

## REVENUE SERVICE INTERNAL

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The Honorable Constance A. Morella  
United States Senator  
51 Monroe Street  
Suite 507  
Rockville, MD 20850

Dear Senator Morella:

This letter responds to your August 24, 2001, inquiry on behalf of your constituent, Ms. [REDACTED]. Ms. [REDACTED] asked whether her daughter, Ms. [REDACTED], can take a tax deduction for her daily transportation expenses.

According to the inquiry, Ms. [REDACTED] has multiple sclerosis and is confined to a wheelchair. Due to her condition, Ms. [REDACTED] cannot drive to work. Ms. [REDACTED] anticipates her daughter's daily transportation to and from her place of employment will cost between \$40.00 and \$80.00 each day.

Unfortunately, no law allows an individual to deduct expenses incurred in commuting to and from his or her place of employment even though his or her illness or disability required an unusual means of transportation.

### **Section 67(d) of the Internal Revenue Code (the Code) not Relevant**

Your letter notes section 67(d) of the Code as relevant to Ms. [REDACTED]'s situation. Section 67 provides that all miscellaneous itemized deductions are only allowed if they exceed two percent of the individual's adjusted gross income. Section 67(b) of the Code specifically excludes from this two percent the deductions allowable for impairment-related work expenses. The term impairment-related work expenses is defined as expenses:

- (1) of a handicapped individual (as defined in section 190(b)(3) of the Code) for attendant care services at the individual's place of employment and other expenses, necessary for an individual to work;
- (2) for which a deduction is allowable under section 162 of the Code (determined without regard to this section).

Because section 67 provides that a deduction must be otherwise allowable, this Code section does not determine whether Ms. [REDACTED]'s daughter could deduct her daily commuting expenses.

### **Commuting Costs Not Deductible**

Under section 162 of the Code, a taxpayer's costs of commuting between his or her residence and place of employment generally are not deductible as a business expense. See section 1.162-2(e) of the Income Tax Regulations; Rev. Rul. 99-7, 1999-1 C.B. 361; and Rev. Rul. 94-47, 1994-2 C.B. 18. No deduction is allowed for personal, living, and family expenses. See section 262 of the Code.

### **Transportation for Medical Care is Deductible**

Section 213(a) of the Code allows a deduction for expenses paid for the taxpayer's medical care if the expenses exceed 7.5 percent of the taxpayer's adjusted gross income. The term "medical care" is defined as amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for affecting any structure or function of the body. See section 213(d)(1)(A) of the Code. The test of deductibility depends on whether the treatment is primarily intended to prevent or alleviate a physical or mental defect or illness as opposed to benefitting the taxpayer's general health. See section 1.213-1(e)(1)(ii) of the Income Tax Regulations.

Medical expenses also may include amounts paid for transportation primarily for and essential to medical care. See section 213(d)(1)(B) of the Code. Unfortunately, a medical expense deduction is generally not permitted for expenses incurred by an individual in commuting to and from the taxpayer's place of employment even though the taxpayer's illness or disability requires an unusual means of transportation.

For example, in *Goldaper v. Commissioner*, 36 T.C.M. (CCH) 1381 (1977), a taxpayer afflicted with serious health problems paid a professional driver to transport him to and from his place of employment. The Tax Court ruled that the taxpayer's transportation costs were a nondeductible personal expense because his employment was not for the mitigation and treatment of his various physical ailments, and his transportation costs were not incurred primarily for the prevention or alleviation of a physical or mental defect or illness. See also *Ginsberg v. United States*, 237 F. Supp. 968 (1964) (holding automobile expenses incurred by the taxpayer primarily in commuting to and from work were not deductible as medical expenses although the taxpayer, who suffered from a chronic illness and had been advised by his doctor to avoid prolonged standing and walking, probably avoided aggravation of his condition through the use of the car); *Donelly v. Commissioner*, 28 T.C. 1278 (1957), aff'd 262 F.2d 411 (2d Cir. 1959) (holding a taxpayer unable to use public transportation due to partial paralysis was disallowed from deducting as a medical expense the costs of driving his specially equipped automobile to and from his job); and *Buck v. Commissioner*, 47 T.C. 113 (1966). But see *Weinzimer v. Commissioner*, 17 T.C.M. (CCH) 712 (1958) (allowing medical expense deduction for commuting expenses where employment was prescribed as a therapy for a handicapped taxpayer).

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I hope this information has been helpful. For more information on medical expense deductions, please see the enclosed Pub. 502, Medical and Dental Expenses. If you have additional questions, please contact William Jackson or Sara Shepherd at (202) 622-4960.

Sincerely,

/s/

LEWIS J. FERNANDEZ  
Deputy Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure