

INTERNAL REVENUE SERVICE

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June 13, 2003

Dear [REDACTED]

Commissioner Everson has asked me to respond to your inquiry dated April 23, 2003, on behalf of a constituent who requires large quantities of wound care supplies. Your constituent has been advised that she may not use her employer-sponsored Flexible Spending Account to purchase these supplies. All employer-provided health coverage is subject to the same exclusion rules.

An amount paid for a medicine or drug can be deducted as a medical care expense only if the item is a prescribed drug or insulin, under section 213(b) of the Internal Revenue Code. A prescribed drug is defined under section 213(d)(3) as a drug or biological that requires a prescription for an individual's use. Thus, a medicine an individual can obtain without a prescription is not a "prescribed drug" for purposes of the section 213 deduction, even if a physician actually issues a prescription for it.

The prescription requirement does not apply to other medical supplies, such as bandages and crutches. We recently issued public guidance on this issue in Rev. Rul. 2003-58. I have enclosed a copy for your convenience.

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

Sincerely,

Robert M. Brown
Acting Associate Chief Counsel
(Income Tax & Accounting)

Enclosure

ISSUES

(1) Are amounts paid by an individual for medicines that may be purchased without a prescription of a physician deductible under § 213 of the Internal Revenue Code?

(2) Are amounts paid by an individual for equipment, supplies, or diagnostic devices that may be purchased without a prescription of a physician deductible under § 213?

FACTS

Taxpayer *A* has an injured leg and uses crutches to enhance mobility while the leg is healing. *A* uses bandages to cover torn skin on the leg. *A*'s physician recommends that *A* take aspirin to treat pain in the leg. *A* also has diabetes and uses a blood sugar test kit to monitor *A*'s blood sugar level. *A* is not compensated for these expenses by insurance or otherwise.

LAW AND ANALYSIS

Section 213(a) allows a deduction for expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, spouse, or dependent, to the extent the expenses exceed 7.5 percent of adjusted gross income. Under § 213(d)(1), medical care includes 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 213(b) permits an amount paid for a medicine or drug to be taken into account for purposes of the § 213 deduction for medical care expenses only if the medicine or drug is a prescribed drug or insulin. Section 213(d)(3) defines a prescribed drug as a drug or biological that requires a prescription of a physician for its use by an individual. Because aspirin is a drug and does not require a physician's prescription for use by an individual, pursuant to § 213(b), its cost may not be taken into account under § 213, even if a physician recommends its use to a

patient. Accordingly, *A* may not deduct the cost of the aspirin under § 213.

However, § 213(b) does not apply to items that are not medicines or drugs, including equipment such as crutches, supplies such as bandages, and diagnostic devices such as blood sugar test kits. Such items may qualify as medical care if they otherwise meet the definition in § 213(d)(1). In this case, the crutches and bandages mitigate the effect of *A*'s injured leg and the blood sugar test kit monitors and assists in treating *A*'s diabetes. Therefore, the costs of these items are amounts paid for medical care under § 213(d)(1) and are deductible, subject to the limitations of § 213.

HOLDINGS

(1) Amounts paid by an individual for medicines or drugs that may be purchased without a prescription of a physician are not taken into account pursuant to § 213(b) and are not deductible under § 213.

(2) Amounts paid by an individual for equipment, supplies, or diagnostic devices may be expenses for medical care deductible under § 213 (subject to the other limitations of that section).

DRAFTING INFORMATION

The principal author of this revenue ruling is John T. Sapienza, Jr., of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Sapienza on (202) 622-7900 (not a toll-free call).