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FIRST DISTRICT OF GEORGIA

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November 12, 2019

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington DC 20224-0002

Dear Commissioner Rettig,

We the undersigned members of Congress request that you revise the IRS Publication 502 to allow nutritional and dietary supplements that carry health claims or structure/function claims to be considered "medical expenses." Our mutual interest in promoting health care choice and competition would be advanced by modernizing the treatment of "nutritional supplements" under this publication. This change would allow Americans to choose to be reimbursed from their HRSS, HSAs, or FSAs for the out-of-pocket expenses they pay for nutritional and dietary supplements. This revision to Publication 502 would be a worthwhile way to achieve its goal of promoting consumer choice and better health.

Section 262 of the Internal Revenue Code (IRC) states that, except as otherwise expressly provided, no deduction shall be allowed for personal, living, or family expenses. One prominent exception to this prohibition lies in Section 213(a) of the IRC, enacted in 1954, which allows a deduction for expenses paid during the taxable year, not compensated for by insurance or otherwise, for the medical care of the taxpayer, the taxpayer's spouse, and the taxpayer's dependents. Section 213(d) provides, in turn, that the term "medical care" includes "amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body."

IRS Publication 502, as revised for tax year 2000, included for the first time a specific exclusion of "nutritional supplements" from the definition of "medical expenses," stating that "you can't include in medical expenses the cost of nutritional supplements, vitamins, herbal supplements, 'natural medicine,' etc. unless they are recommended by a medical practitioner as treatment for a specific medical condition diagnosed by a physician. These items are taken to maintain your ordinary good health and aren't for medical care."

As noted earlier, the IRC defined "medical care" in 1954 as "amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body." We believe that dietary supplement claims fit this definition in two ways:

Under the 1990 Nutrition Labeling and Education Act, nutritional and dietary supplements under certain circumstances may carry health claims regarding the reduced risk of disease. Nutritional or dietary

supplements making such claims should be covered by the “prevention of disease” section of the IRC’s “medical care” definition.

Under the 1994 Dietary Supplement Health and Education Act, nutritional or dietary supplements are permitted to carry structure/function claims, which should fit into the “affecting any structure or function of the body” section of the definition.

In 1960 a regulation was put in place that seeks to confine “medical expenses” strictly to those expenses “incurred primarily for the prevention or alleviation of a physical or mental defect or illness” and to exclude expenditures on items or services that are “merely beneficial to the general health of an individual.” I believe the IRS would not need to change this regulation to accommodate my proposal. For dietary supplements that carry structure/function claims, there is a clear and direct line to Section 213(d) of the IRC, which speaks to “amounts paid... for the purpose of affecting any structure or function of the body.” In 1990, Congress acted to allow dietary supplements to carry claims related to a reduced risk of a disease or health-related condition, and we would argue that expenses for this category of supplements are clearly incurred “for the prevention or alleviation of a physical or mental defect or illness” as required under the 1960 regulation.

Tax laws and regulations from the 1950s and 1960s could not anticipate how important nutritional supplements would become in the 21st century, and the 2000 update to IRS Publication 502 did not contemplate many of the changes in dietary supplement regulation that were happening around the same time at the FDA. The IRS should revise Publication 502 for tax years 2019 and beyond to read as follows:

“you can include in medical expenses the cost of nutritional supplements, vitamins, herbal supplements, ‘natural medicines,’ etc., provided that such products are labeled with a health claim authorized by the Food and Drug Administration, bear statements describing how they are intended to affect the structure or function of the human body, or bear statements characterizing the documents mechanism by which the product acts to maintain such structure or function.”

This simple revision would modernize the treatment of nutritional supplements for purposes of the deduction for out-of-pocket medical expenses as well as for purposes of reimbursable expenses from HRA, HAS, and FAS accounts.

Sincerely,



Earl L. “Buddy” Carter
Member of Congress



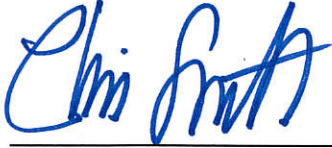
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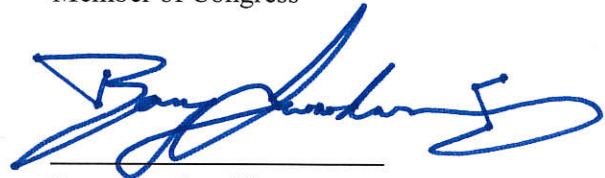
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