account (FSA) or other account-based health plan.

Background

The Internal Revenue Code (IRC) generally provides tax advantages for health related expenses that provide for "medical care," which is defined in IRC § 213(d)(1)(A). This includes allowing for pre-tax reimbursement for the "diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body," and includes diagnostic services (as set forth in IRS regulations), for employees who participate in an employer-sponsored health flexible spending account (FSA), health reimbursement arrangement (HRA), and health savings account (HSA). However, no such tax advantages apply to expenditures that are merely beneficial to the general health of an individual.

In PLR 201933005, the taxpayer sought to use a health FSA to purchase genetic testing services that include reports on an individual's ancestry and health. The taxpayer conceded that the ancestry portion was not for medical care. However, as part of the services, a DNA sample was tested through a process called genotyping and further analysis of the genetic information was done resulting in reports providing lab results and general information. In the PLR, the IRS cited the IRC, IRS regulations and prior guidance relating to allocation of certain expenses as between medical care and non-medical items and services and determined that the genotyping, but not the reports providing general information, was medical care. The IRS concluded the taxpayer must allocate the price of the DNA collection kit between the ancestry services and the health services using a percentage. With respect to the health services portion, the IRS provided that the taxpayer may use a reasonable method to value and allocate the cost between services that are medical care, such as the lab testing, and non-medical, such as the general information reports.

It is important to note that a PLR issued by the IRS may not be cited or used as precedent, as it is directed specifically to the taxpayer who has requested it. Nonetheless, such a ruling does provide some insight as to the IRS's thinking on certain tax issues.

Next steps

Employers with account-based plans, such as health FSAs, HRAs and HSAs, may want to review their plans regarding their past practices in allowing reimbursement for DNA collection kits that include genetic testing services. To the extent such plans expressly exclude covering such kits or services, no further action is required. However, to the extent such plans generally allow reimbursement for any expenses that provide "medical care," sponsors may want to evaluate whether to provide an express exclusion, or determine how to go about evaluating whether just a portion of the cost of such kits or services should be reimbursed.