

INTERNAL REVENUE SERVICE

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[REDACTED]

Dear [REDACTED]

This letter is in response to your letter to the Secretary of the Treasury dated July 10, 2003, concerning the [REDACTED]. You asked that we review the tax-exempt status of [REDACTED] under section 501(c) of the Internal Revenue Code in light of the closing of [REDACTED] programs in other countries, and the recent arrest of a [REDACTED] founder.

The Exempt Organizations (EO) function of the Tax-Exempt and Government Entities Division of the IRS has an ongoing examination program to ensure that exempt organizations continue to meet the requirements for tax-exempt status. Whenever the IRS receives information about an organization that raises questions about its continued exempt status, the information is forwarded to the EO Examinations office in Dallas to determine if it warrants an examination. We have sent a copy of your inquiry to the Dallas office.

You also asked for a detailed analysis of the deductibility as medical care expenses for the cost of tuition, meals, lodging, and transportation of students at [REDACTED] programs. According to their web site, all the programs and schools are [REDACTED]. You enclosed specific information concerning claims that the cost of the program run by the [REDACTED] is deductible under section 213.

This residential program lasts a year or less. The program accepts individuals [REDACTED] who have a history of behavioral and/or emotional problems. Individuals who are admitted are considered to be hard to control, [REDACTED]. Many of them have a history of [REDACTED].

The principal reason for enrollment is to use program resources to treat or alleviate behavioral, emotional, and/or addictive conditions. Educational services are provided as an incidental component to the overall care provided; no one is accepted primarily for academic purposes.

The program strives to affect permanent change in the individuals by having them participate in a variety of therapeutic experiences. The program is holistic in nature, and consists of group counseling with a licensed counselor, individual counseling, family therapy, social interaction counseling, and (when necessary) commitment for short-term stays in local psychiatric hospitals to deal with severe cases of depression, attempts at self-inflicted wounds, etc. In addition, various forms of educational activities are used, including art therapy by a professional artist, cultural therapy to broaden awareness and appreciation of the arts, and educational therapy by a certified teacher.

Based on this information, some of the expenses may be deductible as medical care expenses. Section 213(a) allows taxpayers to deduct expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent, if the expenses exceed 7.5 percent of adjusted gross income. "Medical care" is defined as including the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body. Section 213(d)(1)(A). An individual who actually receives medical care may deduct the cost.

However, it does not follow that a program that provides medical care to some participants necessarily provides medical care to all participants. Each individual's expenses must be considered separately. And an important distinction must be made between treating medical problems and providing discipline for persons who are hard to control. In Rev. Rul. 58-280, 1958-1 C.B. 157, we discussed four levels of care:

(1) When an individual is in an institution because the availability of medical care in the institution is a principal reason for his presence there, the entire cost of medical care is deductible. Because meals and lodging are furnished as a necessary incident while the individual requires continual medical care, these expenses are for medical care. In other words, medical care includes the entire cost of institutional care for a person who is mentally ill and unsafe when left alone.

(2) While ordinary education is not medical care, the cost of medical care is considered to include the cost of attending a special school for a mentally or physically handicapped individual, if the resources of the institution for alleviating the mental or physical handicap are a principal reason for his presence there. In this 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, care, supervision, treatment and training of a mentally retarded individual at an institution is within the meaning of the term medical care.

(3) When an individual is in an institution and the availability of medical care in that institution is not a principal reason for his presence there, only the cost of care in the institution attributable to medical care is allowed as a deduction. The cost of meals and lodging at the institution in this case are not considered a cost of medical care. 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 this case, deductible medical expenses consist only of the cost for care attributable to medical care or nursing attention furnished to him in the nursing home. The cost of his meals and lodging at the home are not considered a cost of medical care.

(4) 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, these costs are not deductible as a medical expense.

Thus, whether someone is attending the program to receive medical care is a question of fact that must be determined for each individual. A person attending for treatment of drug dependency, for example, is there primarily to treat a medical condition. "Behavior modification" to break the addiction habit is a recognized form of medical care. Thus, the fees for attendance and the cost of meals and lodging are all deductible medical care expenses. The fact that the program refers to the cost of attendance as "tuition" is not a factor, as the fee appears to cover activities different from normal educational classes. What matters is that the person is in the program to receive medical care.

On the other hand, a person attending the program to resolve bad personal attitudes in a structured environment does not receive medical care, and none of the expenses are deductible. This form of "behavior modification" does not treat a medical condition.

We are unable to determine whether the program provides special education in the second category described above, and in section 1.213-1(e)(1)(v)(a) of the Income Tax Regulations. There is no description given of services provided to train an individual to overcome a handicap such as blindness. However, if the program did provide such services to an individual in need of them, the cost would be deductible medical care.

Transportation expenses must be both primarily for and essential to medical care to be deductible as medical expenses, under section 213(d)(1)(B). Thus whether particular transportation costs are deductible depends on the specific facts.

I hope this information is helpful. Please call me on [REDACTED], if you have any questions.

Sincerely,

Clifford M. Harbourt
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)