

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200729019**

Release Date: 7/20/2007

Index Number: 213.00-00, 213.05-03,
213.05-05

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B03
PLR-135049-06

Date:
April 10, 2007

Legend:

Condition 1 =
Condition 2 =
Condition 3 =
Condition 4 =
Condition 5 =
Child A =
Taxpayers =
School =
College =
Year =
X =

Dear _____ :

This is in response to your letter of July 18, 2006. You requested a ruling on the deductibility of tuition for your medically handicapped dependent child as a medical care expense under § 213(a) of the Internal Revenue Code

FACTS

Child A has been diagnosed with several developmental disorders, including Condition 1, an endocrine disorder that is accompanied by delayed motor, cognitive, and social development skills, as well as Condition 2, Condition 3, Condition 4 and Condition 5. Child A has received numerous comprehensive developmental, speech and language, educational, and neuropsychological evaluations from early childhood through age 17 years, 8 months. Her most recent neuropsychological report stated in part that she will need to have a support program for Condition 2 and counseling for Condition 5 if she is

to attend college. As a result of this diagnosis, Child A was referred to School. School provides a comprehensive program that is designed to provide students who have learning disabilities of a medical nature such as Condition 2 and Condition 3 with the help and support they need to complete a college or vocational program and to become competent and responsible adults. School's current population includes students with low average to gifted IQ's with various diagnoses of learning disorders and autistic spectrum disorders. School's faculty is a diverse group of over forty professionals, many of whom hold masters or doctoral level degrees.

School does not provide actual college courses or living facilities. School provides assistance to students who are independently enrolled in neighboring colleges and technical schools. Student's academic tuition at the neighboring colleges and technical schools is paid directly to such neighboring schools. School provides tutoring and specialized social, academic and independent living skill development to enable the students to succeed in the college environment. School provides a 12 month program for which the annual tuition is \$X. School has determined that Child A will require significant remedial training prior to and while she is attending classes at College because of the severity of Condition 3.

LAW AND ANALYSIS

Section 213(a) provides that expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse, and dependents (as defined in §152) are deductible to the extent such expenses exceed 7.5 percent of adjusted gross income.

Section 213(d)(1)(A) defines "medical care" to include 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 1.213-1(e)(1)(v)(a) of the Income Tax Regulations provides that ordinary education is not medical care. However, the cost of medical care includes the cost of attending a special school for a mentally or physically handicapped individual, if his condition is such that the resources of the institution for alleviating such mental or physical handicap are a principal reason for his presence there. The regulation further states that the cost of care and supervision, or of treatment and training, of a mentally retarded or physically handicapped individual at an institution is within the meaning of the term "medical care."

Rev. Rul. 70-285, 1970-1 C.B. 52, interprets the term "special school" in the regulations as a limited category of the term "institution." It concludes that the distinguishing characteristic of a special school is the substantive content of its curriculum, which may include some ordinary education, but only if the ordinary education is incidental to the primary purpose of the school of enabling the student to compensate for or overcome a

handicap. Accordingly, the ruling concludes that the taxpayer may deduct as a medical expense the cost of his mentally handicapped child's participation in a specially designed, self-contained course designed to meet the child's needs.

Rev. Rul. 78-340, 1978-2 C.B. 124, involves amounts paid by a taxpayer for the education of a child with severe learning disabilities that resulted in reading difficulties. The child's doctor recommended that the child attend a special school that offered a program to educate children with severe learning disabilities so that they can return to a regular school. The ruling holds that the tuition fees for attending the school are deductible expenses for the child's medical care.

In Greisdorf v. Commissioner, 54 T.C. 1684 (1970), acq. 1970-2 C.B. XIX, the petitioner-wife's daughter, Elizabeth, was incapable of functioning normally at school. Elizabeth was subject to severe emotional outbursts; she lost interest in personal relationships; and, she did not engage in activities that were normal for a girl of her age. Upon the recommendation of a psychiatrist, the petitioners enrolled Elizabeth in a private school which specialized in treating children with emotional handicaps and in remedying their learning disabilities. The court held that the school was a "special school" within the meaning of § 1.213-1(e)(1)(v)(a) and that Elizabeth "was sent to the institution to further her (medical) treatment" and "the scholastic program that was developed for her there was carefully designed to provide the necessary services to eliminate the emotional barriers to her future normal scholastic success". Accordingly, the Court concluded that the tuition paid by the petitioners' during the year in issue was expended for medical care within the meaning of § 213(e)(1).

The above authorities support the conclusion that the program offered by School for Child A is designed primarily to enable Child A to compensate for and overcome her diagnosed medical conditions. Therefore, we conclude that School is a special school within the meaning of section 1.213-1(e)(1)(v)(a) of the Income Tax Regulations. Consequently the tuition paid to School for your dependent Child A is deductible as a medical cost under § 213 of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by

attaching a statement to their return that provides the date and control number of the letter ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement, executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Sincerely,

Christopher F. Kane
Branch Chief, Branch 3
Office of Associate Chief Counsel
Income Tax and Accounting