

IRS Provides New Deductible Medical Expenses under Code § 213

Revenue Ruling 2007-72, published by the Internal Revenue Service ("IRS") on December 10, 2007, rules that amounts paid for annual physical exams, full body electronic scans and pregnancy test kits are deductible "medical care" expenses under section 213 of the Internal Revenue Code ("Code"). Rev. Rul. 2007-72, 2007-50 I.R.B. 1154 (December 10, 2007).

Code § 213(a) provides that medical care expenses, not reimbursed through another source, are deductible from income if a taxpayer's medical expenses exceed 7.5% of the taxpayer's adjusted gross income. Code § 213 also defines what medical care expenses are eligible for tax-free reimbursement through Health Flexible Spending Arrangements ("FSA"), Health Savings Accounts ("HSA"), and Health Reimbursement Arrangements ("HRA"). "Medical care" for this purpose includes "amounts paid for the diagnosis, cure, mitigation, treatment or prevention of any disease or for the purpose of affecting any structure of function of the body." Code § 213(d).

Revenue Ruling 2007-72 explains why three situations qualify as deductible medical care.

1. Physical Exam - In Situation 1, Taxpayer A undergoes and pays for an annual physical exam which is performed by a physician. Situation 1 qualifies as a medical care expense because a diagnosis is "medical care," even where no illness is present.
2. Full-Body Electronic Scan - In Situation 2, Taxpayer B pays for a clinic to perform a costly full-body electronic scan for the purpose of examining the condition of B's internal organs before B consults with a physician. Situation 2 qualifies as a medical care expense even without a physician's recommendation or symptoms because the test serves no non-medical purpose and the cost of treatment does not affect whether it is "medical care."
3. Pregnancy Test Kit - In Situation 3, Taxpayer C buys and uses a test kit to determine whether she is pregnant. Situation 3 qualifies as a medical care expense because medical care includes tests to detect healthy functioning of the body, as well as to detect disease.

It is helpful to have new guidance in this area because very little formal guidance exists concerning whether particular items would qualify as medical expenses under Code § 213(d). Currently, entities seeking to comply with Code § 213 medical care guidelines frequently rely on IRS Publication 502.

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Section 213.—Medical, Dental, etc., Expenses

26 CFR 1.213-1: Medical, dental, etc., expenses.

Diagnostic medical procedures. This ruling holds that amounts paid by individuals for certain diagnostic and similar procedures and devices are medical care expenses deductible under section 213 of the Code.

Revenue Ruling 2007-72

ISSUE

Are amounts paid by individuals for diagnostic and certain similar procedures and devices, not compensated by insurance or otherwise, medical care expenses deductible under § 213(a) of the Internal Revenue Code?

FACTS

In the situations described below, the costs paid by the taxpayers are not compensated by insurance or otherwise, and the taxpayers are not experiencing any symptoms of illness.

Situation 1

Taxpayer A undergoes an annual physical examination, which is performed by a physician. A pays for the physician's services and laboratory tests.

Situation 2

Taxpayer B pays for a full-body electronic scan, a relatively high-cost procedure, performed by a technician at a clinic. The scan examines the condition of B's internal organs and may identify disease or other abnormalities. B has not consulted a physician before undergoing the procedure, which can be obtained without a physician's direction, or determined if less expensive alternatives are available.

Situation 3

Taxpayer C buys a test kit and uses it to determine whether she is pregnant.

LAW

Section 213(a) allows a deduction for expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, spouse, or dependent, to the extent that the expenses exceed 7.5 percent of adjusted gross income. 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. Section 213(d)(1)(A).

Medical care includes X-rays and laboratory and other diagnostic services. Amounts paid for obstetrical services are deemed to be for the purpose of affecting

a structure or function of the body and therefore are paid for medical care. Section 1.213-1(e)(1)(ii) of the Income Tax Regulations.

“Diagnosis” is the determination of a medical condition, such as a disease, by physical examination or study of symptoms. Black’s Law Dictionary (8th ed., 2004). A diagnosis may encompass a determination that disease is absent. The determination of a medical condition may include testing for changes in the functions of the body, such as those resulting from pregnancy, that are unrelated to disease.

In determining whether an expense is for either medical or personal reasons, the recommendation of a physician is important. *Havey v. Commissioner*, 12 T.C. 409, 412 (1949). However, this determination is unnecessary in the case of expenses for items that are wholly medical in nature and serve no other function in everyday life. *Stringham v. Commissioner*, 12 T.C. 580, 584 (court reviewed), aff’d 183 F.2d 579 (6th Cir. 1950)

The amount of the deduction under § 213 is not limited by a ceiling and, although additional costs for personal convenience are not allowable, § 213 does not limit the deduction to amounts paid for the least expensive form of medical care available. *Ferris v. Commissioner*, 582 F.2d 1112, 1116 (7th Cir. 1978).

ANALYSIS

In Situation 1, the amount A pays for the annual physical examination is for diagnosis and qualifies as an expense for medical care even though A is not experiencing any symptoms of illness.

In Situation 2, the amount B pays for the full-body scan is for diagnosis and qualifies as an expense for medical care even though B is not experiencing symptoms of illness and has not obtained a physician’s recommendation before undergoing the procedure. The procedure serves no non-medical function and the expense is not disallowed because of the high cost or possible existence of less expensive alternatives.

In Situation 3, the amount C pays for the pregnancy test qualifies as an expense for medical care even though its purpose is to test the healthy functioning of the body rather than to detect disease.

Therefore, the amounts paid by Taxpayers A, B, and C for the physical examination, the full-body scan, and the pregnancy test kit are deductible under § 213(a), subject to the 7.5 percent floor.

HOLDING

Amounts paid by individuals for diagnostic and certain similar procedures and devices, not compensated by insurance or otherwise, are medical care expenses deductible under § 213(a), subject to the limitations of that section.

DRAFTING INFORMATION

For further information regarding this revenue ruling, contact Dan Cassano at (202) 622-7900 (not a toll-free call). 2007-50 I.R.B. 1154 December 10, 2007