



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

OFFICE OF THE CHIEF COUNSEL

May 11, 2010

Number: **INFO 2010-0129**

Release Date: 6/25/2010

CONEX-115853-10

Index Number: 213.00-00

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

Attention:

Dear Mr. Tanner:

I am responding to your letter of April 9, 2010, on behalf of the . asks whether the costs of buying, training, and maintaining a service animal to assist individuals with mental health disabilities qualify for the medical expense deduction under § 213 of the Internal Revenue Code.

Section 213(a) provides a deduction for expenses paid for medical care of the taxpayer, spouse, or dependent, to the extent the expenses exceed 7.5 percent of adjusted gross income. Section 213(d)(1)(A) defines "medical care" as amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting a structure or function of the body.

Deductions for medical care allowable under § 213 are limited to expenses paid primarily for the prevention or alleviation of a physical or mental defect or illness. Section 1.213-1(e)(1)(ii) of the Income Tax Regulations. Furthermore, under those regulations, an expenditure that is merely beneficial to the general health of an individual is not for medical care. Whether an expenditure is "primarily for" medical care is a question of fact that must be determined on a case-by-case basis.

A taxpayer who claims that an expense of a peculiarly personal nature is primarily for medical care must establish that fact. The courts have looked toward objective factors to determine whether an otherwise personal expense is for medical care: the taxpayer's motive or purpose for making the expenditure, whether a physician has diagnosed a medical condition and recommended the item as treatment or mitigation, 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). The taxpayer also must establish that the expense would not have been paid "but for" the disease or illness. A personal expense is not deductible as medical care if the taxpayer

would have paid the expense even in the absence of a medical condition.
Commissioner v. Jacobs, 62 T.C. 813 (1974).

The costs of buying, training, and maintaining a service animal to assist an individual with mental disabilities may qualify as medical care if the taxpayer can establish that the taxpayer is using the service animal primarily for medical care to alleviate a mental defect or illness and that the taxpayer would not have paid the expenses but for the disease or illness.

I hope this information is helpful. If you need further assistance, please call me or
, Identification Number , at .

Sincerely,

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