



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 9, 2007

UIL 213.05-00

Number: **INFO 2007-0037**

Release Date: 9/28/2007

CONEX-134935-07

The Honorable John P. Sarbanes
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Sarbanes:

I am responding to your letter dated July 9, 2007, on behalf of your constituent,

 sells “meal replacements and dietary supplements” to help people reduce their weight. questions why section 213(d)(1) of the Internal Revenue Code (Code) disallows a “medical expense” deduction for diet foods.

Section 213(a) of the Code provides a deduction for expenses paid for medical care of the taxpayer, his spouse, or a dependent, to the extent such expenses exceed 7.5 percent of adjusted gross income. Section 213(d)(1) defines the term “medical care” as 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 262 of the Code provides that no deduction shall be allowed for personal, living, or family expenses. Food is a personal item. Therefore, the cost of food is nondeductible.

Meal replacements, diet foods, and supplements are substitutes for the food individuals normally consume. The costs of these items are nondeductible personal expenses under section 262.

In Revenue Ruling 2002-19, 2002-1 C.B. 778 (copy enclosed), the Service ruled that obesity is a disease. However, the ruling specifically held that taxpayers diagnosed as obese may not deduct any portion of the cost of purchasing reduced-calorie diet foods because the foods are substitutes for the food taxpayers normally consume to satisfy

their nutritional requirements. Accord, Revenue Ruling 55-261, 1955-1 C.B. 307 (copy enclosed), which distinguishes medical versus personal expenses in several contexts.

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

Sincerely,

George J. Blaine
Associate Chief Counsel
(Income Tax and Accounting)

Enclosures(2)