NOVEMBER 11, 2009, 3:20 P.M. ET

# GETTING PERSONAL: Tax Code Lags Growing Body-Parts Market

By Arden Dale
A DOW JONES NEWSWIRES COLUMN

Organs and blood products, eggs, sperm, breast milk and other goods from the human body are bought and sold in a market that has burgeoned over the past two decades. The tax code hasn't kept up.

The Internal Revenue Code has nothing specific to say about how, or even whether, taxpayers should report sales of their own body materials. Is there taxable income when a person sells an egg, a kidney or blood plasma? If so, should it be treated as ordinary income or capital gains?

"The fact that we don't have any settled tax treatment is currently a problem and looks to be a much bigger problem in the future," says Lisa Milot, an assistant professor of law at the University of Georgia School of Law.

Milot has written a draft paper on the tax-code vacuum around body materials, titled: "What Are We--Laborers, Factories or Spare Parts?"

The total U.S. market for plasma-derived drugs was estimated at about $4 billion in 2008, according to The Marketing Research Bureau, Inc., a market-research firm in Orange, Conn. A trade group for the plasma industry says it isn't aware of how firms handle the taxes for its donors. But, at least one major company doesn't issue tax forms to them. Laura Jacobs, a spokeswoman for Biolife, a plasma-collection subsidiary of Baxter International, Inc., says donors there don't get Form 1099 or other tax forms.

Genetics & IVF Institute, which runs sperm and egg donation programs that are among the largest in the world, issues Forms 1099 to its providers, according to spokeswoman Trina Leonard. Egg donors usually earn around $6,000 for completing a necessary cycle in the process. However, they are compensated for their time--not the material they provide, says Leonard.

Bridget Crawford, a professor at Pace University who teaches on tax issues, says lack of specifics in the tax code reflect the "fundamental question of whether the human body is a product, or if it is something so special that it can't be taxed."

She believes tax law has looked the other way "to avoid dealing with the ugly reality that bodies are being commercialized."

Provisions in the code that apply to the sale of property could be adapted to cover body materials. Section 61(a)(3), for example, deals with the sale of property, and Section 61(a)(1) covers income from services.

A key question for tax analysts is whether the body material should be treated as property, says tax analyst Robert Willens. After that, one has to determine whether it is a capital asset, and what the holding period would be for it.

A taxpayer might have a hard time reporting a capital gain from the sale of body material. That's because, says Willens, the tax code requires a sale of "all substantial rights in order for capital gains to arise, and, here, the items you're selling all seem to self-generate." By definition, then, one couldn't sell all substantial rights, he argues.

Despite the lack of clear rules, the Internal Revenue Service would likely win should it decide to pursue those who don't pay taxes on the sales of their own body materials, according to Crawford, the Pace professor. "It's a slam dunk. There's no doubt this is taxable," she says.

(Arden Dale is a Getting Personal columnist who writes about personal finance; she covers topics including tax and estate planning, retirement, investment strategies, and financial needs of small businesses. She can be reached at 212-416-2234 or by email at arden.dale@dowjones.com.)

(TALK BACK: We invite readers to send us comments on this or other financial news topics. Please email us at TalkbackAmericas@dowjones.com. Readers should include their full names, work or home addresses and telephone numbers for verification purposes. We reserve the right to edit and publish your comments along with your name; we reserve the right not to publish reader comments.)