

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201950004**  
Release Date: 12/13/2019  
Index Number: 104.00-00, 104.00-03

[Third Party Communication:  
Date of Communication: Month DD, YYYY]

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-107009-19

Date:  
September 13, 2019

Taxpayer =  
Clinic =  
Date 1 =  
Date 2 =  
= =  
Date 3 =  
Date 4 =  
Genetic =  
Condition =  
\$x =

State X Court =

Dear :

This letter responds to your letter requesting a ruling that the \$x settlement amount received by Taxpayer on Date 4 is excluded from Taxpayer's gross income pursuant to § 104(a)(2) of the Internal Revenue code.

**FACTS**

Taxpayer contracted with Clinic to provide her with a suitable anonymous donor egg and perform an embryo transfer via in vitro fertilization. On Date 1, Clinic implanted into Taxpayer an embryo that was developed using an anonymous donor's egg. As a result of that implantation, Taxpayer conceived . Prior to this procedure and unbeknownst to Taxpayer, Clinic did not test the donor egg or embryo implanted in Taxpayer for genetic mutations. Specifically, Clinic did not test the donor egg or embryo

to determine if either carried the gene that causes Genetic Condition. On Date 2, Taxpayer gave birth to .

Some months after birth, underwent a medical examination and genetic testing. The testing revealed that suffered from Genetic Condition. At no point prior to the birth of did Clinic inform Taxpayer that the donor egg and/or donor carried, or was at risk for carrying, the gene that causes Genetic Condition. Because of being born with Genetic Condition, suffer from multiple physical, cognitive, and behavioral disabilities.

On Date 3, the Taxpayer, individually and on behalf of , filed a complaint in State X Court against Clinic seeking damages for the above described physical injuries and physical sickness that suffered. Taxpayer's complaint states that after Taxpayer informed Clinic of the results of testing that revealed that suffer from Genetic Condition, Taxpayer was provided with genetic testing results of the anonymous donor egg which showed that it was positive for the gene causing Genetic Condition. Taxpayer's complaint claimed that physical injuries and physical sickness was the result of Clinic using a donor egg carrying the gene that causes Genetic Condition for the embryo that Clinic implanted into Taxpayer, and that Clinic failed to test the donor egg or embryo for the gene that causes Genetic Condition prior to the implanting procedure. The damages Taxpayer sought also included damages for emotional distress that Taxpayer suffered as a result of physical injuries and physical sickness. On Date 4, Taxpayer accepted a settlement of her lawsuit claims against Clinic for a single lump sum amount of \$x.

## LAW AND ANALYSIS

Section 61 provides that gross income includes all income from whatever source derived, except as otherwise excluded in subtitle A.

Section 104(a)(2) provides that gross income does not include the amount of any damages received (whether by suit or agreement) on account of personal physical injuries or physical sickness, except for amounts attributable to (and not in excess of) deductions allowed under § 213 (relating to medical, etc., expenses) for any prior taxable year.

Section 1.104-1(c)(1) of the Income Tax Regulations provides that damages for emotional distress attributable to a physical injury or physical sickness are excluded from gross income under § 104(a)(2). For purposes of § 1.104-1(c), the term damages means an amount received (other than workers' compensation) through prosecution of a legal suit or action, or through a settlement agreement entered into in lieu of prosecution.

In her complaint against Clinic, Taxpayer claimed that \_\_\_\_\_ suffer physical, cognitive, and behavioral disabilities because the donor egg that Clinic used for the embryo that was implanted in Taxpayer carried the gene that causes Genetic Condition. Taxpayer further claims in her complaint that Clinic should have tested the donor egg for Genetic Condition. By failing to test and then implanting into Taxpayer the embryo developed with the donor egg carrying Genetic Condition gene, Clinic caused \_\_\_\_\_ to suffer injuries and disabilities resulting from Genetic Condition. The injuries and disabilities \_\_\_\_\_ suffer have resulted from Genetic Condition and can be characterized as physical injuries or physical sickness within the meaning of § 104(a)(2). Under § 1.104-1(c)(1), \$x that Taxpayer received through the settlement of her claims against Clinic on Date 4 was to compensate for actual damages that are attributable to the personal physical injuries and/or physical sickness. Thus, \$x was received on account of personal physical injuries and/or within the meaning of § 104(a)(2).

### CONCLUSION

Based strictly on the information submitted and the representations made, we conclude that the \$x Taxpayer received in settlement for personal physical injuries suffered by \_\_\_\_\_, including Taxpayer's emotional distress attributable to those injuries, is excluded from Taxpayer's gross income under § 104(a)(2), other than the amounts that reimbursed Taxpayer for medical expenses that were incurred and previously deducted.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for the ruling, it is subject to verification on examination.

Sincerely,

William A. Jackson  
Office of Associate Chief Counsel  
Branch Chief, Branch 5  
(Income Tax & Accounting)