

## Egg Donor Fees are Income

Nichelle Perez, age 29, is a high school graduate and worked as a sales associate. While in her early 20s Ms. Perez became knowledgeable about egg donations. Her internet search led her to the website of The Donor Source International LLC, an egg-donation agency in her part of the country, that matches egg donors with women and couples struggling to conceive on their own.

(The word “donor” typically refers to giving something without getting something back. When “donor” is used in this article, we are referring to someone who is getting paid for their “donation” and there is not a charitable event taking place.)

Donor Source finds potential egg donors by advertising on Craigslist, in magazines, and by word of mouth. It focuses on nonsmoking women between the ages of 21 and 30 with no family history of cancer or personal history of infertility or mental disorders. If selected, the potential donors are invited for a consultation to go over the time requirements, medication needs, and various psychological and physical evaluations. Donor Source pays compensation to egg donors (\$5,500 for Southern California women) and typically increases the amount with each subsequent donation. Donor Source also reimburses the donors for their expenses in traveling to and from their medical appointments.

The contract Ms. Perez has with Donor Source states in part: “Donor Fee: Donor and Intended Parents will agree upon a Donor Fee for Donor’s time, effort, inconvenience, pain, and suffering in donating her eggs. The fee is for Donor’s good faith and full compliance with the donor egg procedure, not in exchange for or purchase of eggs and the quantity or quality of eggs retrieved will not affect the Donor Fee.” This phrase means Ms. Perez will get her fee as long as she complies with her side of the arrangement even if no eggs are produced or produced eggs are unusable.

After signing the contracts, Ms. Perez had to take birth-control pills for approximately a month to sync her menstrual cycle with that of the intended mother. Then she underwent a series of intrusive physical examinations, submitting to pregnancy tests, enduring invasive internal ultrasound examinations, and having a syringe stuck into her arm to draw four to five vials of blood. After returning home she had to self-administer hormonal injections using a one-inch needle into her stomach which often bruised and hurt her. Ms. Perez described these procedures as “actually very painful – it was burning the entire time you were injecting it.” Overall she made around 22 injections into her stomach. A final “trigger shot” took place at a fertility clinic using a two-inch needle and was injected into her lower hip, causing significant physical pain deep in her muscles as well as extreme abdominal bloating. When the harvesting took place, the doctors were able to retrieve between 15 and 20 eggs – rather than the body’s normal production of only one. When it was all over, Ms. Perez received a check for \$10,000. She went back for a second round later in the year and received another check for \$10,000.

She received a Form 1099 showing \$20,000 of income for the year. After consulting with other egg donors online, Ms. Perez did not report the money on her tax return, considering it to be for pain and suffering. At audit and in Court Ms. Perez referred to Section 104 which includes an

exclusion from income for amounts received for damages on account of personal injuries or personal illness.

IRS reviewed the contract and determined Ms. Perez received the fee “for Donor’s good faith and full compliance with the donor egg procedure.” The fact that physical injuries or physical sickness could exist as a result of the compliance procedures does not change the character of the monies received. IRS position is that the monies received were for complying with the contracted procedures and is therefore taxable.

Tax Court agree with IRS. The Court looked at many injury related cases where similar claims were argued. The Court also looked at Ms. Perez arguments specifically. Tax Court stated a ruling in Ms. Perez’ favor would create all kinds of tax mischief such as a professional boxer arguing that some of the money received should be nontaxable by allocating some to bruises, cuts, and nosebleeds. And a hockey player could argue a portion of his salary is for chipped teeth that invariably happen during his career. And a football player could argue the same for brain injuries suffered, And the less-noticed bodily damage daily endured by working men and women on farms and ranches, in mines, or on fishing boats. The Court stated the compensation received by all of these people reflects the risk that they will feel pain and suffering, but it’s a risk that they agree to before they begin their work. That makes it taxable compensation and not excludable damages.

Nichelle G Perez, 144 TC 4. This case can be found by going to [www.ustaxcourt.gov](http://www.ustaxcourt.gov), clicking on Opinion Search, and entering Perez in the “Case Name Keyword” box.

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