

IT 2359 - Income tax : medical expenses - in vitro fertilization

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TAXATION RULING NO. IT 2359

INCOME TAX : MEDICAL EXPENSES - IN VITRO FERTILIZATION

F.O.I. EMBARGO: May be released

REF

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I 1210138 MEDICAL EXPENSES 159P

PREAMBLE

Section 159P of the Income Tax Assessment Act provides that an amount paid by a taxpayer as "medical expenses" in respect of the taxpayer or his or her dependants, less any amount paid or payable to the taxpayer or any other person in respect of those medical expenses by a Government or public authority or by a society, association or fund, shall be a rebatable amount. Where the sum of rebatable amounts exceeds \$1000 in a year of income the taxpayer is entitled to a rebate of tax of 30% of the excess.

2. The definition of "medical expenses" in sub-section 159P(4) includes payments to a legally qualified medical practitioner or a public or private hospital in respect of an illness or an operation. The question has been raised whether expenditure for treatment under an In Vitro Fertilization program is in respect of an illness or an operation as those terms are used in sub-section 159P(4).

3. In Vitro Fertilization is a clinical procedure for the alleviation of infertility. The procedure involves the implanting in the womb of a woman an ovum produced by her and fertilized outside her body. In some cases the procedure may require surgery.

4. The procedures, or programs as they are otherwise referred to, are confined to married couples and to bona-fide de facto relationships. They are generally administered by specialist clinics most of which are attached to major hospitals. There are some private clinics and a small number of specialist gynaecologists who also administer the procedures.

5. The terms "illness" and "operation" are not defined in the income tax law. The terms are not technical and are to be given the meanings which are ordinarily given to them. The meaning of the term "illness" was discussed by Taxation Board of Review No. 3 in Case Q21, 83 ATC 77: Case 85 26 CTBR(NS) 570. Dr Gerber expressed his understanding of the concept of illness in these words:

"'Illness' is not defined in the Act. However, I do

not accept that it is a term of art. Adopting a purposive construction, I find the term includes any condition marked by a pronounced deviation from the normal healthy state. If this is the correct view, 'illness' must include any disorder of body, function or systems."

In its ordinary meaning the term "operation" refers to an act performed by hand and/or instrument to some part of the body to remedy deformity, injury, disease, pain etc.

6. Infertility can be caused by a number of factors. Whatever the cause it is a disorder of body, function or systems in the sense referred to by Dr Gerber. It is accepted as an illness within the ordinary meaning of the term.

7. In Vitro Fertilization procedures or programs do not cure infertility. They are not intended to. Rather they overcome it. Sub-section 159P(4) does not require the cure of illness - it requires that the payment be made in respect of an illness or operation. In Vitro Fertilization procedures are clearly procedures in respect of the illness of infertility.

RULING 8. Payments to a legally qualified medical practitioner or a public or private hospital for treatment under an In Vitro Fertilization program fall within the definition of medical expenses in sub-section 159P(4) of the Act as being in respect of an illness or an operation. Accordingly, the payments, less any reimbursements, qualify as rebatable amounts.

COMMISSIONER OF TAXATION
28 August 1986