

INTERNAL REVENUE SERVICE

April 29, 2004

Number: **INFO 2004-0090**

Release Date: 6/30/2004

CONEX-119044-04/CC:ITA:B02

Index No. 213.05-05

[REDACTED]

Dear [REDACTED]:

I am writing in response to your letter of March 24, 2004, addressed to IRS Commissioner Mark Everson. You wrote on behalf of your constituent [REDACTED] who is concerned about the deductibility of private school tuition as a medical care expense. His son has been diagnosed with [REDACTED] and is attending a school that specializes in correcting this kind of disorder. An IRS employee told your constituent the tuition at the school was not deductible as a "special school" expense because the school does not have a physician on staff.

Education is normally not medical care. Thus, a physician must diagnose a medical condition and recommend special education to correct the condition for the education to be medical care. The school need not employ physicians to provide that education, but the school must have a curriculum designed to provide medical care. Helping the student overcome a physical or mental handicap and move on to normal education and living is the essence of "special education." Section 1.213-1(e)(1)(v)(a) of the Income Tax Regulations; Rev. Rul. 70-285, 1970-1 C.B. 52, 53.

Publication 502, *Medical and Dental Expenses*, states a taxpayer can include in medical expenses the cost (tuition, meals, and lodging) of attending a school that furnishes special education to help a child to overcome learning disabilities. A doctor must recommend that the child attend the school for special education. Overcoming the learning disabilities must be a principal reason for attending the school, and any ordinary education received must be incidental to the special education provided. Special education thus includes teaching Braille to a visually-impaired person, teaching lip reading to a hearing-impaired person, giving remedial language training to correct a condition caused by a birth defect, or overcoming other disabilities.

[REDACTED] quoted the following statement from Publication 502: "You cannot include in medical expenses the cost of sending a problem child to a school where the course of study and the disciplinary methods have a beneficial effect on the child's attitude if the

availability of medical care in the school is not a principal reason for sending the student there." Apparently, [REDACTED] accountant said this statement explained why the expenses would not be deductible. [REDACTED] asked that we remove this statement from Publication 502 because he believes it discriminates against children with mental health issues.

I believe the statement quoted is correct in its context of children who need discipline to correct their behavior. This is an example of education that is not medical care. Thus, a parent who sends a defiant son to military school is not doing this to overcome a mental or physical disorder, but to provide discipline and ordinary education.

Although the IRS tries to assist taxpayers who telephone with questions, a telephone conversation is not an authoritative analysis. [REDACTED] may, of course, consult with his accountant on whether to apply for a private letter ruling to determine deductibility of the cost of sending his son to a particular school. To receive a favorable ruling, he will need to show his son is attending principally to receive medical care.

I hope this information is helpful in responding to [REDACTED]. If you have any questions, please call me at [REDACTED], or [REDACTED].

Sincerely,

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