



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

June 25, 2010

Number: **2010-0175**

Release Date: 9/24/2010

CONEX-123056-10

UILC: 213.00-00

Dear :

I am responding to your inquiry dated November 18, 2009. You asked about introducing legislation that would allow gym fees as deductible medical expenses. You referred to Publication 502, Medical and Dental Expense, which excludes from medical expenses "health club dues paid to improve one's general health or to relieve physical or mental discomfort not related to a particular medical condition."

Taxpayers can deduct expenses paid for medical care of the taxpayer, spouse, or dependent, to the extent the expenses exceed 7.5 percent of adjusted gross income (section 213(a) of the Internal Revenue Code (the Code)). Medical care refers to amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting a structure or function of the body (section 213(d)(1)(A) of the Code).

The law limits deductions for medical care to expenses paid primarily for the prevention or alleviation of a physical or mental defect or illness (section 1.213-1(e)(1)(ii) of the Income Tax Regulations). An expense qualifies as medical care as preventing disease only if a present existence or an imminent probability of developing a disease, physical or mental defect, or illness exists (*Daniels v. Commissioner*, 41 T.C. 324 (1963); *Stringham v. Commissioner*, 12 T.C. 580 (1949)).

Taxpayers cannot deduct personal, family, or living expenses as medical care if the expenses do not fall within the section 213 definition (section 262 of the Code and section 1.213-1(e)(1)(vi) of the Income Tax Regulations). An expenditure that is merely beneficial to the general health of an individual is personal and is not for medical care (section 1.213-1(e)(1)(ii) of the Income Tax Regulations).

A taxpayer who claims that an expense of a peculiarly personal nature is primarily for medical care must establish that fact. Objective factors that indicate that an otherwise personal expense is for medical care include:

- The taxpayer's motive or purpose for making the expenditure
- A physician's diagnosis of a medical condition and recommendation of the item as treatment or mitigation
- The relationship between the treatment and the illness
- The treatment's effectiveness
- The proximity in time to the onset or recurrence of a disease (*Havey v. Commissioner*, 12 T.C. 409 (1949)).

The taxpayer must establish that he or she would not have paid the expense but for the disease or illness. A taxpayer cannot deduct a personal expense as medical care if he or she would have paid the expense in the absence of a medical condition (*Commissioner v. Jacobs*, 62 T.C. 813 (1974)).

Fees that an individual pays to health institutes where the taxpayer exercises are personal expenses but may be deductible as medical expenses only when a physician prescribes the treatments and provides a statement that the treatments are necessary for the alleviation of a physical or mental defect or illness of the individual receiving the treatments (Revenue Ruling 55-261, 1955-1 C.B. 307).

In addition, a taxpayer who participates in a weight loss program to improve his or her appearance, general health, and sense of well being, and not for the purpose of curing any specific ailment or disease, is not a medical expense (Revenue Ruling 79-151, 1979-1 C.B. 116).

Uncompensated amounts an individual pays for participation in a weight loss program as treatment for a specific disease, such as obesity or hypertension, that a physician has diagnosed are expenses for medical care that a taxpayer can deduct (Revenue Ruling 2002-19, 2002-16 C.B. 778).

A taxpayer cannot deduct costs associated with using a gym to improve general health and well-being and not to cure a specific disease or ailment. A taxpayer may be able to deduct the gym fees as a medical expense if the taxpayer can establish that:

- A physician diagnosed the taxpayer with a specific disease
- The taxpayer uses the gym to treat the specific disease
- The taxpayer would not incur the gym fees but for the specific disease

The IRS administers the tax law as enacted. Any change in the law would require legislative action by the Congress. I hope this information is helpful. If you have any questions, please contact _____, Identification Number _____, at _____.

Sincerely,

Thomas D. Moffitt
Chief, Branch 2
Office of Associate Chief Counsel
(Income Tax & Accounting)