

Itemized Medical Deduction for Expenses of Special Programs

Document Overview

This document contains information pertaining to the deduction from federal taxable income of costs incurred by individuals for special programs such as those provided by an emotional growth school. Such costs deducted as itemized medical deductions may include tuition, room and board, and related travel and incidental expenses. The document is organized as follows:

Introduction: A statement of the general rule for medical deductions excerpted from a leading tax practitioner guide.

Key Internal Revenue Code text.

Key Treasury Regulations text.

Excerpts of the medical-related facts and findings from the tax court case CHARLES F. AND KIM K. URBAUER v. COMMISSIONER; TC Memo 1992-170. Decision in part for Taxpayer and in part for Commissioner. Taxpayers are the parents of a 17-year old boy with severe behavioral and drug problems. In addition to a decision largely in favor of taxpayers, the text provides a concise annotated analysis of related law, regulations, and rulings.

PLR 9852015, 12/24/1998 Private Letter Ruling. Taxpayers are the parents of a dependent with neurologically based ADHD. Although Section 6110(j)(3) provides that a Private Letter Ruling may not be used or cited as precedent, this PLR provides a concise annotated analysis of related law, regulations, and rulings.

Full text of Internal Revenue Code Section 213.

Full text of Treasury Regulations 1.213-1

Other documents received from Mount Bachelor Academy parents, including a sample medical statement, text of Lawrence D. Greisdorf and Marianne C. A. Greisdorf v. Commissioner. *April, 2003*: Sample memorandum MEMORANDUM REGARDING DEDUCTIBILITY OF MEDICAL CARE EXPENSES FOR FEDERAL INCOME TAX PURPOSES--As It Pertains To Costs Incurred Solely With Respect To Grace Christian Home for Girls, Shreveport, LA

Disclaimer: This document, although prepared by a CPA, is not intended to render a general tax opinion or an opinion for any specific taxpayer, school, or program. The review of literature is selective and not complete; there may be other rulings and court decisions that would lead to different conclusions. Rather, this summary is a collection of published information that may be useful for taxpayers and their tax return preparers to analyze the facts and circumstances pertaining to their unique situations. The information contained herein is only guidance. No assurances are made that the taxing authorities will not challenge a medical deduction for expenses incurred at a special school.

First Revision October, 2002

Itemized Medical Deduction for Expenses of Special Programs

Introduction

“Generally, medical care is defined as an amount paid for (1) the diagnosis, cure, mitigation, treatment, or prevention of disease, or for a purpose affecting the body’s structure or function; (2) transportation primarily for and essential to medical care; (3) qualified long-term care services; and (4) insurance for medical care or any qualified long-term care insurance contract [IRC Sec. 213(d)(1)]. An expenditure that is merely beneficial to the general health of an individual is not an expenditure for medical care [Reg. 1.213-1(e)(1)(ii)]” (Source: Practitioners Publishing Company, 1040 Deskbook © 2001)

Key IRC Section:

213(d)(2) Amounts paid for certain lodging away from home treated as paid for medical care. Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed \$50 for each night for each individual.

Key Treasury Regulations:

1.213-1(e)(1)(iv) Expenses paid for transportation primarily for and essential to the rendition of the medical care are expenses paid for medical care. However, an amount allowable as a deduction for 'transportation primarily for and essential to medical care' shall not include the cost of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a taxpayer go to a warm climate in order to alleviate a specific chronic ailment, the cost of meals and lodging while there would not be deductible. On the other hand, if the travel is undertaken merely for the general improvement of a taxpayer's health, neither the cost of transportation nor the cost of meals and lodging would be deductible. If a doctor prescribes an operation or other medical care, and the taxpayer chooses for purely personal considerations to travel to another locality (such as a resort area) for the operation or the other medical care, neither the cost of transportation nor the cost of meals and lodging (except where paid as part of a hospital bill) is deductible

1.213-1(e)(1)(v) The cost of in-patient hospital care (including the cost of meals and lodging therein) is an expenditure for medical care. The extent to which expenses for care in an institution other than a hospital shall constitute medical care is primarily a question of fact which depends upon the condition of the individual and the nature of the services he receives (rather than the nature of the institution). A private establishment which is regularly engaged in providing the types of care or services outlined in this subdivision shall be considered an institution for purposes of the rules provided herein. In general, the following rules will be applied:

(a) Where an individual is in an institution because his condition is such that the availability of medical care (as defined in subdivisions (i) and (ii) of this subparagraph) in such institution is a principal reason for his presence there, and meals and lodging are furnished as a necessary incident to such care, the entire cost of medical care and meals and lodging at the institution, which are furnished while the individual requires continual medical care, shall constitute an expense for medical care. For example, medical care includes the entire cost of institutional care for a person who is mentally ill and unsafe when left alone. **While ordinary education is not medical care, the cost of medical care includes the cost of attending a special school for a mentally or physically handicapped individual, if his condition is such that the resources of the institution for alleviating such mental or physical handicap are a principal reason for his presence there. In such a case, the cost of attending such a special school will include the cost of meals and lodging, if supplied, and the cost of ordinary education furnished which is incidental to the special services furnished by the school. Thus, the cost of medical care includes the cost of attending a special school designed to compensate for or overcome a physical handicap, in order to qualify the individual for future normal education or for normal living, such as a school for the teaching of braille or lip reading. Similarly, the cost of care and supervision, or of treatment and training, of a mentally retarded or physically handicapped individual at an institution is within the meaning of the term 'medical care'.**

(b) Where an individual is in an institution, and his condition is such that the availability of medical care in such institution is not a principal reason for his presence there, only that part of the cost of care in the institution as is attributable to medical care (as defined in subdivisions (i) and (ii) of this subparagraph) shall be considered as a cost of medical care; meals and lodging at the institution in such a case are not considered a cost of medical care for purposes of this section. For example, an individual is in a home for the aged for personal or family considerations and not because he requires medical or nursing attention. In such case, medical care consists only of that part of the cost for care in the home which is attributable to medical care or nursing attention furnished to him; his meals and lodging at the home are not considered a cost of medical care.

Charles F. Urbauer, TC Memo 1992-170 -- IRC Sec(s) 274, 162, 213, 170
CHARLES F. AND KIM K. URBAUER; TC Memo 1992-170, RIA TC Memo P 92170, 63
CCH TCM 2492

Case Information

IRC SEC(S): Code Sec. 274, Code Sec. 162, Code Sec. 213, Code Sec. 170
Docket/Court: Docket No. 11173-90, Tax Court Memorandum Decision.
Date Issued: March 24, 1992
Tax Year(s): Years 1985, 1986, 1987.
Disposition: Decision in part for Taxpayer and in part for Commissioner.

Medical Expenses

John Urbauer, petitioners' 17-year-old son, experienced severe behavioral problems as a result of habitual drug use during 1986 and 1987. In 1987, petitioners enrolled John in the DeSisto School (DeSisto) for treatment of these problems.

DeSisto is a college-preparatory school located in Stockbridge, Massachusetts. The curriculum at DeSisto is designed to address both the educational and emotional needs of its students. DeSisto facilitates the student's emotional development through a holistic program that includes community interaction, peer support, and weekly therapy sessions. DeSisto also uses a multifamily therapy program called "Parent/Child Communication Groups" to treat the emotional needs of its students.

Parents of Desisto students are required to provide money for their child's "personal account" and "allowance account", in addition to tuition, room, board, and therapy charges.

Petitioners traveled to and from DeSisto to participate in John's therapy sessions with DeSisto staff members. These therapy sessions, including petitioners' attendance, were a requirement of John's continued enrollment and treatment at DeSisto. In addition to airfare, petitioners incurred expenses for hotels, rental cars, meals, and movies when they traveled to these therapy sessions. John's therapy also was conducted through telephone calls between petitioners, John, and DeSisto staff members. Petitioners placed these telephone calls, at the insistence of DeSisto staff members, to further John's treatment at DeSisto. Failure to place these telephone calls would have resulted in John's dismissal from the program.

Petitioners bought new clothing for John to wear at DeSisto. Prior to his enrollment at DeSisto, John had either lost or destroyed most of his clothing as a result of his behavioral and drug problems. The clothing purchased was of the same type worn by other students.

Petitioners purchased toiletries and towels for John to use while at DeSisto. Petitioners also bought and gave jewelry to John in recognition of his achievements in the DeSisto program, and to increase his self-esteem. These gifts of jewelry were made at the suggestion of DeSisto staff members.

Petitioners joined the Michigan Association for Parents of DeSisto (MAPOD), and provided refreshments for at least one MAPOD function held during 1987. Petitioners also purchased prescription medicine for family members during the taxable year 1987.

On their 1987 Federal income tax return, petitioners deducted John's tuition, room, and board at DeSisto as a medical expense under section 213. Petitioners also claimed a medical expense deduction for amounts paid in 1987 for the family's airfare to and from DeSisto; rental car payments, hotel, meal, and movie expenditures made in connection with these trips to DeSisto; telephone expenditures; membership dues in the Michigan Association for Parents of DeSisto (MAPOD); clothing, toiletries, and jewelry purchased for John while at DeSisto; John's allowance while at DeSisto; and family medical prescriptions. Respondent disallowed all of petitioners' medical expense deductions except the amounts paid for John's tuition, room, and board.

II. Medical Expenses

Section 213(a) allows a deduction for expenses paid, and not otherwise compensated, for medical care of the taxpayer, the taxpayer's spouse, or a dependent to the extent that these expenses exceed 7.5 percent of the taxpayer's adjusted gross income. The medical care deduction permitted by section 213 is an exception to the general rule of section 262 that a taxpayer is not entitled to a deduction for personal, living, or family expenses. *Gerstacker v. Commissioner*, 414 F.2d 448, 450 [24 AFTR2d 69-5389] (6th Cir. 1969). A taxpayer is entitled to a deduction under section 213 only where the expenditure is proximately related to his medical care, and not merely connected with his medical care. *Gerstacker v. Commissioner*, supra at 450; *Carlisle v. Commissioner*, 37 TC 424, 428 (1961); *Havey v. Commissioner*, 12 TC 409, 412 (1949). The term "medical care" is defined by the statute 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, * * * [and] for transportation primarily for and essential to medical care". Sec. 213(d)(1). Whether an expenditure constitutes medical care depends upon the therapeutic nature to the individual, and not whether the expense is "medical" to all persons. *Fischer v. Commissioner*, 50 TC 164, 174 (1968). However, expenses merely beneficial to an individual's general health are not expenditures for medical care. Sec. 1.213-1(e)(1)(ii), Income Tax Regs. Respondent contends that petitioners' disallowed medical expenses do not constitute amounts paid for medical care. Respondent argues that DeSisto did not render medical care to John, and that the disallowed expenditures were not primarily for the alleviation of John's behavioral and drug problems.

Petitioners contend that they enrolled John in DeSisto primarily to treat his behavioral and drug problems. They argue that treatment of John's behavioral and drug problems constitutes medical care under the regulations, and that the disallowed expenditures were necessary to John's treatment.

We reject respondent's argument that DeSisto did not render medical care to John. Respondent has not challenged petitioners' deduction of payments made to DeSisto for John's tuition, room, and board. Section 1.213-1(e)(1)(v), Income Tax Regs., provides that a taxpayer is entitled to a medical care deduction for ordinary costs of education only where the availability of medical care is a principal reason for his presence at the school, and the expenses are incidental to the special services provided by the school. *Atkinson v. Commissioner*, 44 TC 39, 51 (1965). By application of this regulation, we conclude that John attended DeSisto to receive medical care, and that DeSisto provided such care.

Parents of DeSisto students were required to maintain a "personal account" and an "allowance account", in addition to the other amounts they paid DeSisto. Petitioners' failure to maintain these accounts would have prompted John's dismissal from DeSisto. Because of this requirement, petitioners' expenses for John's "personal account" and "allowance account" at DeSisto were ordinary costs of education and incidental to the special services DeSisto provides. Thus, petitioners are entitled to a deduction of these costs. Sec. 1.213-1(e)(1)(v), Income Tax Regs. It is obvious that therapy sessions were integral to John's treatment at DeSisto. The decision by DeSisto to require petitioners' participation in these therapy sessions presupposes that such participation was essential to John's treatment. As such, petitioners' participation in these therapy sessions was therapeutic and an integral part of John's medical care.

Petitioners' participation in John's treatment required their attendance at some therapy sessions. To attend these sessions, they incurred costs for airfare and rental cars. On the record, it is obvious that the only reason petitioners traveled to and from DeSisto was to attend and participate in John's therapy sessions. Accordingly, petitioners' transportation was primarily for and essential to medical care, and they are entitled to deduct these costs. Sec. 213(d)(1).

John's therapy was also conducted by telephone calls between petitioners, John, and DeSisto staff. We believe that DeSisto staff would not have required petitioners' participation in these telephone calls if their participation was not necessary to John's treatment. Thus, petitioners'

participation in these calls was proximately related to John's medical care, and their telephone expenses are therefore deductible under section 213.

Section 213(d)(2) provides that amounts paid for lodging while away from home, not lavish or extravagant, may only be deducted if the medical care is provided by a physician in a licensed hospital or medical care facility. In contrast to other parts of section 213, the language of section 213(d)(2) is unambiguous in limiting the deduction for lodging to those circumstances where the medical care is provided by a physician in a licensed hospital or medical care facility. Sec. 213(d)(2); *Polyak v. Commissioner*, 94 TC 337, 344-345 (1990). Petitioners failed to substantiate whether John's therapy sessions were conducted by a therapist or by a psychiatrist. Because a therapist need not be a physician, petitioners have not satisfied the requirements of section 213(d)(2), and are not entitled to deduct their away-from-home lodging expenses incurred by reason of John's treatment at DeSisto.

It is well settled that no medical expense deduction is allowed for meal expenses incurred while away from home for medical care. *Bilder v. Commissioner*, 369 U.S. 499 [9 AFTR2d 1355] (1962); *Carasso v. Commissioner*, 292 F.2d 367 [8 AFTR2d 5145] (2d Cir. 1961), affg. 34 TC 1139 (1960); *Rose v. Commissioner*, 52 TC 521 (1969), affd. 435 F.2d 149 [26 AFTR2d 70-5653] (5th Cir. 1970). Accordingly, petitioners are not allowed a deduction for meal expenses they incurred while they were away from home for the purpose of attending John's therapy sessions at DeSisto.

We also reject petitioners' claim that expenditures for clothing, toiletries, towels, MAPOD, and movies constitute medical expenses. Although these expenditures were in connection with John's stay at DeSisto, petitioners provided no evidence that these expenditures were proximately related to John's medical care. Petitioners' motive in making these expenditures amounted to no more than their concern for John's general health. These expenditures were not therapeutic or essential either to John's enrollment or treatment at DeSisto. We have stated that "it is obvious that many expenses are so personal in nature that they may only in rare situations lose their identity as ordinary personal expenses and acquire deductibility as amounts claimed primarily for * * * [medical care]." *Stringham v. Commissioner*, 12 TC 580, 584 (1949), affd. 183 F.2d 579 [39 AFTR 777] (6th Cir. 1950). This is not such a rare situation.

Petitioners also claimed a deduction of \$879 for amounts paid for prescriptions during the taxable year 1987. Mr. Urbauer testified that petitioners bought prescription medicines during 1987, although he did admit that one-half to three-quarters of the \$879 was spent to purchase toiletries for John during his stay at DeSisto. As we have previously stated, petitioners are not entitled to a medical deduction for amounts paid for John's toiletries. However, we are convinced that petitioners incurred expenses in the amount of \$220 for prescription medicines. *Cohan v. Commissioner*, 39 F.2d 540 [8 AFTR 10552] (2d Cir. 1930).

PLR 9852015, 12/24/1998 -- IRC Sec. 213

December 24, 1998

Code sec. 213

Uil no. 0213.05-05

Full Text

Date: September 25, 1998

Refer Reply To: CC:DOM:IT&A:2 -- PLR-105258-98

In re: * * *

LEGEND:

C = * * *

S = * * *

T = * * *

X = * * *

Y = * * *

XX = * * *

YY = * * *

ZZ = * * *

Dear * * *

This letter is in response to your request for a ruling that certain expenses for your child's attendance at a private school are deductible as expenses for medical care under section 213(a) of the Internal Revenue Code.

Facts

C is the dependent child (within the meaning of section 152) of you and your spouse. C has been diagnosed with a neurologically based attention deficit hyperactivity disorder (ADHD). C's ADHD is manifested by distractibility, inattention, difficulty processing verbal information, and poor mental flexibility, planning skills, and concentration. As a result, C has experienced significant academic difficulties in typical school settings. Various doctors, psychologists, and educational specialists have evaluated C and have recommended that C's ADHD be addressed through educational strategies such as frequent repetitions of information, presentation of information and tasks in small amounts, use of incentives and rewards, and frequent monitoring. On the specific recommendation of teachers and educational specialists, You [sic] enrolled C in S, a private school with grades 6 through 12. S offers a basic college preparatory curriculum, with classes of 8-10 students and a teacher-student ratio of 5:1. S focuses on preparing for college or other life experiences students who may have learning disabilities or who have otherwise experienced academic failure. Approximately half of the students at S have diagnosed learning disabilities or attention deficit disorders.

S also offers a distinct program, T, that is open only to students who have a written diagnosis of ADHD. T provides extra support and monitoring for students with attention deficit disorders. T includes individual behavior evaluation, creation of a special educational plan for each student, frequent daily monitoring of behavior and performance, and social skills improvement. Students in T are assigned to advisors with specific skills in teaching ADHD students. The purpose of T is to enable students to manage independently the challenges of ADHD over their lifetimes. C is enrolled in T.

For the 1998-1999 academic year, the basic tuition for attendance as a day student at S is \$X. The additional, separately stated cost for T is \$Y. For the 1997-98 academic year, the basic tuition was \$XX and the separately stated cost of T was \$YY. For the 1997-1998 academic year S awarded you a grant of \$ZZ that was applied generally to your total tuition obligation.

Law AND ANALYSIS

Section 213(a) provides that expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse, and dependents

(as defined in section 152) are deductible to the extent such expenses exceed 7.5 percent of adjusted gross income.

Section 213(d)(1)(A) defines "medical care" to include 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 1.213-1(e)(1)(v)(a) of the Income Tax Regulations provides that ordinary education is not medical care. However, the cost of medical care includes the cost of attending a special school for a mentally or physically handicapped individual, if his condition is such that the resources of the institution for alleviating such mental or physical handicap are a principal reason for his presence there. If this provision applies, the cost of attending such a special school includes the cost of meals and lodging, and the cost of ordinary education furnished which is incidental to the special services furnished by the school. Thus, the cost of medical care includes the cost of attending a special school designed to compensate for or overcome a physical handicap in order to qualify the individual for future normal education or for normal living.

Section 1.213-1(e)(1)(v)(b) provides that, if an individual is in an institution providing medical care, but the availability of medical care is not a principal reason for the individual's presence there, then only that part of the cost of the institution that is attributable to medical care (and not the cost of other services such as meals and lodging) is a cost of medical care.

Rev. Rul. 70-285, 1970-1 C.B. 52, interprets the term "special school" in the regulations as a limited category of the term "institution." It concludes that the distinguishing characteristic of a special school is the substantive content of its curriculum, which may include some ordinary education, but only if the ordinary education is incidental to the primary purpose of the school of enabling the student to compensate for or overcome a handicap. Accordingly, the ruling concludes that the taxpayer may deduct as a medical expense the cost of his mentally handicapped child's participation in a specially designed, self-contained course designed to meet the child's needs.

Rev. Rul. 78-340, 1978-2 C.B. 124, involves amounts paid by a taxpayer for the education of a child with severe learning disabilities that resulted in reading difficulties. The child's doctor recommended that the child attend a special school that offered a program to educate children with severe learning disabilities so that they can return to a regular school. The ruling holds that the tuition fees for attending the school are deductible expenses for the child's medical care.

Rev. Rul. 58-280, 1958-1 C.B. 157, holds that the cost of special education for a mentally retarded child in an institution is deductible as a medical expense. However, it also states:

A distinction must be made, however, in cases involving the costs of sending a problem child to a special school where the curriculum and disciplinary methods employed have a beneficial effect on the child's attitude. Such costs are not includible as a medical expense

In *Fischer v. Commissioner*, 50 T.C. 164 (1968), acq. 1969- 2 C.B. xxiv, taxpayer's son suffered from emotional problems that resulted in severe educational impairment. Upon the recommendation of a psychiatrist, taxpayer enrolled the son in a school that accepted only boys of normal intelligence who had failed in other schools because of mental or emotional problems.

The school provided close psychological surveillance and treatment and one-on-one instruction tailored to the needs of the individual student. There was no separate program for students with specific disorders or disabilities. Rather, the psychological intervention was completely integrated with the educational program. The court, held that the school was not a "special school" within the meaning of section 1.213-1(e)(1)(v)(a) and that only so much of the tuition that exceeded the cost of tuition for other private schools in the area was an expense for medical care. See also *Hendrick v. Commissioner*, 35 T.C. 1223 (1961), acq. 1962-2 C.B. 4; but cf. *Greisdorf v. Commissioner*, 54 T.C. 1684 (1970), acq. 1970-2 C.B. xix, and Rev. Rul. 78-340.

In *Fay v. Commissioner*, 76 T.C. 408 (1981), the taxpayers sent their two children, who had learning disabilities, to a private school that offered a regular curriculum based on the Montessori method and a special program for children with learning disabilities. The staff of the special

program were educators trained to work with learning disabled children. Children received a psychological and educational evaluation prior to admission to the program. Further, based on observations by the staff of the special program, the curriculum of each learning disabled student was tailored to fit his or her particular need. The court held that the separate cost of the learning disabilities program, but not the basic tuition, was an expense for medical care.

The above authorities support the conclusion that amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of learning disabilities resulting from ADHD may be amounts paid for "medical care" within the meaning of section 213(d)(1)(A). However, amounts paid for educational programs of a general nature that are not specifically for the diagnosis, cure, mitigation, treatment, or prevention of ADHD are not amounts paid for medical care, even if such programs are beneficial to learning disabled students.

Holding

We conclude, based strictly on the information submitted and representations made, that the general program at S is educational and not medical in nature. S is not a "special school" within the meaning of section 1.213-1(e)(1)(v)(a) because its \$X for the 1998-99 academic year and \$XX for the 1997-98 academic year, is not an expense for medical care.

However, we also conclude, based on the information submitted and representations made, that T is a program that specifically addresses learning disabilities of a medical nature such as ADHD. Therefore, \$Y, the cost of T at S for the 1998-99 academic year is an expense of medical care. Similarly, \$YY, the cost of T at S for the 1997-98 academic year is an expense of medical care. However, you must reduce the amount of medical expenses (before applying the 7.5% floor) by allocating a proportionate part of any grant received to the tuition cost for T. This proportionate part is determined by multiplying the amount of a grant for an academic year by a fraction the numerator of which is the cost of T for an academic year and the denominator of which is the total cost of S for an academic year.

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

No opinion is expressed regarding the federal tax consequences of the transaction described above under any other provision of the Code.

A copy of this ruling should be attached to any income tax return to which it is relevant.

Sincerely,

Assistant Chief Counsel
(Income Tax & Accounting)
By: Michael J. Montemurro
Senior Technician Reviewer,
Branch 2

Internal Revenue Code

§ 213 Medical, dental, etc., expenses.

(a) Allowance of deduction.

There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152), to the extent that such expenses exceed 7.5 percent of adjusted gross income.

(b) Limitation with respect to medicine and drugs.

An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

(c) Special rule for decedents.

(1) Treatment of expenses paid after death.

For purposes of subsection (a) , expenses for the medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation.

Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed—

(A) a statement that such amount has not been allowed as a deduction under section 2053, and

(B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(d) Definitions.

For purposes of this section—

(1) The term "medical care" means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A),

(C) for qualified long-term care services (as defined in section 7702B(c)), or

(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long-term care insurance contract (as defined in section 7702B(b)).

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D) .

(2) Amounts paid for certain lodging away from home treated as paid for medical care.

Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed \$50 for each night for each individual.

(3) Prescribed drug.

The term "prescribed drug" means a drug or biological which requires a prescription of a physician for its use by an individual.

(4) Physician.

The term "physician" has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) Special rule in the case of child of divorced parents, etc.

Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section .

(6) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A) , (B) , and (C) of paragraph (1) —

(A) no amount shall be treated as paid for insurance to which paragraph (1)(D) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

(7) Subject to the limitations of paragraph (6) , premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A) , (B) , and (C) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(8) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

(9) Cosmetic surgery.

(A) In general. The term "medical care" does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

(B) Cosmetic surgery defined. For purposes of this paragraph , the term "cosmetic surgery" means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

(10) Eligible long-term care premiums.

(A) In general. For purposes of this section, the term "eligible long-term care premiums" means the amount paid during a taxable year for any qualified long-term care insurance contract (as defined in section 7702B(b)) covering an individual, to the extent such amount does not exceed the limitation determined under the following table:

In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	\$ 200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500.

(B) Indexing.

(i) In general. In the case of any taxable year beginning in a calendar year after 1997, each dollar amount contained in subparagraph (A) shall be increased by the medical care cost adjustment of such amount for such calendar year. If any increase determined under the preceding sentence is not a multiple of \$10, such increase shall be rounded to the nearest multiple of \$10.

(ii) Medical care cost adjustment. For purposes of clause (i), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

(I) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds

(II) such component for August of 1996.

The Secretary shall, in consultation with the Secretary of Health and Human Services, prescribe an adjustment which the Secretary determines is more appropriate for purposes of this paragraph than the adjustment described in the preceding sentence, and the adjustment so prescribed shall apply in lieu of the adjustment described in the preceding sentence.

(11) Certain payments to relatives treated as not paid for medical care.

An amount paid for a qualified long-term care service (as defined in section 7702B(c)) provided to an individual shall be treated as not paid for medical care if such service is provided—

(A) by the spouse of the individual or by a relative (directly or through a partnership, corporation, or other entity) unless the service is provided by a licensed professional with respect to such service, or

(B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this paragraph, the term "relative" means an individual bearing a relationship to the individual which is described in any of paragraphs (1) through (8) of section 152(a). This paragraph shall not apply for purposes of section 105(b) with respect to reimbursements through insurance.

(e) Exclusion of amounts allowed for care of certain dependents.

Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

Treasury Regulations

§ 1.213-1 Medical, dental, etc., expenses.

Caution: The Treasury has not yet amended Reg §1.213-1 to reflect changes made by P.L. 104-191, P.L. 103-66, P.L. 101-508, P.L. 99-514, P.L. 98-369, P.L. 97-248.

(a) Allowance of deduction.

(1) Section 213 permits a deduction of payments for certain medical expenses (including expenses for medicine and drugs). Except as provided in paragraph (d) of this section (relating to special rule for decedents) a deduction is allowable only to individuals and only with respect to medical expenses actually paid during the taxable year, regardless of when the incident or event which occasioned the expenses occurred and regardless of the method of accounting employed by the taxpayer in making his income tax return. Thus, if the medical expenses are incurred but not paid during the taxable year, no deduction for such expenses shall be allowed for such year.

(2) Except as provided in subparagraph (4)(i) and (5)(i) of this paragraph, only such medical expenses (including the allowable expenses for medicine and drugs) are deductible as exceed 3 percent of the adjusted gross income for the taxable year. For taxable years beginning after December 31, 1966, the amounts paid during the taxable year for insurance that constitute expenses paid for medical care shall, for purposes of computing total medical expenses, be reduced by the amount determined under subparagraph (5)(i) of this paragraph. For the amounts paid during the taxable year for medicine and drugs which may be taken into account in computing total medical expenses, see paragraph (b) of this section. For the maximum deduction allowable under section 213 in the case of certain taxable years, see paragraph (c) of this section. As to what constitutes 'adjusted gross income', see section 62 and the regulations thereunder.

(3) (i) For medical expenses paid (including expenses paid for medicine and drugs) to be deductible, they must be for medical care of the taxpayer, his spouse, or a dependent of the taxpayer and not be compensated for by insurance or otherwise. Expenses paid for the medical care of a dependent, as defined in section 152 and the regulations thereunder, are deductible under this section even though the dependent has gross income equal to or in excess of the amount determined pursuant to §1.151-2 applicable to the calendar year in which the taxable year of the taxpayer begins. Where such expenses are paid by two or more persons and the conditions of section 152 (c) and the regulations thereunder are met, the medical expenses are deductible only by the person designated in the multiple support agreement filed by such persons and such deduction is limited to the amount of medical expenses paid by such person.

(ii) An amount excluded from gross income under section 105(c) or (d) (relating to amounts received under accident and health plans) and the regulations thereunder shall not constitute compensation for expenses paid for medical care. Exclusion of such amounts from gross income will not affect the treatment of expenses paid for medical care.

(iii) The application of the rule allowing a deduction for medical expenses to the extent not compensated for by insurance or otherwise may be illustrated by the following example in which it is assumed that neither the taxpayer nor his wife has attained the age of 65:

Example. Taxpayer H, married to W and having one dependent child, had adjusted gross income for 1956 of \$3,000. During 1956 he paid \$300 for medical care, of which \$100 was for treatment of his dependent child and \$200 for an operation on W which was performed in September 1955. In 1956 he received a payment of \$50 for health insurance to cover the portion of the cost of W's

operation performed during 1955. The deduction allowable under section 213 for the calendar year 1956, provided the taxpayer itemizes his deductions and does not compute his tax under section 3 by use of the tax table, is \$160, computed as follows:

Payments in 1956 for medical care.....	\$300
Less: Amount of insurance received in 1956.....	50
Payments in 1956 for medical care not compensated for during 1956.....	250
Less: 3 percent of \$3,000 (adjusted gross income).....	90
Excess allowable as a deduction for 1956.....	160

(4) (i) For taxable years beginning before January 1, 1967, where either the taxpayer or his spouse has attained the age of 65 before the close of the taxable year, the 3-percent limitation on the deduction for medical expenses for medical care of the taxpayer or his spouse. Moreover, for taxpayer years beginning after December 31, 1959, and before January 1, 1967, the 3-percent limitation on the deduction for medical expenses does not apply to amounts paid for the medical care of a dependent (as defined in section 152) who is the mother or father of the taxpayer or of his spouse and who has attained the age of 65 before the close of the taxpayer's taxable year. For taxable years beginning before January 1, 1964, and for taxable years beginning after December 31, 1966, all amounts paid by the taxpayer for medicine and drugs are subject to the 1-percent limitation provided by section 213(b). For taxable years beginning after December 31, 1963, and before January 1, 1967, the 1-percent limitation provided by section 213(b) does not apply, under certain circumstances, to amounts paid by the taxpayer for medicine and drugs for the taxpayer and his spouse or for a dependent (as defined in sec. 152) who is the mother or father of the taxpayer or of his spouse. (For additional provisions relating to the 1-percent limitation with respect to medicine and drugs, see paragraph (b) of this section.) For taxable years beginning before January 1, 1967, whether or not the 3-percent or 1-percent limitation applies, the total medical expenses deductible under section 213 are subject to the limitations described in section 213(c) and paragraph (c) of this section and, where applicable, to the limitations described in section 213(g) and § 1.213-2.

(ii) The age of a taxpayer shall be determined as of the last day of his taxable year. In the event of the taxpayer's death, his taxable year shall end as of the date of his death. The age of a taxpayer's spouse shall be determined as of the last day of the taxpayer's taxable year, except that, if the spouse dies within such taxable year, her age shall be determined as of the date of her death. Likewise, the age of the taxpayer's dependent who is the mother or father of the taxpayer or of his spouse shall be determined as of the last day of the taxpayer's taxable year but not later than the date of death of such dependent.

(iii) The application of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example (1). Taxpayer A, who attained the age of 65 on February 22, 1956, makes his return on the basis of the calendar year. During the year 1956, A had adjusted gross income of \$8,000, and paid the following medical bills: (a) \$560 (7 percent of adjusted gross income) for the medical care of himself and his spouse, and (b) \$160 (2 percent of adjusted gross income) for the medical care of his dependent son. No part of these payments was for medicine and drugs nor compensated for by insurance or otherwise. The allowable deduction under section 213 for 1956 is \$560, the full amount of the medical expenses for the taxpayer and his spouse. No deduction is allowable for the amount of \$160 paid for medical care of the dependent son since the amount of such payment (determined without regard to the payments for the care of the taxpayer and his spouse) does not exceed 3 percent of adjusted gross income.

Example (2). H and W, who have a dependent child, made a joint return for the calendar year 1956. H became 65 years of age on August 15, 1956. The adjusted gross income of H and W in 1956 was \$40,000 and they paid in such year the following amounts for medical care: (a) \$3,000 for the medical care of H; (b) \$2,000 for the medical care of W; and (c) \$3,000 for the medical care of the dependent child. No part of these payments was for medicine and drugs nor compensated for by insurance or otherwise. The allowable deduction under section 213 for medical expenses paid in 1956 is \$6,800 computed as follows:

Payments for medical care of H and W in 1956.....	\$ 5,000	
Payments for medical care of the dependent in 1956.....	\$3,000	
Less: 3 percent of \$40,000 (adjusted gross income).....	1,200	
		1,800

Allowable deduction for 1956.....	6,800	

Example (3). D and his wife, E, made a joint income tax return for the calendar year 1962, and reported adjusted gross income of \$30,000. On December 13, 1962, D attained the age of 65. During the year 1962, D's father, F, who was 87 years of age, received over half of his support from, and was a dependent (as defined in section 152) of, D. However, D could not claim an exemption under section 151 for F because F had gross income from rents in 1962 of \$800. D paid the following medical expenses in 1962, none of which were compensated for by insurance or otherwise: hospital and doctor bills for D and E, \$6,500; hospital and doctor bills for F, \$4,850; medicine and drugs for D and E, \$225, and for F, \$225. Since none of the medical expenses are subject to the 3-percent limitation, the amount of medical expenses to be taken into account (before computing the maximum deduction) is \$11,500, computed as follows:

Hospital and doctor bills--for D and E.....	\$ 6,500	
Hospital and doctor bills--for F.....	4,850	
Medicine and drugs--for D and E.....	\$225	
Medicine and drugs--for F.....	225	

Total medicine and drugs.....	450
Less: 1 percent of adjusted gross income (\$30,000).....	300
Allowable expenses for medicine and drugs...	150
Total medical expenses taken into account.....	11,500

Since an exemption cannot be claimed for F on the 1962 return of D and E, their deduction for medical expenses (assuming that section 213(g) does not apply) is limited to \$10,000 for that year (\$5,000 multiplied by the two exemptions allowed for D and E under section 151(b)). If these identical facts had occurred in a taxable year beginning before January 1, 1962, the medical expense deduction for D and E would, for such taxable year, be limited to \$5,000 (\$2,500 multiplied by the two exemptions allowed for D and E under section 151(b)). See paragraph (c) of this section.

Example (4). Assume the same facts as in Example (3), except that D furnished the entire support of his father's twin sister, G, who had no gross income during 1962 and for whom D was entitled to a dependency exemption. In addition, D paid \$4,800 to doctors and hospitals during 1962 for the medical care of G. No part of the \$4,800 was for medicine and drugs, and no amount was compensated for by insurance or otherwise. For purposes of the maximum limitation under section 213(c), the maximum deduction for medical expenses on the 1962 return of D and E is limited to \$15,000 (\$5,000 multiplied by 3, the number of exemptions allowed under section 151, exclusive of the exemptions for old age or blindness). If these identical facts had occurred in a taxable year beginning before January 1, 1962, the medical expense deduction for D and E would, for such taxable year, be limited to \$7,500 (\$2,500 multiplied by the three exemptions allowed under section 151, exclusive of the exemptions for old age or blindness). The medical expenses to be taken into account by D and E for 1962 and the maximum deductions allowable for such expenses are \$15,400 and \$15,000, respectively, computed as follows:

Medical expenses per example (3).....	\$11,500
Add: Expenses paid for G.....	\$4,800
Less: 3 percent of adjusted gross income (\$30,000).....	900
	3,900
Total medical expenses taken into account.....	15,400
Maximum deduction for 1962 (\$5,000 multiplied by 3 exemptions).....	15,000
Medical expenses not deductible.....	400

Example (5). Assume that the facts set forth in Example (3) had occurred in respect of the calendar year 1964 rather than the calendar year 1962. Since both D and his father, F, had attained the age of 65 before the close of the taxable year, the 1-percent limitation does not apply to the amounts, paid for medicine and drugs for D, E, and F. Accordingly, the total medical expenses taken into account by D and E for 1964 would be \$11,800 (rather than \$11,500 as in Example (3)) computed as follows:

Hospital and doctor bills--for D and E.....	\$ 6,500
Hospital and doctor bills--for F.....	4,850
Medicine and drugs--for D and E.....	225
Medicine and drugs--for F.....	225
<hr/>	
Total medical expenses taken into account.....	11,800

(5) (i) For taxable years beginning after December 31, 1966, there may be deducted without regard to the 3-percent limitation the lesser of—(a) One-half of the amounts paid during the taxable year for insurance which constitute expenses for medical care for the taxpayer, his spouse, and dependents; or (b) \$150.

(ii) The application of subdivision (i) of this subparagraph may be illustrated by the following example:

Example. H and W made a joint return for the calendar year 1967. The adjusted gross income of H and W for 1967 was \$10,000 and they paid in such year \$370 for medical care of which amount \$350 was paid for insurance which constitutes medical care for H and W. No part of the payment was for medicine and drugs or was compensated for by insurance or otherwise. The allowable deduction under section 213 for medical expenses paid in 1967 is \$150, computed as follows:

(1) Lesser of \$175 (one-half of amounts paid for insurance) or \$150.....	\$150
(2) Payments for medical care.....	\$370
(3) Less line 1.....	150
(4) Medical expenses to be taken into account under 3-percent limitation (line 2 minus line 3).....	\$220
(5) Less: 3 percent of \$10,000 (adjusted gross income).....	300
(6) Excess allowable as a deduction for 1967 (excess of line 4 over line 5).....	0
(7) Allowable medical expense deduction for 1967 (line 1 plus line 6).....	\$150

(b) Limitation with respect to medicine and drugs.

(1) Taxable years beginning before January 1, 1964. (i) Amounts paid during taxable years beginning before January 1, 1964, for medicine and drugs are to be taken into account in computing the allowable deduction for medical expenses paid during the taxable year only to the extent that the aggregate of such amounts exceeds 1 percent of the adjusted gross income for the taxable year. Thus, if the aggregate of the amounts paid for medicine and drugs exceeds 1 percent of adjusted gross income, the excess is added to other medical expenses for the purpose of computing the medical expense deduction. The application of this subdivision may be illustrated by the following example:

Example. The taxpayer, a single individual with no dependents, had an adjusted gross income of \$6,000 for the calendar year 1956. During 1956, he paid a doctor \$300 for medical services, a hospital \$100 for hospital care, and also spent \$100 for medicine and drugs. These payments were not compensated for by insurance or otherwise. The deduction allowable under section 213 for the calendar year 1956 is \$260, computed as follows:

Payments for medical care in 1956:

Doctor.....	\$300	
Hospital.....	100	
Medicine and drugs.....	\$100	
Less: 1 percent of \$6,000 (adjusted gross income).....	60	40
		<hr/>
Total medical expenses taken into account.....	440	
Less: 3 percent of \$6,000 (adjusted gross income).....	180	
		<hr/>
Allowable deduction for 1956.....	260	

(ii) For taxable years beginning before January 1, 1964, the 1-percent limitation is applicable to all amounts paid by a taxpayer during the taxable year for medicine and drugs. Moreover, this limitation applies regardless of the fact that the amounts paid are for medicine and drugs for the taxpayer, his spouse, or dependent parent (the mother or father of the taxpayer or of his spouse) who has attained the age of 65 before the close of the taxable year. In a case where either a taxpayer or his spouse has attained the age of 65 and the taxpayer pays an amount in excess of 1 percent of adjusted gross income for medicine and drugs for himself, his spouse, and his dependents, it is necessary to apportion the 1 percent of adjusted gross income (the portion which is not taken into account as expenses paid for medical care) between the taxpayer and his spouse on the one hand and his dependents on the other. The part of the 1 percent allocable to the taxpayer and his spouse is an amount which bears the same ratio to 1 percent of his adjusted gross income which the amount paid for medicine and drugs for the taxpayer and his spouse bears to

the total amount paid for medicine and drugs for the taxpayer, his spouse, and his dependents. The balance of the 1 percent shall be allocated to his dependents. The amount paid for medicine and drugs in excess of the allocated part of the 1 percent shall be taken into account as payments for medical care for the taxpayer and his spouse on the one hand and his dependents on the other, respectively. A similar apportionment must be made in the case of a dependent parent (65 years of age or over) of the taxpayer or his spouse. The application of this subdivision (ii) may be illustrated by the following example:

Example. H and W, who have a dependent child, made a joint return for the calendar year 1956. H became 65 years of age on September 15, 1956. The adjusted gross income of H and W for 1956 is \$10,000. During the year, H and W paid the following amounts for medical care: (i) \$1,000 for doctors and hospital expenses and \$180 for medicine and drugs for themselves; and (ii) \$500 for doctors and hospital expenses and \$140 for medicine and drugs for the dependent child. These payments were not compensated for by insurance or otherwise. The deduction allowable under section 213(a)(2) for medical expenses paid in 1956 is \$1,420, computed as follows:

H and W:	
Payments for doctors and hospital.....	\$1,000.00
Payments for medicine and drugs.....	\$180.00
Less: Limitation for medicine and drugs (see computation below).....	56.25
	123.75
Medical expenses for H and W to be taken into account.....	1,123.75
Dependent:	
Payments for doctors and hospital.....	500.00
Payments for medicine and drugs.....	\$140.00
Less: Limitation for medicine and drugs (see computation below).....	43.75
	96.25
Total medical expenses.....	596.25
Less: 3 percent of \$10,000 (adjusted gross income).....	300.00
Medical expenses for the dependent to be taken into account.....	296.25
Allowable deductions for 1956.....	1,420.00
Payments for medicine and drugs:	
H and W.....	180.00
Dependent.....	140.00
Total payments.....	320.00
Less: 1 percent of \$10,000 (adjusted gross	

income).....	100.00
Payments to be taken into account.....	220.00

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Allocation of 1-percent exclusion:

180		
H and W ---- X \$100	56.25	
320		
140		
Dependent ---- X \$100.....	43.75	
320		-----
Total.....	100.00	

(2) Taxable years beginning after December 31, 1963. (i) Except as otherwise provided in subdivision (ii) of this subparagraph, amounts paid during taxable years beginning after December 31, 1963, for medicine and drugs are to be taken into account in computing the allowable deduction for medical expenses paid during the taxable year only to the extent that the aggregate of such amounts exceeds 1 percent of the adjusted gross income for the taxable year. Thus, if the aggregate of the amounts paid for medicine and drugs which are subject to the 1-percent limitation exceeds 1 percent of adjusted gross income, the excess is added to other medical expenses for the purpose of computing the medical expense deduction.

(ii) The 1-percent limitation provided by section 213 does not apply to amounts paid by a taxpayer during a taxable year beginning after December 31, 1963, and before January 1, 1967, for medicine and drugs for the medical care of the taxpayer and his spouse if either has attained the age of 65 before the close of the taxable year. Moreover, for taxable years beginning after December 31, 1963, and before January 1, 1967, the 1-percent limitation with respect to medicine and drugs does not apply to amounts paid for the medical care of a dependent (as defined in sec. 152) who is the mother or father of the taxpayer or of his spouse and who has attained the age of 65 before the close of the taxpayer's taxable year. Amounts paid for medicine and drugs which are not subject to the limitation on medicine and drugs are added to other medical expenses of a taxpayer and his spouse or the dependent (as the case may be) for the purpose of computing the medical expense deduction.

(iii) The application of this subparagraph may be illustrated by the following examples:
 Example (1). H and W, who have a dependent child, C, were both under 65 years of age at the close of the calendar year 1964 and made a joint return for that calendar year. During the year 1964, H's mother, M, attained the age of 65, and was a dependent (as defined in section 152) of H. The adjusted gross income of H and W in 1964 was \$12,000. During 1964 H and W paid the following amounts for medical care: (i) \$600 for doctors and hospital expenses and \$120 for medicine and drugs for themselves; (ii) \$350 for doctors and hospital expenses and \$60 for medicine and drugs for C; and (iii) \$400 for doctors and hospital expenses and \$100 for medicine and drugs for M. These payments were not compensated for by insurance or otherwise. The deduction allowable under section 213(a)(1) for medical expenses paid in 1964 is \$1,150, computed as follows:

H, W, and C:	
Payments for doctors and hospital.....	\$ 950
Payments for medicine and drugs.....	\$180
Less: 1 percent of \$12,000 (adjusted gross income).....	120 60
Total medical expenses.....	1,010
Less: 3 percent of \$12,000 (adjusted gross income).....	360
Medical expenses of H, W, and C to be taken into account.....	\$650
M:	
Payments for doctors and hospitals.....	400
Payments for medicine and drugs.....	100
Medical expenses of M to be taken into account.....	500
Allowable deduction for 1964.....	1,150

Example (2). H and W, who have a dependent child, C, made a joint return for the calendar year 1964, and reported adjusted gross income of \$12,000. H became 65 years of age on January 23, 1964. F, the 87 year old father of W, was a dependent of H. During 1964, H and W paid the following amounts for medical care: (i) \$400 for doctors and hospital expenses and \$75 for medicine and drugs for H; (ii) \$200 for doctors and hospital expenses and \$100 for medicine and drugs for W; (iii) \$200 for doctors and hospital expenses and \$175 for medicine and drugs for C; and (iv) \$700 for doctors and hospital expenses and \$150 for medicine and drugs for F. These payments were not compensated for by insurance or otherwise. The deduction allowable under section 213(a)(2) for medical expenses paid in 1964 is \$1,625, computed as follows:

H and W:	
Payments for doctors and hospital.....	\$600
Payments for medicine and drugs.....	175
Medical expenses for H and W to be taken into account.....	\$ 775
F:	
Payments for doctors and hospital.....	700
Payments for medicine and drugs.....	150
Medical expenses for F to be taken into account.....	850
C:	
Payments for doctors and hospital.....	200
Payments for medicine and drugs.....	\$175

Less: 1 percent of \$12,000 (adjusted gross income).....	120	55
Total medical expenses.....		255
Less: 3 percent of \$12,000 (adjusted gross income).....	360	
Medical expenses for C to be taken into account.....		0
Allowable deduction for 1964.....		1,625

Example (3). Assume the same facts as example (2) except that the calendar year of the return is 1967 and the amounts paid for medical care were paid during 1967. The deduction allowable under section 213(a) for medical expenses paid in 1967 is \$1,520, computed as follows:

Payments for doctors and hospitals:	
H.....	\$ 400
W.....	200
C.....	200
F.....	700
	<u>\$1,500</u>

Payments for medicine and drugs:		
H.....	75	
W.....	100	
C.....	175	
F.....	150	
	<u>\$500</u>	
Less: 1 percent of \$12,000 (adjusted gross income).....	120	380
Medical expenses to be taken into account.....		\$1,880
Less: 3 percent of \$12,000 (adjusted gross income).....	360	
Allowable medical expense deduction for 1967.....		1,520

(3) Definition of medicine and drugs. For definition of medicine and drugs, see paragraph (e)(2) of this section.

(c) Maximum limitations.

(1) For taxable years beginning after December 31, 1966, there shall be no maximum limitation on the amount of the deduction allowable for payment of medical expenses.

(2) Except as provided in section 213(g) and §1.213-2 (relating to maximum limitations with respect to certain aged and disabled individuals for taxable years beginning before January 1, 1967), for taxable years beginning after December 31, 1961, and before January 1, 1967, the maximum deduction allowable for medical expenses paid in any one taxable year is the lesser of:

(i) \$5,000 multiplied by the number of exemptions allowed under section 151 (exclusive of exemptions allowed under section 151(c) for a taxpayer or spouse attaining the age of 65, or section 151(d) for a taxpayer who is blind or a spouse who is blind);

(ii) \$10,000, if the taxpayer is single, not the head of a household (as defined in section 1(b)(2)) and not a surviving spouse (as defined in section 2(b)), or is married and files a separate return; or

(iii) \$20,000 if the taxpayer is married and files a joint return with his spouse under section 6013, or is the head of a household (as defined in section 1(b)(2)), or a surviving spouse (as defined in section 2(b)).

(3) The application of subparagraph (2) of this paragraph may be illustrated by the following example:

Example. H and W made a joint return for the calendar year 1962 and were allowed five exemptions (exclusive of exemptions under sec. 151 (c) and (d)), one for each taxpayer and three for their dependents. The adjusted gross income of H and W in 1962 was \$80,000. They paid during such year \$26,000 for medical care, no part of which is compensated for by insurance or otherwise. The deduction allowable under section 213 for the calendar year 1962 is \$20,000, computed as follows:

Payments for medical care in 1962.....	\$26,000
Less: 3 percent of \$80,000 (adjusted gross income).....	2,400
Excess of medical expenses in 1962 over 3 percent of adjusted gross income.....	23,600
Allowable deduction for 1962 (\$5,000 multiplied by five exemptions allowed under sec. 151 (b) and (e) but not in excess of \$20,000).....	20,000

(4) Except as provided in section 213(g) and §1.213-2 (relating to certain aged and disabled individuals), for taxable years beginning before January 1, 1962, the maximum deduction allowable for medical expenses paid in any 1 taxable year is the lesser of:

(i) \$2,500 multiplied by the number of exemptions allowed under section 151 (exclusive of exemptions allowed under section 151(c) for a taxpayer or spouse attaining the age of 65, or section 151(d) for a taxpayer who is blind or a spouse who is blind);

(ii) \$5,000, if the taxpayer is single, not the head of a household (as defined in section 1(b)(2)) and not a surviving spouse (as defined in section 2(b)) or is married and files a separate return; or

(iii) \$10,000, if the taxpayer is married and files a joint return with his spouse under section 6013, or is head of a household (as defined in section 1(b)(2)), or a surviving spouse (as defined in section 2(b)).

(5) For the maximum deduction allowable for taxable years beginning before January 1, 1967, if the taxpayer or his spouse is age 65 or over and is disabled, see §1.213-2.

(d) Special rule for decedents.

(1) For the purpose of section 213(a), expenses for medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time the medical services were rendered. However, no credit or refund of tax shall be allowed for any taxable year for which the statutory period for filing a claim has expired. See section 6511 and the regulations thereunder.

(2) The rule prescribed in subparagraph (1) of this paragraph shall not apply where the amount so paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent unless there is filed in duplicate (i) a statement that such amount has not been allowed as a deduction under section 2053 in computing the taxable estate of the decedent and (ii) a waiver of the right to have such amount allowed at any time as a deduction under section 2053. The statement and waiver shall be filed with or for association with the return, amended return, or claim for credit or refund for the decedent for any taxable year for which such an amount is claimed as a deduction.

(e) Definitions.

(1) General. (i) The term 'medical care' includes the diagnosis, cure, mitigation, treatment, or prevention of disease. Expenses paid for 'medical care' shall include those paid for the purpose of affecting any structure or function of the body or for transportation primarily for and essential to medical care. See subparagraph (4) of this paragraph for provisions relating to medical insurance.

(ii) Amounts paid for operations or treatments affecting any portion of the body, including obstetrical expenses and expenses of therapy or X-ray treatments, are deemed to be for the purpose of affecting any structure or function of the body and are therefore paid for medical care. Amounts expended for illegal operations or treatments are not deductible. Deductions for expenditures for medical care allowable under section 213 will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness. Thus, payments for the following are payments for medical care: hospital services, nursing services (including nurse's board where paid by the taxpayer), medical, laboratory, surgical, dental and other diagnostic and healing services, X-rays, medicine and drugs (as defined in subparagraph (2) of this paragraph, subject to the 1-percent limitation in paragraph (b) of this section), artificial teeth or limbs, and ambulance hire. However, an expenditure which is merely beneficial to the

general health of an individual, such as an expenditure for a vacation, is not an expenditure for medical care.

(iii) Capital expenditures are generally not deductible for Federal income tax purposes. See section 263 and the regulations thereunder. However, an expenditure which otherwise qualifies as a medical expense under section 213 shall not be disqualified merely because it is a capital expenditure. For purposes of section 213 and this paragraph, a capital expenditure made by the taxpayer may qualify as a medical expense, if it has as its primary purpose the medical care (as defined in subdivisions (i) and (ii) of this subparagraph) of the taxpayer, his spouse, or his dependent. Thus, a capital expenditure which is related only to the sick person and is not related to permanent improvement or betterment of property, if it otherwise qualifies as an expenditure for medical care, shall be deductible; for example, an expenditure for eye glasses, a seeing eye dog, artificial teeth and limbs, a wheel chair, crutches, an inclinor or an air conditioner which is detachable from the property and purchased only for the use of a sick person, etc. Moreover, a capital expenditure for permanent improvement or betterment of property which would not ordinarily be for the purpose of medical care (within the meaning of this paragraph) may, nevertheless, qualify as a medical expense to the extent that the expenditure exceeds the increase in the value of the related property, if the particular expenditure is related directly to medical care. Such a situation could arise, for example, where a taxpayer is advised by a physician to install an elevator in his residence so that the taxpayer's wife who is afflicted with heart disease will not be required to climb stairs. If the cost of installing the elevator is \$1,000 and the increase in the value of the residence is determined to be only \$700, the difference of \$300, which is the amount in excess of the value enhancement, is deductible as a medical expense. If, however, by reason of this expenditure, it is determined that the value of the residence has not been increased, the entire cost of installing the elevator would qualify as a medical expense. Expenditures made for the operation or maintenance of a capital asset are likewise deductible medical expenses if they have as their primary purpose the medical care (as defined in subdivisions (i) and (ii) of this subparagraph) of the taxpayer, his spouse, or his dependent. Normally, if a capital expenditure qualifies as a medical expense, expenditures for the operation or maintenance of the capital asset would also qualify provided that the medical reason for the capital expenditure still exists. The entire amount of such operation and maintenance expenditures qualifies, even if none or only a portion of the original cost of the capital asset itself qualified.

(iv) Expenses paid for transportation primarily for and essential to the rendition of the medical care are expenses paid for medical care. However, an amount allowable as a deduction for 'transportation primarily for and essential to medical care' shall not include the cost of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a taxpayer go to a warm climate in order to alleviate a specific chronic ailment, the cost of meals and lodging while there would not be deductible. On the other hand, if the travel is undertaken merely for the general improvement of a taxpayer's health, neither the cost of transportation nor the cost of meals and lodging would be deductible. If a doctor prescribes an operation or other medical care, and the taxpayer chooses for purely personal considerations to travel to another locality (such as a resort area) for the operation or the other medical care, neither the cost of transportation nor the cost of meals and lodging (except where paid as part of a hospital bill) is deductible.

(v) The cost of in-patient hospital care (including the cost of meals and lodging therein) is an expenditure for medical care. The extent to which expenses for care in an institution other than a hospital shall constitute medical care is primarily a question of fact which depends upon the condition of the individual and the nature of the services he receives (rather than the nature of the institution). A private establishment which is regularly engaged in providing the types of care or

services outlined in this subdivision shall be considered an institution for purposes of the rules provided herein. In general, the following rules will be applied:

(a) Where an individual is in an institution because his condition is such that the availability of medical care (as defined in subdivisions (i) and (ii) of this subparagraph) in such institution is a principal reason for his presence there, and meals and lodging are furnished as a necessary incident to such care, the entire cost of medical care and meals and lodging at the institution, which are furnished while the individual requires continual medical care, shall constitute an expense for medical care. For example, medical care includes the entire cost of institutional care for a person who is mentally ill and unsafe when left alone. While ordinary education is not medical care, the cost of medical care includes the cost of attending a special school for a mentally or physically handicapped individual, if his condition is such that the resources of the institution for alleviating such mental or physical handicap are a principal reason for his presence there. In such a case, the cost of attending such a special school will include the cost of meals and lodging, if supplied, and the cost of ordinary education furnished which is incidental to the special services furnished by the school. Thus, the cost of medical care includes the cost of attending a special school designed to compensate for or overcome a physical handicap, in order to qualify the individual for future normal education or for normal living, such as a school for the teaching of braille or lip reading. Similarly, the cost of care and supervision, or of treatment and training, of a mentally retarded or physically handicapped individual at an institution is within the meaning of the term 'medical care'.

(b) Where an individual is in an institution, and his condition is such that the availability of medical care in such institution is not a principal reason for his presence there, only that part of the cost of care in the institution as is attributable to medical care (as defined in subdivisions (i) and (ii) of this subparagraph) shall be considered as a cost of medical care; meals and lodging at the institution in such a case are not considered a cost of medical care for purposes of this section. For example, an individual is in a home for the aged for personal or family considerations and not because he requires medical or nursing attention. In such case, medical care consists only of that part of the cost for care in the home which is attributable to medical care or nursing attention furnished to him; his meals and lodging at the home are not considered a cost of medical care.

(c) It is immaterial for purposes of this subdivision whether the medical care is furnished in a Federal or State institution or in a private institution.

(vi) See section 262 and the regulations thereunder for disallowance of deduction for personal, living, and family expenses not falling within the definition of medical care.

(2) Medicine and drugs. The term 'medicine and drugs' shall include only items which are legally procured and which are generally accepted as falling within the category of medicine and drugs (whether or not requiring a prescription). Such term shall not include toiletries or similar preparations (such as toothpaste, shaving lotion, shaving cream, etc.) nor shall it include cosmetics (such as face creams, deodorants, hand lotions, etc., or any similar preparation used for ordinary cosmetic purposes) or sundry items. Amounts expended for items which, under this subparagraph, are excluded from the term 'medicine and drugs' shall not constitute amounts expended for 'medical care'.

(3) Status as spouse or dependent. In the case of medical expenses for the care of a person who is the taxpayer's spouse or dependent, the deduction under section 213 is allowable if the status of such person as 'spouse' or 'dependent' of the taxpayer exists either at the time the medical services were rendered or at the time the expenses were paid. In determining whether such status as 'spouse' exists, a taxpayer who is legally separated from his spouse under a decree of separate

maintenance is not considered as married. Thus, payments made in June 1956 by A, for medical services rendered in 1955 to B, his wife, may be deducted by A for 1956 even though, before the payments were made, B may have died or in 1956 secured a divorce. Payments made in July 1956 by C, for medical services rendered to D in 1955 may be deducted by C for 1956 even though C and D were not married until June 1956.

(4) Medical insurance. (i) (a) For taxable years beginning after December 31, 1966, expenditures for insurance shall constitute expenses paid for medical care only to the extent that such amounts are paid for insurance covering expenses of medical care referred to in subparagraph (1) of this paragraph. In the case of an insurance contract under which amounts are payable for other than medical care (as, for example, a policy providing an indemnity for loss of income or for loss of life, limb, or sight)—

(1) No amount shall be treated as paid for insurance covering expenses of medical care referred to in subparagraph (1) of this paragraph unless the charge for such insurance is either separately stated in the contract or furnished to the policyholder by the insurer in a separate statement,

(2) The amount taken into account as the amount paid for such medical insurance shall not exceed such charge, and

(3) No amount shall be treated as paid for such medical insurance if the amount specified in the contract (or furnished to the policyholder by the insurer in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

For purposes of the preceding sentence, amounts will be considered payable for other than medical care under the contract if the contract provides for the waiver of premiums upon the occurrence of an event. In determining whether a separately stated charge for insurance covering expenses of medical care is unreasonably large in relation to the total premium, the relationship of the coverages under the contract together with all of the facts and circumstances shall be considered. In determining whether a contract constitutes an 'insurance' contract it is irrelevant whether the benefits are payable in cash or in services. For example, amounts paid for hospitalization insurance, for membership in an association furnishing cooperative or so-called free-choice medical service, or for group hospitalization and clinical care are expenses paid for medical care. Premiums paid under Part B, Title XVIII of the Social Security Act (42 U.S.C. 1395j-1395w), relating to supplementary medical insurance benefits for the aged, are amounts paid for insurance covering expenses of medical care. Taxes imposed by any governmental unit do not, however, constitute amounts paid for such medical insurance.

(b) For taxable years beginning after December 31, 1966, subject to the rules of (a) of this subdivision, premiums paid during a taxable year by a taxpayer under the age of 65 for insurance covering expenses of medical care for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 are to be treated as expenses paid during the taxable year for insurance covering expenses of medical care if the premiums for such insurance are payable (on a level payment basis) under the contract—

(1) For a period of 10 years or more, or

(2) Until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

For purposes of this subdivision (b), premiums will be considered payable on a level payment basis if the total premium under the contract is payable in equal annual or more frequent installments. Thus, a total premium of \$10,000 payable over a period of 10 years at \$1,000 a year shall be considered payable on a level payment basis.

(ii) For taxable years beginning before January 1, 1967, expenses paid for medical care shall include amounts paid for accident or health insurance. In determining whether a contract constitutes an 'insurance' contract it is irrelevant whether the benefits are payable in cash or in services. For example, amounts paid for hospitalization insurance, for membership in an association furnishing co-operative or so-called free-choice medical service, or for group hospitalization and clinical care are expenses paid for medical care.

(f) Exclusion of amounts allowed for care of certain dependents. Amounts taken into account under section 44A in computing a credit for the care of certain dependents shall not be treated as expenses paid for medical care.

(g) Reimbursement for expenses paid in prior years.

(1) Where reimbursement, from insurance or otherwise, for medical expenses is received in a taxable year subsequent to a year in which a deduction was claimed on account of such expenses, the reimbursement must be included in gross income in such subsequent year to the extent attributable to (and not in excess of) deductions allowed under section 213 for any prior taxable year. See section 104, relating to compensation for injuries or sickness, and section 105(b), relating to amounts expended for medical care, and the regulations thereunder, with regard to amounts in excess of or not attributable to deductions allowed.

(2) If no medical expense deduction was taken in an earlier year, for example, if the standard deduction under section 141 was taken for the earlier year, the reimbursement received in the taxable year for the medical expense of the earlier year is not includible in gross income.

(3) In order to allow the same aggregate medical expense deductions as if the reimbursement received in a subsequent year or years had been received in the year in which the payments for medical care were made, the following rules shall be followed:

(i) If the amount of the reimbursement is equal to or less than the amount which was deducted in a prior year, the entire amount of the reimbursement shall be considered attributable to the deduction taken in such prior year (and hence includible in gross income); or

(ii) If the amount of the reimbursement received in such subsequent year or years is greater than the amount which was deducted for the prior year, that portion of the reimbursement received which is equal in amount to the deduction taken in the prior year shall be considered as attributable to such deduction (and hence includible in gross income); but

(iii) If the deduction for the prior year would have been greater but for the limitations on the maximum amount of such deduction provided by section 213(c), then the amount of the reimbursement attributable to such deduction (and hence includible in gross income) shall be the amount of the reimbursement received in a subsequent year or years reduced by the amount disallowed as a deduction because of the maximum limitation, but not in excess of the deduction allowed for the previous year.

(4) The application of subparagraphs (1), (2), and (3) of this paragraph may be illustrated by the following examples: Examples (1) and (2) reflect the maximum limitation on the medical expense deduction applicable to taxable years beginning after December 31, 1961. Examples (3) and (4) reflect the maximum limitation on the medical expense deduction applicable to taxable years beginning prior to January 1, 1962. For explanation of such maximum medical expense limitations, see paragraph (c) of this section.

Example (1). Taxpayer A, a single individual (not the head of a household and not a surviving spouse) with one dependent, is entitled to two exemptions under the provisions of section 151. He

had an adjusted gross income of \$35,000 for the calendar year 1962. During 1962 he paid \$16,000 for medical care. A received no reimbursement for such medical expenses in 1962, but in 1963 he received \$6,000 upon an insurance policy covering the medical expenses which he paid in 1962. A was allowed a deduction of \$10,000 (the maximum) from his adjusted gross income for 1962. The amount which A must include in his gross income for 1963 is \$1,050, and the amount to be excluded from gross income for 1963 is \$4,950, computed as follows:

Payments for medical care in 1962 (not reimbursed in 1962).....	\$16,000	
Less: 3 percent of \$35,000 (adjusted gross income).....		1,050
Excess of medical expenses not reimbursed in 1962 over 3 percent of adjusted gross income.....		14,950
Allowable deduction for 1962.....	10,000	
Amount by which the medical deductions for 1962 would have been greater than \$10,000 but for the limitations on the maximum amount provided by section 213.....	4,950	
Reimbursement received in 1963.....	\$ 6,000	
Less: Amount by which the medical deduction for 1962 would have been greater than \$10,000 but for the limitations on the maximum amount provided by section 213.....	4,950	
Reimbursement received in 1963 reduced by the amount by which the medical deduction for 1962 would have been greater than \$10,000 but for the limitations on the maximum amount provided by section 213.....	1,050	
Amount attributed to medical deduction taken for 1962.....	1,050	
Amount to be included in gross income for 1963.....		1,050
Amount to be excluded from gross income for 1963 (\$6,000 less \$1,050).....	4,950	

Example (2). Assuming that A, in example (1), received \$15,000 in 1963 as reimbursement for the medical expenses which he paid in 1962, the amount which A must include in his gross income for 1963 is \$10,000, and the amount to be excluded from gross income for 1963 is \$5,000, computed as follows:

Reimbursement received in 1963.....	\$15,000
Less: Amount by which the medical deduction for 1962 would have been greater than \$10,000 but for the limitations on the maximum amount provided by section 213.....	4,950

Reimbursement received in 1963 reduced by the amount by which the medical deduction for 1962 would have been greater than \$10,000 but for the limitations on the maximum amount provided by section 213.....	10,050
Deduction allowable for 1962.....	10,000
Amount of reimbursement received in 1963 to be included in gross income for 1963 as attributable to deduction allowable for 1962	10,000
Amount to be excluded from gross income for 1963 (\$15,000 less \$10,000).....	5,000

Example (3). Taxpayer A, a single individual (not the head of a household and not a surviving spouse) with one dependent, is entitled to two exemptions under the provisions of section 151. He had an adjusted gross income of \$35,000 for the calendar year 1956. During 1956 he paid \$9,000 for medical care. A received no reimbursement for such medical expenses in 1956, but in 1957 he received \$6,000 upon an insurance policy covering the medical expenses which he paid in 1956. A was allowed a deduction of \$5,000 (the maximum) from his adjusted gross income for 1956. The amount which A must include in his gross income for 1957 is \$3,050 and the amount to be excluded from gross income for 1957 is \$2,950, computed as follows:

Payments for medical care in 1956 (not reimbursed in 1956).....	\$9,000
Less: 3 percent of \$35,000 (adjusted gross income).....	1,050
Excess of medical expenses not reimbursed in 1956 over 3 percent of adjusted gross income.....	7,950
Allowable deduction for 1956.....	5,000
Amount by which the medical deductions for 1956 would have been greater than \$5,000 but for the limitations on the maximum amount provided by section 213.....	2,950
Reimbursement received in 1957.....	6,000
Less: Amount by which the medical deduction for 1956 would have been greater than \$5,000 but for the limitations on the maximum amount provided by section 213.....	2,950
Reimbursement received in 1957 reduced by the amount by which the medical deduction for 1956 would have been greater than \$5,000 but for the limitations on the maximum amount provided by section 213.....	3,050
Amount attributed to medical deduction taken for 1956.....	3,050
Amount to be included in gross income for 1957.....	3,050
Amount to be excluded from gross income for 1957 (\$6,000 less \$3,050).....	2,950

Example (4). Assuming that A, in example (3), received \$8,000 in 1957 as reimbursement for the medical expenses which he paid in 1956, the amount which A must include in his gross income for 1957 is \$5,000 and the amount to be excluded from gross income for 1957 is \$3,000 computed as follows:

Reimbursement received in 1957.....	\$8,000
Less: Amount by which the medical deduction for 1956 would have been greater than \$5,000 but for the limitations on the maximum amount provided by section 213.....	2,950

Reimbursement received in 1957 reduced by the amount by which the medical deduction for 1956 would have been greater than \$5,000 but for the limitations on the maximum amount provided by section 213.....	5,050
Deduction allowable for 1956.....	\$5,000
Amount of reimbursement received in 1957 to be included in gross income for 1957 as attributable to deduction allowable for 1956	5,000
Amount to be excluded from gross income for 1957 (\$8,000 less \$5,000).....	3,000

(h) Substantiation of deductions. In connection with claims for deductions under section 213, the taxpayer shall furnish the name and address of each person to whom payment for medical expenses was made and the amount and date of the payment thereof in each case. If payment was made in kind, such fact shall be so reflected. Claims for deductions must be substantiated, when requested by the district director, by a statement or itemized invoice from the individual or entity to which payment for medical expenses was made showing the nature of the service rendered, and to or for whom rendered; the nature of any other item of expense and for whom incurred and for what specific purpose, the amount paid therefor and the date of the payment thereof; and by such other information as the district director may deem necessary.

T.D. 6279, 12/13/57, amend T.D. 6451, 2/3/60, T.D. 6604, 7/23/62, T.D. 6661, 6/26/63, T.D. 6761, 9/28/64, T.D. 6946, 2/12/68, T.D. 6985, 12/26/68, T.D. 7114, 5/17/71, T.D. 7317, 6/27/74, T.D. 7643, 8/27/79.

Documents received from MBA parents:

From Les Brodie:

**(NAMES OF TAXPAYERS) (SOCIAL SECURITY NUMBERS)
MEDICAL EXPENSES FOR DEPENDENT**

Pursuant to IRC section 213, the Taxpayer incurred medical expenses associated with the care of their dependent (**name of dependent**). Medical expenses in the amount of (**dollar amount**) were not (and are not anticipated to be) reimbursed by medical insurance. The medical costs deducted include amounts paid for the diagnosis, cure, mitigation, and treatment, of the Taxpayer's dependent.

In (**year**), (**name of dependent's**) physician examined him and determined that he had severe behavioral complications which seriously put him at risk and recommended that he have substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment. The Physician strongly recommended that he be treated at a therapeutic residential school (copy enclosed) and recommended Mount Bachelor Academy for his health and safety. He receives 24 hour care and supervision and is not allowed to be alone.

The principle reason for the dependent's presence at the school is for the special services provided by the school. The academic service provided at the institution is incidental to the medical treatment. The dependent spends an incidental portion of his day for academic purposes and the balance of his day in treatment of his behavioral complications noted above.

The transportation and lodging costs are amounts that were for and essential to medical care that qualified as medical expenses including accompanying the patient to and from the institution and for regular required parent training with the school medical staff and to see the dependent as recommended as part of the treatment. The lodging was not lavish or extravagant and there was no element of personal pleasure, recreation, or vacation in the travel and the cost did not exceed \$50 per day.

Description:	Amount
Pursuant to Treasury Regulation 1.213-1(e)(1)(v) (a): Medical facility costs	\$XXXX
Pursuant to Treasury Regulation 1.213-1(e)(1)(ii): Physicians	XXXX
Pursuant to Treasury Regulation 1.213-1(e)(1)(iv): Lodging costs not to exceed \$50 per night and transportation for required parental training.	XXXX
Subtotal	XXXX
Less:	
Academic Tuition portion	(XXXX)
Clothing and other personal costs	(XXXX)
Total	XXXX

From Les Brodie:

TC, [CCH Dec. 30,311] , Lawrence D. Greisdorf and Marianne C. A. Greisdorf v. Commissioner, [Medical expenses: Special school: Emotionally disturbed child: Primary purpose of school.]--, (Aug. 31, 1970)

[CCH Dec. 30,311]

Lawrence D. Greisdorf and Marianne C. A. Greisdorf v. Commissioner

Docket No. 4699-69 SC, 54 TC --, No. 167, 54 TC 1684, Filed August 31, 1970

[Code [Secs. 213](#) and [262](#) --Result unchanged by '69 Tax Reform Act]

[Medical expenses: Special school: Emotionally disturbed child: Primary purpose of school.]--The petitioner-wife's daughter, a girl of average to above-average intelligence, suffered from an emotional disturbance which caused her to withdraw from reality and to be incapable of functioning normally at school. Upon the recommendation of a psychiatrist, the petitioners enrolled her in a private school which specialized in treating children with problems of this nature and in remedying their learning disabilities. *Held*, the school was a "special school" within the meaning of [section 1.213-1\(e\)\(1\)\(v\)\(a\)](#), Income Tax Regs., and the tuition paid by the petitioners during the year in issue was expended for medical care within the meaning of [sec. 213\(e\)\(1\)](#) of the 1954 Code. *Held, further*, miscellaneous expenses paid to the school were not shown by the petitioners to be properly deductible.

Lawrence D. Greisdorf, pro se, 813 Harrison St., Hollywood, Fla. M. W. Piliaris, for the respondent.

HOYT, Judge:

The respondent determined a deficiency in the petitioners' income tax for the calendar year 1967 in the amount of \$310.25. The case presents the issue of whether the petitioners are entitled to deduct as a medical expense under [section 213](#) of the 1954 Code, the amount of \$1,410,23 which they paid in 1967 to send the petitioner-wife's daughter to the Mills School in Fort Lauderdale, Florida.

Findings of Fact

The stipulation of facts and the exhibits attached thereto are incorporated herein by this reference.

The petitioners, Lawrence D. Greisdorf and Marianne C. A. Greisdorf, were husband and wife during the year in issue. They filed their joint income tax return for the year 1967 with the director of the Southeast Service Center of the Internal Revenue Service, located at Chamblee, Georgia. At the time the petitioner herein was filed, they resided in Hollywood, Florida.

Elizabeth Angell is Marianne's daughter by a former marriage. She was born in 1953. Elizabeth's natural father, a psychiatrist, was an emotionally troubled man who tended to reject his children and discipline them severely, occasionally by assaulting them physically. Instead of giving them backing and support, he demanded it from them. Elizabeth innocently suffered from the traumatic conditions in her home during the period of her father's instability. She manifested various symptoms of emotional disturbance and began to have difficulty in school.

Elizabeth started public school when she was six years old. She was withdrawn from school during the first grade because of poor adjustment. The next year she was placed in the first grade in the Little Flower Catholic School in Hollywood, Florida, where she remained through the fifth grade.

Marianne obtained a divorce in 1961, and she married Lawrence in 1962. In 1963, when Elizabeth was approximately 9 years old, her natural father committed suicide.

The divorce of her parents and the subsequent death of her father had a profound psychological effect on Elizabeth. She felt somehow responsible for her father's death. She also felt rejected and developed symptoms of extreme anxiety. At school she would refuse to do any academic work and would sit and stare into space. She would regularly have temper tantrums and vomit. Elizabeth -- increasingly more withdrawn from reality. She lost interest in her personal relationships and engaged in few of the activities that would be normal for a girl of her age.

Elizabeth had very little confidence in herself and did not believe she was very intelligent. In truth, testing indicated that her intellectual capabilities were better than average. Despite this fact, she had a poor attention span at school and daydreamed excessively. Seldom, if ever, did she experience scholastic success.

The **Greisdorfs** are intelligent people and were fully aware of the scope of Elizabeth's problem. Marianne is a graduate nurse and has had professional experience working with children with emotional problems. Although the petitioners were not rich, they attempted to provide the child the assistance and support she required. In 1964, they enrolled her in summer school for corrective help in arithmetic and English. The results of this special instruction were not totally satisfactory. In the early spring of 1965, the petitioners took Elizabeth to a psychiatrist for therapy. At that time she was unable to function because of severe emotional outbursts. The psychiatrist, after 12 psychotherapeutic sessions, diagnosed Elizabeth as having a "Preadolescent Adjustment Reaction" ¹ and "recommended that she attend a school such as the Mills School for further treatment."

Despite the fact that the petitioners found it financially burdensome to do so, they followed the doctor's advice and enrolled Elizabeth in the Mills School at Fort Lauderdale, Florida, on August 31, 1965, to continue her treatment. Elizabeth also attended the school during the 1966-1967 school year, returning to the **Greisdorf** home at the end of each day.

The Mills School was established in 1958 by Robert E. Mills to provide an environment where average and above-average students with special learning disabilities (usually psychological) could learn to adjust and function normally in a competitive classroom situation. Mills earned his doctorate in the field of education, and he and each member of his teaching staff had special training in psychology. They kept abreast of current developments in clinical training workshops, which Mills sponsored and met twice a week to diagnose and make recommendations. In addition, there were psychologists on the staff, and two psychiatrists served the school as consultants.

Although the Mills School was accredited by the Florida State Department of Education, it maintained a highly flexible academic program in order to accommodate the degree of stress that a given child could withstand. Classes were kept very small (limited to six students) to foster a close teacher-student relationship. The school accepted only students with learning difficulties, generally of an emotional nature, and its primary service was to assist its charges in becoming more effective students and better adjusted individuals by providing a total therapeutic milieu. It was the only school of its kind in the Fort Lauderdale area.

Upon entering the school, Elizabeth's intellectual ability was extensively tested, and she was subjected to a psychological and psychometric evaluation. The staff determined the scope of her emotional problems in order to develop an educational program suited to her specific needs. Her paramount need was to develop a more positive and confident regard of herself which the staff concluded could be accomplished most easily in a clinical educational setting.

During her first few months at the Mills School, Elizabeth spent an hour each day either receiving therapy from Mills or participating in group therapy with other children.

All staff members at the school were knowledgeable about Elizabeth's maladjustment, and they consulted with each other frequently to develop a consistent approach for dealing with her difficulties.

The educational program that was established for Elizabeth was individualized to bolster her emotional development and was designed to enhance the therapy she was receiving. She was placed in a class with children with similar problems. The class was essentially ungraded to permit each student to progress at his or her own rate in each subject.

Although Elizabeth was supposed to be in the fifth grade, she was assigned fourth grade reading and low fourth grade mathematics. She had manifested some difficulty in each of these areas, and the staff felt that it was essential that she be able to realize success and build up her self-confidence. Because Elizabeth was an active girl, a considerable amount of her time was spent in recreational activity. The scholastic program which she followed at the school was directed towards her psychological needs and was developed primarily to bring about an improvement in her emotional state.

Subsequent to the year in issue, Elizabeth progressed to the point where she could be withdrawn from the Mills School. She presently attends school in the public school system of Broward County, Florida.

On their income tax return for the calendar year 1967, the petitioners deducted \$1,910.23 paid during that year as expenses incurred at the Mills School for Elizabeth. Of this total amount, \$500 was directly attributable to the therapy provided by Mills, \$1,200 was attributable to tuition, and \$210.23 was attributable to miscellaneous expenses of an unspecified nature incurred at the Mills School. In his statutory notice of deficiency, dated June 27, 1969, the respondent allowed as a deduction the \$500 attributable to Mills' therapy and disallowed the remaining \$1,410.23. This latter amount was not regarded as an allowable medical expense under [section 213](#) of the 1954 Code.

Opinion

The petitioners claim that the total amounts paid by them in 1967 to the Mills School on behalf of Elizabeth, the petitioner-wife's daughter, are deductible medical expenses under [section 213](#) of the 1954 Code.²

[Section 213](#) provides for a deduction of expenses paid during the taxable year for the medical care of a taxpayer's dependent suffering from a disease. Expenditures made to treat emotional difficulties, such as those experienced by Elizabeth, may qualify under this section as expenses paid for medical care. *Paul H. Ripple* [[Dec. 30,218](#)], 54 T. C. -- (June 30, 1970); *C. Fink Fischer* [[Dec. 28,935](#)], 50 T. C. 164 (1968); *Hobart J. Hendrick* [[Dec. 24,772](#)], 35 T. C. 1223 (1961).

In determining whether the petitioners' payments to the Mills School for Elizabeth's benefit qualify as medical deductions, we have carefully considered [section 1.213-1](#) of the Income Tax Regulations. These regulations contain the following provision:

* * * While ordinary education is not medical care, the cost of medical care includes the cost of attending a special school for a mentally or physically handicapped individual, if his condition is such that the resources of the institution for alleviating such mental or physical handicap are a principal reason for his presence there. In such a case, the cost of attending such a special school will include the cost of meals and lodging, if supplied, and the cost of ordinary education furnished which is incidental to the special services furnished by the school. Thus, the cost of medical care includes the cost of attending a special school designed to compensate for or overcome a physical handicap, in order to qualify the individual for future normal education or for normal living, such as a school for the teaching of braille or lip reading. * * * ([Section 1.213-1\(e\)\(1\)\(v\)](#) (a), Income Tax Regs.)

In the present case, the Mills School will be regarded as a "special school," within the meaning of the regulations, if its resources for alleviating Elizabeth's mental handicap were a principal reason for her presence there and if its educational program was only incidental to its medical care function. *Paul H. Ripple, supra*; *C. Fink Fischer, supra*. See also *Arnold P. Grunwald* [[Dec. 29,198](#)], 51 T. C. 108 (1968).

As should be apparent from our Findings of Fact, we believe that the Mills School adequately meets the criteria of a "special school." Its founder established the school to provide an environment where children with emotionally caused learning disabilities could learn to adapt effectively to a classroom situation. The objective of the Mills School was to produce more effective students and better adjusted individuals.

All members of the staff, including those who were not psychologists, had formal training in psychology and regularly kept abreast of current developments in training workshops at the school. Two psychiatrists were employed in a consultant capacity. The staff members, teachers and psychologists, met regularly to develop consistent approaches for dealing with the specific problems of the students.

As can be seen from Elizabeth's experience, the school provided an educational program that was highly individualized, permitting each child to progress at a rate suited to his special abilities and needs. Each student's course of study was devised to be supportive of the therapy which he received and to instill in him the necessary confidence to permit him to overcome his emotional and educational deficiencies. The scholastic program at the school was designed primarily to enhance a given child's psychological development and was used as a means to that end. The educational aspects of the Mills School were merely incidental to the school's principal goal of eliminating or reducing the learning disabilities of its students.

Elizabeth attended the Mills School at the recommendations of the psychiatrist who had been giving her therapy. He felt that her attendance at the school was important for the treatment of her emotional problems. Although it was difficult for them from a financial standpoint, the petitioners enrolled Elizabeth upon his recommendation in the expectation that Elizabeth would be helped to overcome her emotional difficulties and resultant learning handicap. When progress was made in this regard, Elizabeth withdrew from the school and began attending public school. It seems clear from the record that the special resources available at the Mills School for alleviating Elizabeth's mental handicap were the principal reason for her enrollment there.

The regulations referred to earlier in our discussion list "a school for the teaching of braille or lip reading" as an example of an institution "designed to compensate for or overcome a *physical* handicap, in order to qualify the individual for future normal education or normal living * * *." [Emphasis added.] We believe that the Mills School, with its emphasis on a child's *emotional* handicap, is equivalent in scope and purpose to a school for braille or lip reading, and we regard it as falling within the purview of the above-quoted regulatory provision.

The case is distinguishable from the *Ripple*, *Grunwald*, and *Fischer* cases, *supra*, wherein we held, on the facts then before us, that the school in question did not qualify as a "special school" under the applicable regulations.

In those cases, although certain therapeutic benefits were derived by handicapped students from the services provided by the schools, the evidence showed the essential service of each school to be educational in nature. In the present case, while educational benefits may have been incidentally obtained by Mills students, their attendance at the school was prompted by their mental handicaps and had principally a therapeutic value.

Even if we were to assume that this were not the case for most Mills School students, which assumption would be contrary to the record, there can be no doubt that the school performed a therapeutic function as far as Elizabeth was concerned. She was sent to the institution to further her treatment, and the program that was developed for her there was carefully designed to provide the necessary services to eliminate the emotional barriers to her future normal scholastic success. In *C. Fink Fischer*, *supra*, we stated (at page 174):

* * * The cases, the rulings, and the regulations make clear that whether a service for which an expenditure is made constitutes medical care will depend upon its therapeutic nature to the individual, and not upon the title of the person rendering the service, or whether the expense is

"medical" to all persons, or the general nature of the institution in which the service is rendered.
[Footnotes omitted.]

Elizabeth suffered from a mental handicap which if untreated would no doubt have become "fixated" and even more disabling and which prevented her from pursuing normal education and normal living. The resources of the Mills School for alleviating Elizabeth's mental instability were the principal reason for her attendance there and after the successful application of those resources, resulting in the hoped for improvement in her mental condition, she was withdrawn from the school and attended the local public schools. This is precisely the type of situation covered by the provisions of [section 1.213-1](#) of the Income Tax Regs. We decide this issue in favor of petitioners and conclude that the \$1,200 expended for Elizabeth's tuition in 1967 was paid for the mitigation and treatment of her disease.

The petitioners also deducted on their 1967 return expenses of \$210.23 which were incurred at the Mills School. They have offered no evidence in connection with these miscellaneous expenditure and have therefore failed to meet the burden of establishing their deductibility. Rule 32 of the Rules of Practice of this Court; *Welch v. Helvering* [[3 USTC ¶1164](#)], 290 U. S. 111 (1933). We uphold the respondent's determination in this respect.

Decision will be entered under Rule 50.

¹ "Adjustment Reaction of Adolescence" is a generally accepted diagnosis of a type of mental disorder which stems from an acute reaction to overwhelming environmental stress. If untreated, this category of illness can become fixated and more permanently debilitating.

² [Sec. 213](#) of the 1954 Code was amended by Pub. L. 89-97, effective for taxable years beginning after December 31, 1966, to read in part as follows:

(a) ALLOWANCE OF DEDUCTION.--There shall be allowed as a deduction the following amounts, not compensated for by insurance or otherwise--

(1) the amount by which the amount of the expenses paid during the taxable year * * * for medical care of the taxpayer, his spouse, and dependents (as defined in [section 152](#)) exceeds 3 percent of the adjusted gross income * * *

* * *

(e) DEFINITIONS.--For purpose of this section--

(1) The term "medical care" means amounts paid--

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A) * * *

No substantive change was made by Pub. L. 89-97 to [sec. 213](#) which would affect the issue presently before us. See H. Rept. 213, 89th Cong., 1st Sess. (1965), 1965-2 C. B. 733, 744-745.

Received from Les Brodie:

Here are the links to tax deductability information:

<http://www.strugglingteens.com/archives/1993/4/oe01.html>

http://www.teennewhorizons.com/tax_deductions.htm

Received from Ken Stalnaker, father of Cameron PG 22 (MBA)

My attorney would like to see documentation from/about MBA describing the therapeutic value of the school.

The tax document from the "Grace Christian Home for Girls" does great job of documenting the therapeutic value of the school (http://www.teennewhorizons.com/tax_deductions.htm). Does anything like that exist for MBA?

Grace Christian Home for Girls
P.O. Box 44171 Shreveport, LA 71134
www.girlshome.org

**MEMORANDUM REGARDING
DEDUCTIBILITY OF MEDICAL CARE EXPENSES
FOR FEDERAL INCOME TAX PURPOSES**

**As It Pertains To Costs Incurred Soley With Respect To
Grace Christian Home for Girls, Shreveport, LA**

Note: *This memorandum was prepared by Joe F. Akins, a Certified Public Accountant. Joe is a co-founder, and a former executive director of Grace Christian Home for Girls. This memorandum was prepared based on tax laws and principles in effect in 1999. Although as a general rule, there is little, if any, change in tax principles relating to the matters discussed, you should consult your tax advisor to determine whether any changes in fact have occurred.*

Taxpayers are permitted to deduct expenses incurred for "medical care" of a dependent to the extent that they exceed 7.5% of adjusted gross income (including both husband and wife if joint returns are filed).

This memorandum is offered for the purpose of assisting parents and tax advisors in reviewing and understanding the law regarding this matter. The specific facts of each case determine whether the criteria are met for the deductibility of costs incurred. You should consult your tax advisor and obtain an opinion specific to your case as to the deductibility of costs that you incur.

Definition of the term "medical care" -

The term "medical care" includes amounts paid (A) for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health

insurance) [and] (B) for transportation primarily for and essential to medical care.
Section 213(e)(1) of the Internal Revenue Code

To qualify an expenditure for medical deduction, taxpayers must show that the dependent was afflicted with a mental disease, defect, or illness and that the services received directly or proximately related to the mitigation or treatment of the disease or defect. The legislative history and the regulations make it clear that expenditures for the alleviation of mental, as well as physical, defects or illnesses are to be deductible. *A.J. Simms V. Commissioner*

The extent to which expenses for care in an institution other than a hospital shall constitute medical care is primarily a question of fact which depends upon the condition of the individual and the nature of the services he receives (rather than the nature of the institution). A private establishment which is regularly engaged in providing the types of care or services outlined [herein] shall be considered an institution for purposes of the rules provided herein. *Income Tax Regs., sec. 1.213-1(e) Definitions -(1) General*

Medical care does not depend on the experience, qualification, or title of the person rendering services, but instead it depends on the nature of the services rendered. The Code and the regulations do not require a taxpayer to ascertain whether a practitioner is qualified, is authorized under state law, or is licensed to practice, before obtaining his services or claiming a medical expense deduction. Where it can be shown that an individual paid an amount for a purpose defined in the Code as "medical care," such amount qualifies as a medical expense. *Rev. Rul. 63-91*

Whether an expenditure constitutes medical care depends upon the therapeutic nature to the individual, and not whether the expense is "medical" to all persons. *Fischer v. Commissioner [Dec. 28,935], 50 T.C. 164, 194 (1968).*

The nature of Grace Christian Home -

Grace Christian Home is a residential program with a duration of nine to twelve months. Grace Christian Home accepts girls between the ages of 13-17 who have a history of behavioral and/or emotional problems. Girls who are admitted to Grace Christian Home are considered to be hard to control, oppositional, and defiant. Many girls have a history of substance abuse; may be sexually promiscuous; may have suffered physical, emotional or sexual abuse; may be violent prone; may be potentially suicidal; may be suffering mild or moderate depression; may be afflicted with ADHD.

No one is accepted into Grace Christian Home who does not exhibit the described behavioral experiences to some degree. The principal reason for enrollment at Grace Christian Home is to utilize its resources to treat or alleviate the behavioral, emotional, and/or addictive conditions presented. Educational services provided are rendered as an incident and component to the overall care

rendered. No one is accepted into Grace Christian Home solely, or primarily, for academic purposes.

Grace Christian Home meets the needs of the girls in its care and strives to affect permanent change by having the girls participate in a variety of therapeutic experiences. The program is holistic in nature, consisting of several components, including the following:

- * group counseling under the supervision of a licensed counselor
- * individual counseling under the supervision of trained counselors, but not necessarily licensed
- * family therapy under the supervision of a licensed counselor -- agreement to participate in on-site (or tele/video conferences if necessary) therapy sessions is required as a condition of admission to Grace Christian Home.
- * work therapy -- scheduled household chores and an outdoor "workday"
- * physical/recreational therapy -- regular, scheduled, supervised exercise sessions: gym, track, pool, exercise machines etc. for physical health purposes
- * group therapy: topical studies -- conducted by staff persons to deal with such matters as substance abuse, self-esteem, communications, co-dependent relationships, decision making, social etiquette etc.
- * art therapy -- conducted by a professional artist
- * educational therapy -- schooling under the supervision of a certified teacher
- * social interaction therapy -- supervised by trained staff persons: the process of learning to co-exist successfully with roommates and housemates, to share, to communicate, to contribute to a functioning household
- * cultural therapy -- a variety of cultural events such as ballet, opera, symphony, community theater, art museums, community fairs etc. to broaden awareness and appreciation of fine arts and cultural diversity.
- * if necessary, girls can be committed for short term stays in local psychiatric hospitals to deal with severe cases of depression, attempts at self inflicted wounds etc. These commitments are supervised by medical staff of the receiving institutions, which are not affiliated with Grace Christian Home.

Because of the facts stated above Grace Christian Home meets the institutional requirements of the Internal Revenue Code and regulations for providing medical care.

Taxpayers who enrolled their son in a college prep school, that addressed the educational and emotional needs of its students, primarily for the purpose of treating his behavior and drug problems, were entitled to deduct tuition, room and board, and other direct costs of care. *C.F. Urbauer V. Commissioner*

Amounts paid to a non-professional individual who helped conduct certain exercises for a mentally retarded child were expenses of medical care. The medical services qualified as medical care even though those who performed the services were not required by law to be, and were not licensed, certified or otherwise qualified to perform the services rendered. The cost incurred qualified

as medical care because it was for services given for the purpose of affecting a function of the body and of alleviating physical and mental defects. *Rev. Rul. 70-170*

Amounts paid by a taxpayer to maintain a dependent for several months in a therapeutic center for drug addicts were held to be deductible medical expenses. *Rev. Rul. 72-226*

The U.S. Supreme Court has held that person addicted to narcotics "are diseased and proper subjects for [medical] treatment ..." *C.O. Linder v. the United States, 268 U.S. 5 (1925)*

Deductible medical costs (assuming that all criteria for deductibility are met)-

* Tuition paid to Grace Christian Home -- The full amount of tuition paid to Grace Christian Home is a deductible medical care expense.

* Transportation and lodging - A deduction is allowed for the cost of transportation of the dependent to the facility upon admission, and the cost of her return transportation upon completion of the program.

Travel expenses incurred by a parent who is required to accompany a child because of the child's immaturity are deductible. *Rev. Rul 58-110*

A deduction is allowed for lodging, but not meals, while away from home primarily for and essential to the medical care. This deduction is limited to \$50 per person per night.

The cost of transportation, lodging or other costs of attending, or participating in family therapy sessions is a medical care expense related to the treatment of the dependent. Grace Christian Home requires, as a condition of enrollment in its program, that families participate in a number of family therapy sessions. *C.F. Urbauer v. Commissioner*

Where an individual is in an institution because his condition is such that the availability of medical care (as defined) in such institution is a principal reason for his presence there, and meals and lodging are furnished as a necessary incident to such care, the entire cost of medical care and meals and lodging at the institution, which are furnished while the individual requires continual medical care, constitute an expense for medical care. ... the cost of medical care includes the cost of attending a special school for a mentally or physically handicapped individual, if his condition is such that the resources of the institution for alleviating such mental or physical handicap are a principal reason for his presence there. In such a case, the cost of attending such a special school will include the cost of meals and lodging, if supplied, and the cost of ordinary

education furnished which is incidental to the special services furnished by the school. *Section 1.213-1(e)(1)(v) of the Income Tax Regs.*

Other Criteria Required for Deductibility -

The taxpayer should have a physician, substance abuse counselor, or other professional person evaluate your daughter and render a diagnosis of her condition, and render an opinion that her diagnosis would probably be improved by her admission into a program such as Grace Christian Home.

In order to claim a medical expense deduction for tuition paid to a private school for their son the taxpayers had to prove the direct relationship between the tuition paid and an objective contemplated by the definition of medical care, and that it was paid to accomplish that purpose. Certain criteria for determining this issue have been developed in [previous cases], including among which are the principle purpose for which the expenditure was made, whether it was made on the advice of a physician, whether the expenditure had a direct relationship to the treatment of a specific disease or a physical or mental condition, and whether the treatment could reasonably be expected to effect the diagnosis, cure, mitigation or prevention of a specific disease. *E.F. Glaze V. Commissioner*

The four principal questions raised in Glaze were:

1. was the principal purpose of the expenditures for "medical" reasons, as defined
2. were the expenditures made on the advice of a physician
3. do the expenditures directly relate to the treatment
4. could the treatment reasonable be expected to be effective.

Year of Deductibility -

In general, medical care expenses are deductible in the year paid, except that payments made in advance are deductible when the services are rendered.

Sources Quoted and Other References -

- * Internal Revenue Code Sec. 213(e)(1)
- * Sec. 1.123-1(e), Income Tax Regulations
- * Rev. Ruling 63-91
- * Rev. Ruling 63-273
- * Rev. Ruling 70-170
- * Rev. Ruling 72-226
- * Rev. Ruling 73-325
- * E. F. Glaze, 20 TCM 1276, Dec. 25,004(M) TC Memo. 1961-244
- * A. J. Simms, 39 TCM 700, Dec. 36,493(M), TC Memo. 1979-499
- * C. F. Urbauer, 63 TCM 2492, Dec. 48,094(M), TC MEMO. 1992-170
- * CCH Standard Federal Tax Reports
- * CCH 1998 U.S. Master Tax Guide

