

INTERNAL REVENUE SERVICE

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March 14, 2005

The Honorable Mark E. Souder
E. Ross Adair Federal Building
1300 S. Harrison St., Room 3105
Ft. Wayne, IN 46802

Attention: Steve Howell

Dear Congressman Souder:

I am responding to your inquiry of September 23, 2004, on behalf of your constituent, _____, about deducting the cost of drugs he imported from Canada.

He read an article stating the deduction is not allowed because importation is illegal, and asked your aid to reverse this.

A taxpayer may deduct expenses for medical care for the taxpayer, spouse, or a dependent under section 213(a) of the Internal Revenue Code. But no deduction is allowed for illegal operations, treatments, or drugs. Sections 1.213-1(e)(1)(ii) and (e)(2) of the Income Tax Regulations. The Food and Drug Administration (FDA) announced it is illegal for individuals to import drugs from other countries. FDA Traveler Alert, http://www.fda.gov/ora/import/traveler_alert.htm. Those drugs are thus nondeductible.

The Congress enacted a law to let the FDA allow individuals waivers to legally obtain drugs from Canada, provided the FDA certified this can be safe and cost-effective. Section 1121 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173, Dec. 8, 2003), 21 U.S.C. § 384(j)(2). However, the FDA concluded that it would be difficult and costly to ensure the safety and effectiveness of drugs imported by individuals, and such a program would not give consumers significant savings. HHS Task Force on Drug Importation, Report on Prescription Drug Importation (2004). Because this leaves standing the FDA position that it is illegal for individuals to import drugs, individuals may not deduct the cost of drugs they import from Canada.

I hope this information is helpful. If you have any questions, please call me at

Sincerely,

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