



IRS Policies on Deductions for Weight Control Treatment

On April 2, 2002, the Internal Revenue Service (IRS) announced a change in its policy regarding how taxpayers may deduct the costs of weight loss / weight control programs.

The following are interpretations of the American Obesity Association regarding the IRS policy. This is not an official interpretation. Consult your professional tax advisor on how this new policy effects your specific tax situation.

1. **What has changed?**

The IRS set out a new policy in a Revenue Ruling (2002-19) on April 2, 2002.

New Policy: In Revenue Ruling 2002-19, the IRS stated that, "Obesity is medically accepted to be a disease in its own right." The IRS ruled that, "Uncompensated amounts paid by individuals for participation in a weight-loss program as treatment for a specific disease or diseases (including obesity) diagnosed by a physician are expenses for medical care that are deductible under § 213, subject to the limitations of that section."

Old Policy: A ruling in 2000 allowed that "You can include in medical expenses the cost of a weight-loss program undertaken at a physician's direction to treat an existing disease (such as heart disease). But you cannot include the cost of a weight-loss program if the purpose of the weight control is to maintain your general good health." Publications prior to 2000 stated "You cannot include the cost of a weight loss program for your general health even if your doctor prescribes the program."

2. **What does the policy change mean?**

Previously, the language was so strict that all treatments for weight loss were excluded. The IRS then allowed the cost for treating diseases associated with obesity. Now the IRS has clearly stated new criteria allowing a wide array of costs for weight loss programs to be deducted by taxpayers to a) treat obesity, and b) treat conditions (such as hypertension) that can be improved with weight loss.

3. **Who is eligible for the deduction?**

There are three categories of persons who may be eligible. First, taxpayers who itemize their deductions can add these costs to the costs of medical and dental expenses. Within this category, taxpayers can only deduct medical and dental expenses that exceed 7.5% of their adjusted gross income and that are not reimbursed.

Second, many employees have medical savings accounts (MSAs) through their employers. MSAs use the same definitions of medical expenses, as do individual taxpayers. Therefore, employees can use their MSAs for weight loss programs if undertaken at a physician's direction to treat an existing disease.

Third, many employers provide Flexible Savings Accounts (FSAs) that may provide this coverage. FSAs, also, use the same definitions of medical expenses, as do individual taxpayers.

4. Do I have to be overweight or obese to be eligible for the deduction?

The IRS did not use those terms. The eligible taxpayer must have a disease (including obesity), which is likely to benefit from weight loss treatment. Heart disease, hypertension, high cholesterol, type 2 diabetes are other conditions that a physician may prescribe weight loss for treatment even if the person is not obese.

5. Is obesity itself a disease?

Yes. Obesity is a listed disease in the International Classification of Diseases (ICD-9-CM). The ICD-9-CM is published by the World Health Organization and is the definitive compilation of diseases; the United States Public Health Service uses it.

According to the IRS, "Obesity is medically accepted to be a disease in its own right. The National Heart, Lung, and Blood Institute, part of the National Institutes of Health, describes obesity as a 'complex, multifactorial chronic disease.'" "Other government and scientific entities have reached similar conclusions. For example, in a preamble to final regulations the Food and Drug Administration states "obesity is a disease." 65 Fed. Reg. 1027, 1028 (Jan. 6, 2000). The World Health Organization states that "[o]besity is now well recognized as a disease in its own right" Press Release 46 (June 12, 1997)."

Obesity is not defined in the Revenue Ruling. Medically, obesity is excessive body fat usually measured as 30 pounds or more over ideal body weight or a Body Mass Index of 30 or more.

6. What is the definition of a "weight-loss program?"

The AOA interprets "weight-loss programs" to include physician-recommended treatments that are specific for weight loss and maintenance such as bariatric surgery, FDA approved weight-loss drugs, physician and hospital-based programs, behavioral counseling, the services of physicians, dieticians and nutritionists, exercise specialists as well as some commercial-like programs such as Weight Watchers and Jenny Craig.

7. What about weight maintenance programs?

Weight maintenance is a special circumstance and may or may not be allowed as a deduction. According to the IRS, once a condition is "cured," it is no longer deductible. However, the IRS states that "the deduction for medical care expenses will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness." Maintaining a weight loss should qualify for the deduction if a physician recommends the continuation of treatment to manage weight for prevention or alleviation purposes.

8. What expenses cannot be deducted?

Under separate sections of Publication 502, the following expenses are not deductible: health club dues, nutritional supplements, over the counter products, low fat foods, exercise

equipment. Liposuction is regarded as cosmetic surgery and would not be deductible under this new provision.

The IRS has ruled that "a taxpayer who participates in a weight reduction program to improve the taxpayer's appearance, general health, and sense of well-being, and not to cure a specific ailment or disease, may not deduct the cost as a medical expense."

9. What documentation and proof of payment must be submitted to the IRS?

Documentation that your physician told you to lose weight to treat a specific disease such as obesity should be kept. Although the weight loss program itself does not have to be under physician direction, documentation should describe the treatment your physician recommends for weight loss. It is probably prudent to make a note for your files of when your doctor told you to lose weight.

You must also keep records of the expense of the treatment(s). You need not submit proof of treatment and payment for treatment (e.g., prescriptions, receipts, invoices) with your taxes. However, such documentation should be kept in case of an audit.

10. How is the IRS going to enforce this policy?

Remember that we don't speak for the IRS. We assume that the IRS would rely on audits of taxpayer returns. Audits for the express reason of the medical deduction are rare unless very large medical deductions are claimed in relationship to the income reported. But it could come up in routine audits.

If asked, taxpayers are expected to be able to produce documentation of their deductions going back three years (sometimes up to six years). Therefore, it is wise to obtain your doctor's instruction in writing now. The IRS would probably be less accepting of a letter from your doctor two years after the weight loss program is started.

If the IRS otherwise believes the policy is being abused it can revert to the previous policy or alter the new policy.

11. What is the background of this change?

On September 14, 1999, the American Obesity Association and nine other organizations, American Association of Bariatric Physicians, American Society for Bariatric Surgery, Health Management Resources, Inc, Jenny Craig, Inc., Knoll Pharmaceutical Co., Novartis Nutrition Corp., Obesity Law and Advocacy Center, Shape Up! America, Tanita Corp., and Weight Watchers Intl. Inc., filed a petition with the Internal Revenue Service seeking a revision in Revenue Ruling 79-151.

It was that Revenue Ruling which provided the basis of the information in the IRS Publication. After a response from the IRS for additional information, the AOA provided extensive and detailed information to the IRS on March 20, 2000. During this period, many of the participating organizations wrote directly to the IRS or to Members of Congress in support of the change. As a result, the IRS dramatically revised its advice to taxpayers in a ruling that allowed the cost of a weight-loss program as a medical deduction to treat an existing disease.

In May 2001, the AOA asked the IRS to clarify whether the cost for the treatment of obesity itself, without another disease, is allowed as a medical expense. Ruling 2002-19 is the result.

12. Do I have to show an actual improvement in health to be eligible for the deduction?

No. Treatment does not have to be successful for the expense to be deductible.

13. I had a lot of expenses for weight loss last year and some maintenance expenses this year. Can I amend my taxes for last year to reflect the new policy?

You should be able to. According to the IRS, "This guidance applies not only to the 2001 tax returns being filed this year, but also to any years for which taxpayers may file amended returns. Generally, a person may amend a return for three years after the due date. Thus, a taxpayer who did not have an extension to file would have until April 15, 2002, to amend a 1998 return." We suggest consulting your professional tax advisor before submitting an amended tax return.

Internal Revenue Service Ruling 2002-19

As provided by the Internal Revenue Service (IRS):

Part 1

Section 213 -- Medical, Dental, etc., Expenses

26 CFR 1.213-1: Medical, Dental, etc., Expenses

(Also § 262; 1.262-1.)

Rev. Rul. 2002-19

ISSUE

Are uncompensated amounts paid by individuals for participation in a weight-loss program as treatment for a specific disease or ailment (including obesity) diagnosed by a physician and for diet food items expenses for medical care that are deductible under § 213 of the Internal Revenue Code?

FACTS

Taxpayer A is diagnosed by a physician as obese. A does not suffer from any other specific disease. Taxpayer B is not obese but suffers from hypertension. B has been directed by a physician to lose weight as treatment for the hypertension.

A and B participate in the X weight-loss program. A and B are required to pay an initial fee to join X and an additional fee to attend periodic meetings. At the meetings participants develop a diet plan, receive diet menus and literature, and discuss problems encountered in dieting. A and B also purchase X brand reduced-calorie diet food items. Neither A's nor B's costs are compensated by insurance or otherwise.

LAW

Section 213(a) allows a deduction for uncompensated expenses for medical care of an individual, the individual's spouse or a dependent, to the extent the expenses exceed 7.5 percent of adjusted gross income. Section 213(d)(1) provides, in part, that medical care means

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.

Under § 1.213-1(e)(1)(ii) of the Income Tax Regulations, the deduction for medical care expenses will be -confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness. An expense- that is merely beneficial to the general health of an individual is not an expense for medical care. Whether an expenditure is primarily for medical care or is merely beneficial to general health is a question of fact.

Section 262 provides that, except as otherwise expressly provided by the Code, no deduction is allowed for personal, living, or family expenses.

Rev. Rul. 79-151, 1979-1 C.B. 116, holds that a taxpayer who participates in a weight reduction program to improve the taxpayer's appearance, general health, and sense of well-being, and not to cure a specific ailment or disease, may not deduct the cost as a medical expense under § 213.

Rev. Rul. 55-261, 1955-1 C.B. 307, holds that medical care includes the cost of special food if (1) the food alleviates or treats an illness, (2) it is not part of the normal nutritional needs of the taxpayer, and (3) the need for the food is substantiated by a physician. However, special food that is a substitute for the food the taxpayer normally consumes and that satisfies the taxpayer's nutritional needs is not medical care.

ANALYSIS

Amounts paid for the primary purpose of treating a disease are deductible as medical care. Obesity is medically accepted to be a disease in its own right. The National Heart, Lung, and Blood Institute, part of the National Institutes of Health, describes obesity as a "complex, multifactorial chronic disease." Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults (1998), page vii. This report is based on an evaluation by a panel of health professionals of scientific evidence published from 1980 to 1997.

Other government and scientific entities have reached similar conclusions. For example, in a preamble to final regulations the Food and Drug Administration states "obesity is a disease." 65 Fed. Reg. 1027, 1028 (Jan. 6, 2000). The World Health Organization states that "[o]besity is now well recognized as a disease in its own right. . . ." Press Release 46 (June 12, 1997).

In the present case, a physician has diagnosed A as suffering from a disease, obesity. Therefore, the cost of A's participation in the X weight-loss program as treatment for A's obesity is an amount paid for medical care under § 213(d)(1). Although B is not suffering from obesity, B's participation in X is part of the treatment for B's hypertension. Therefore, B's cost of participating in the program is also an amount paid for medical care. A and B may deduct under § 213 (subject to the limitations of that section) the fees to join the program and to attend periodic meetings. These situations are distinguishable from the facts of Rev. Rul. 79-151, in which the taxpayer was not suffering from any specific disease or ailment and participated in a weight-loss program merely to improve the taxpayer's general health and appearance. However, A and B may not deduct any portion of the cost of purchasing reduced-calorie diet foods because the foods are substitutes for the food A and B normally consume and satisfy their nutritional requirements.

HOLDING

Uncompensated amounts paid by individuals for participation in a weight-loss program as treatment for a specific disease or diseases (including obesity) diagnosed by a physician are expenses for medical care that are deductible under § 213, subject to the limitations of that section. The cost of purchasing diet food items is not deductible under § 213.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 79-151 and Rev. Rul. 55-261 are distinguished.

IRS Clarification Obesity Tax

Internal Revenue Service

Index No.: 213.05-00

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Dear Mr. X:

This responds to your letter of May 22, 2001. You requested general information on whether expenses for the diagnosis and treatment of obesity by a physician under generally accepted medical guidelines qualify as expenses for medical care under the Internal Revenue Code.

Section 213(a) allows as a deduction the expenses paid during the taxable year for medical care of the taxpayer, spouse, or dependent. Under § 213(d)(1)(A), an expense is for "medical care" if its primary purpose is the diagnosis, cure, mitigation, treatment, or prevention of disease.

The Income Tax Regulations state that the deduction for medical care expenses will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness. An expense that is merely beneficial to the general health of an individual is not an expense for medical care. Section 1.213-1(e)(1)(ii).

A taxpayer who claims that an expense of a peculiarly personal nature is primarily for medical care must establish that fact. Among the objective factors that indicate that an otherwise

personal expense is for medical care are the taxpayer's motive or purpose, recommendation by a physician, linkage between the treatment and the illness, treatment effectiveness, and proximity in time to the onset or recurrence of a disease. *Havey v. Commissioner*, 12 T.C. 409 (1949). There is no strict requirement that a medical treatment must be provided by a physician, see, e.g., Rev. Rul. 70-170, 1970-1 C.B. 51. However, as in *Havey*, a diagnosis by a physician is sometimes necessary to substantiate that the taxpayer is suffering from a disease or that an expense for something peculiarly personal (e.g., a hot tub, a treadmill, or a trip to Florida) is treatment for a disease. See *also* Rev. Rul. 55-261, 1955-1 C.B. 307 questions 9 and 15.

In accordance with these principles, Rev. Rul. 79-151, 1979-1 C.B. 116, holds that, if participation in a weight loss program is to improve the participant's appearance, general health, or sense of well-being, the expenses of the program are not for medical care and are not deductible. However, the expenses of a weight-loss program that is intended to treat a specific disease (such as heart disease or high blood pressure) are for medical care and are deductible.

We are aware that there is considerable scientific and regulatory authority that obesity is, in and of itself, a disease. E.g., National Heart, Lung, and Blood Institute, Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults (1998), page vii; World Health Organization, Press Release 46 (June 12, 1997); National Academy of Sciences, Institute of Medicine, *Weighing the Options: Criteria for Evaluating Weight-Management Programs* (National Academy Press 1995), page 1; Food and Drug Administration, final regulation on statements made for dietary supplements, 65 Fed. Reg. 1027,1028 (Jan. 6, 2000); Social Security Administration, ruling on the evaluation of disability claims involving obesity, 65 Fed. Reg. 31039 (May 15, 2000). If obesity is a disease, then expenses for the diagnosis and treatment of obesity may qualify as expenses for medical care.

There are, however, certain limitations on the medical expense deduction that may apply to expenses for treating obesity. Expenses for medicines and drugs to assist in weight loss can be for medical care only if the medicine or drug is a prescribed drug or insulin. A "prescribed drug" is a drug or biological that requires a prescription of a physician for use by an individual. Sections 213(b) and (d)(3).

Additionally, while many obese individuals may follow special diets as part of their treatment, the cost of food is not an expense for medical care to the extent the food is a substitute for the food that an individual would normally consume to meet nutritional requirements. If a special diet is directed as treatment for a disease, only the excess cost of the special diet over the cost of a regular diet could be an expense for medical care. Rev. Rul. 55-261, 1955-1 C.B. 307, question 15; *Harris v. Commissioner*, 46 T.C. 672 (1966).

I hope that this general information is helpful. If you have any questions or require additional information please contact Donna M. Crisalli at (202) 622-4920.

Sincerely,

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By: (signed)
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