

Internal Revenue Service

Department of the Treasury

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Dear 

This responds to your letter of May 22, 2001. You requested general information on whether expenses for the diagnosis and treatment of obesity by a physician under generally accepted medical guidelines qualify as expenses for medical care under the Internal Revenue Code.

Section 213(a) allows as a deduction the expenses paid during the taxable year for medical care of the taxpayer, spouse, or dependent. Under § 213(d)(1)(A), an expense is for "medical care" if its primary purpose is the diagnosis, cure, mitigation, treatment, or prevention of disease.

The Income Tax Regulations state that the deduction for medical care expenses will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness. An expense that is merely beneficial to the general health of an individual is not an expense for medical care. Section 1.213-1(e)(1)(ii).

A taxpayer who claims that an expense of a peculiarly personal nature is primarily for medical care must establish that fact. Among the objective factors that indicate that an otherwise personal expense is for medical care are the taxpayer's motive or purpose, recommendation by a physician, linkage between the treatment and the illness, treatment effectiveness, and proximity in time to the onset or recurrence of a disease. *Havey v. Commissioner*, 12 T.C. 409 (1949). There is no strict requirement that a medical treatment must be provided by a physician, see, e.g., Rev. Rul. 70-170, 1970-1 C.B. 51. However, as in *Havey*, a diagnosis by a physician is sometimes necessary to substantiate that the taxpayer is suffering from a disease or that an expense for something peculiarly personal (e.g., a hot tub, a treadmill, or a trip to Florida) is treatment for a disease. See also Rev. Rul. 55-261, 1955-1 C.B. 307, questions 9 and 15.

In accordance with these principles, Rev. Rul. 79-151, 1979-1 C.B. 116, holds that, if participation in a weight loss program is to improve the participant's appearance, general health, or sense of well-being, the expenses of the program are not for medical

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care and are not deductible. However, the expenses of a weight-loss program that is intended to treat a specific disease (such as heart disease or high blood pressure) are for medical care and are deductible.

We are aware that there is considerable scientific and regulatory authority that obesity is, in and of itself, a disease. *E.g.*, National Heart, Lung, and Blood Institute, Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults (1998), page vii; World Health Organization, Press Release 46 (June 12, 1997); National Academy of Sciences, Institute of Medicine, Weighing the Options: Criteria for Evaluating Weight-Management Programs (National Academy Press 1995), page 1; Food and Drug Administration, final regulation on statements made for dietary supplements, 65 Fed. Reg. 1027, 1028 (Jan. 6, 2000); Social Security Administration, ruling on the evaluation of disability claims involving obesity, 65 Fed. Reg. 31039 (May 15, 2000). If obesity is a disease, then expenses for the diagnosis and treatment of obesity may qualify as expenses for medical care.

There are, however, certain limitations on the medical expense deduction that may apply to expenses for treating obesity. Expenses for medicines and drugs to assist in weight loss can be for medical care only if the medicine or drug is a prescribed drug or insulin. A "prescribed drug" is a drug or biological that requires a prescription of a physician for use by an individual. Sections 213(b) and (d)(3).

Additionally, while many obese individuals may follow special diets as part of their treatment, the cost of food is not an expense for medical care to the extent the food is a substitute for the food that an individual would normally consume to meet nutritional requirements. If a special diet is directed as treatment for a disease, only the excess cost of the special diet over the cost of a regular diet could be an expense for medical care. Rev. Rul. 55-261, 1955-1 C.B. 307, question 15; *Harris v. Commissioner*, 46 T.C. 672 (1966).

I hope that this general information is helpful. If you have any questions or require additional information please contact Donna M. Crisalli at (202) 622-4920.

Sincerely,

Associate Chief Counsel
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By: _____
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