

**Internal Revenue Service**

**Department of the Treasury**

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(202) 622-4920  
**Refer Reply To:**  
CC:DOM:IT&A:2 – COR-114823-00  
**Date:**  
September 19, 2000

Dear [REDACTED]:

This is in response to your letter of August 1, 2000, in which you requested a "ruling" on whether the cost of transportation to a distant location for a medical procedure may be deductible as a medical care expense under § 213 of the Internal Revenue Code.

In order to obtain a private letter ruling, a taxpayer must follow the procedures specified in Rev. Proc. 2000-1, 2000-1 I.R.B. 4, a copy of which is enclosed. Section 8 has general instructions to follow. The taxpayer must also pay a user fee, which for most individuals is \$500. Since your letter does not conform to these requirements, we are unable to issue a private letter ruling. However, we hope that the following general information is useful.

You state that you traveled to a distant location in another country, X, to undergo a vision correction surgical procedure known as "Lasik." Although the procedure is available in city Y where you reside, you traveled to X because your total cost for the procedure and travel to X was less than the cost of the procedure alone in Y. You state that your only purpose in traveling to X was to undergo the Lasik procedure and that there was no element of personal pleasure. You later returned to X for additional corrective surgery. You are seeking reimbursement from your flexible spending arrangement for the cost of transportation to X.

In general, a flexible spending arrangement may reimburse expenses paid for medical care. Section 213(d)(1)(A) defines "medical care" 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.

Section 1.213-1(e)(1)(ii) of the Income Tax Regulations states that deductions for expenditures for medical care allowable under § 213 will be confined strictly to expenses paid primarily for the prevention or alleviation of a physical or mental defect or illness. Whether an expenditure is "primarily for" medical care is a question of fact.

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Section 213(d)(1)(B) provides that "medical care" also includes transportation that is primarily for and *essential* to medical care referred to in § 213(d)(1)(A). Thus, the standard for deducting an expense under § 213(d)(1)(B) is more stringent than that for deducting an expense under § 213(d)(1)(A). A taxpayer who, for purely personal reasons, travels to another locality to obtain an operation or other medical care prescribed by a doctor may not deduct the cost of transportation under § 213.

Section 213(d)(2) provides that lodging (not lavish or extravagant under the circumstances) while away from home that is "primarily for and essential" to medical care (as defined in § 213(d)(1)(A)) is an amount paid for medical care if, in addition, (A) the medical care (as defined in § 213(d)(1)(A)) is provided by a physician in a licensed hospital or a related or equivalent facility, and (B) there is no significant element of personal pleasure, recreation, or vacation in the travel. The deduction for lodging expenses is limited to \$50 per night for each individual. Because the allowance for deduction of lodging expenses under § 213(d)(2) has three requirements that must be satisfied, it is much narrower than the allowance for deducting transportation expenses under § 213(d)(1)(B).

Meal expenses while away from home may not be deducted as an expense for medical care unless provided at a hospital or similar institution at which the taxpayer, the taxpayer's spouse, or dependent is receiving medical care. Section 1.213-1(e)(1)(iv) and (v).

We recognize that, in most cases, Lasik is performed *primarily for* the purpose of affecting a structure and function of the body and therefore qualifies as "medical care." However, the law is unclear on whether the cost of transportation to a distant location to obtain this procedure may be considered *essential to* medical care when the reason for the travel is that the total cost is less than the cost of the procedure alone at home.

Transportation has been considered essential to medical care if the taxpayer is suffering from an illness that will be alleviated by a better climate. *Commissioner v. Bilder*, 369 U.S. 499 (1962); *Stringham v. Commissioner*, 12 T.C. 580 (1949), *aff'd per curiam*, 183 F.2d 579 (1950). Transportation has been deemed to be essential to medical care when the taxpayer's presence was necessary to care for a sick spouse, *Cohn v. Commissioner*, 38 T.C. 387 (1962); to facilitate a dependent's psychiatric treatment, *Hunt v. Commissioner*, T.C.M. 1972-226; Rev. Rul. 58-533, 1958-2 C.B. 108; or to encourage a psychologically troubled and asthmatic child to remain at a school away from home in a beneficial climate, *Lichterman v. Commissioner*, 37 T.C. 586 (1961), *acq.* 1962-2 C.B. 5.

A few cases have considered whether a taxpayer's travel to a distant location in order to obtain medical treatment was primarily for and essential to medical care. In *Montgomery v. Commissioner*, 428 F.2d 243 (6th Cir. 1970), the court accepted the basic character of the taxpayer's travel from Kentucky to be treated at the Mayo Clinic in Rochester, Minnesota, as medical care. In *Winderman v. Commissioner*, 32 T.C. 1197 (1959), *acq.* 1960-2 C.B. 7, the court allowed the taxpayer, who had moved from New York to California, to deduct as a medical expense the cost of traveling to New

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York for annual checkups with his doctor there. (Note, however, that the tax years considered in that case preceded the enactment of the requirement that transportation must be *essential* to medical care.) On the other hand, in *Murray v. Commissioner*, T.C.M. 1982-269, the taxpayer was not allowed a deduction when the primary purpose of her travel to California was personal even though she was treated by a doctor there.

I hope this information is helpful. We would be pleased to consider this matter further should you decide to request a private letter ruling. Please call Donna M. Crisalli, at the number above, if you have any questions.

Sincerely,

Associate Chief Counsel  
(Income Tax & Accounting)

by \_\_\_\_\_  
Robert A. Berkovsky  
Chief, Branch 2

Enclosure