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FEDERAL INCOME TAXATION

Deductibility of Medical Expenses Which Are Also Personal Expenses

Can the cost of a television set be deductible as a medical expense? Over the past six years, medical deductions have been allowed for air conditioning,1 “autoette” wheelchair,2 elevator,3 swimming pool,4 tape recorder, typewriter, special lenses and projectory lamp,5 special foods,6 and a reclining chair.7 The preceding list is not complete but is indicative of the “personal nature” of some medical deductions.

Case law over the years has set forth the following criteria for a medical deduction: (1) Was the expense incurred at the direction or suggestion of a physician; (2) Did the treatment bear

1Rev. Rul. 55-261, 1955-1 C.B. 307, where it was said that air conditioner installed for the purpose of effecting relief from an allergy or for relieving difficulty in breathing due to heart condition is deductible if need for it is substantiated by the evidence, that it is used primarily for the alleviation of the illness, and does not become a permanent part of the dwelling and may be removed to other quarters.

2Rev. Rul. 58-8, 1958-1 C.B. 154, where an autoette or wheel chair either manually operated or self-propelled, and used primarily for alleviation of taxpayer’s disability, was deductible as long as it was not merely to provide transportation between his residence and place of employment.

3Rev. Rul. 59-411, 1959-2 C.B. 100, where the elevator was installed on the advice of a doctor to alleviate an acute coronary insufficiency of one Mrs. Berry. Expenditure for medical purposes will not be denied simply because they are of a capital nature. James E. Barry et ux. v. Earl R. Wiseman (W.D. Okla. 1958), 174 F. Supp. 748.

457-2 U.S.T.C. ¶ 10,012, in which a jury found that cost of a swimming pool constructed on doctor’s orders for the treatment of taxpayer’s wife who had suffered from an attack of paralytic poliomyelitis, was deductible.

5Rev. Rul. 58-223, 1958-1 C.B. 156, in which the cost of aid to assist in education of child going blind was deductible as tending to mitigate the condition of the sense of losing sight.

6Rev. Rul. 55-261, 1955-1, C.B. 307 where food prescribed by a physician for medical purposes and in addition to a normal diet, qualified as a medical expense.

7Rev. Rul. 58-155, 1958-1 C.B. 156, in which said chair was acquired for the purpose of obtaining maximum rest by the taxpayer suffering from a cardiac condition.
such a direct or proximate therapeutic relation to the bodily condition as to justify a reasonable belief that it would be efficacious; and, (3) Was the treatment so proximate in time to the outset or recurrence of the disease or condition as to make the one the true occasion of the other, thus eliminating the objection that the expense was incurred for "general" as contrasted with a "specific" physical or mental impairment. 8

In still another landmark case, L. Stringham v. Commissioner of Internal Revenue, 9 the court noted that the basic concept of the Code was that personal expenses are not deductible and that medical expenses were in no way to encompass items which were primarily personal living expenses. The court went on to say, in effect, that there are expenses decidedly medical in character and those decidedly personal by nature and that it will be a question of fact where the expenses have characteristics of medical and personal nature.

Under what fact situation, if any, could a television set be deducted as a medical expense? Or, is a television set prima facie a personal living expense and never deductible?

The above problem might be presented in the following hypothetical situation: Mrs. X, a widow, seeks a medical deduction for a television set bought by her upon instructions of Doctor Y, a qualified psychiatrist. Doctor Y has told Mrs. X that the television will serve to mitigate Mrs. X's eight year old daughter's mental illness brought on by the child's loneliness while her mother is away working. Mrs. X dislikes TV and has never made any use of the set while she was at home.

Section 213(e)(1) of the Internal Revenue Code of 1954 defines medical care as "amounts paid for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of effecting any structure or function of the body..." To satisfactorily answer this hypothetical problem it is necessary to find when the definition of medical care will or should include expenses incurred for items which are decidedly personal in nature and under what circumstances the mere fact that one usually

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9 12 T.C. 580 (1949).
considers an item “personal” should not defeat a claim for a medical deduction.

A recent revenue ruling allowed a deduction for a reclining chair,\textsuperscript{10} hardly an item of a medical nature. In the ruling, a simplified version of the Havey\textsuperscript{11} test for medical deductions was laid down. That is, (1) can it be substantiated that the chair was prescribed by a cardiac specialist; (2) did the chair serve no other purpose than the mitigation of the physical condition of the patient; and, (3) was the chair not generally used as an article of furniture. Certainly the facts of our hypothetical situation fit this test. The television set was bought under doctor’s orders; the set served no other purpose than the mitigation of the eight year old’s mental illness; and the set was not used generally as an item of furniture. But before taxpayer concludes that he can get a medical deduction for a television set, he should consider a line of thought on medical deductions as illustrated by the case of \textit{John J. Thoene v. Commissioner of Internal Revenue}.\textsuperscript{12}

In the Thoene case the taxpayer’s psychiatrist recommended that he engage in activities which would bring him into contact with groups of people in a social environment by way of a cure for his emotional disturbances. A few months later, Taxpayer underwent an abdominal operation which had the effect of weakening his legs. The physician suggested mild exercise of the legs and the psychiatrist reiterated his advice that taxpayer should enroll in dancing school. The court said, in denying the deduction for the cost of dance lessons, that normally such expenses must be considered personal and the government did not intend that dance lessons would constitute medical care. What the doctors had suggested were purely personal activities—the same benefits could be derived from playing golf and participating in the activities of a country club. The court cited the Havey\textsuperscript{13} case for the proposition that Congress never intended purely personal expenses to be deductible. To put the results of this case in terms of the Havey test, the court seemed to be saying

\textsuperscript{10}Rev. Rul. 58-155, \textit{supra} note 7.
\textsuperscript{11}\textit{Supra} note 8.
\textsuperscript{12}33 T.C. 62 (1959).
\textsuperscript{13}Havey, \textit{supra} note 8.
that the expense was incurred for a general as contrasted with specific mental impairment since the treatment was not so proximate in time to the outset or recurrence of the disease or condition as to make the one the true occasion of the other.

The result of the Thoene case, as contrasted with the host of revenue rulings permitting deductions for items just as personal in nature as dancing lessons, will probably have a two-fold effect. First, because of the underlying theory that Congress did not intend to give a deduction for personal expenses, the courts appear to be drawing a line, the one side of which will be expenses which are always personal in nature and non-deductible per se. Secondly, it has been posited that the traditional test in the Havey case is so clearly set forth in terms relating to physical diseases and conditions that cases involving mental illness and their treatment cannot qualify, and yet as the understanding of mental illness and treatment progresses, these should qualify as legitimate medical expenses.\(^\text{14}\) This suggestion, then, is based on the notion that the cure for mental diseases cannot be as specific as that for physical diseases; or, to paraphrase the last phrase in terms of the Havey case, the treatment cannot be so proximate in time to the outset or recurrence of the mental disease as to make one the true occasion of the other. But should this defeat the deduction?

In allowing a deduction for an air conditioner\(^\text{15}\) or an "auto-ette,"\(^\text{16}\) it is easy to see the direct relation between the treatment and the cure, the treatment being so "proximate in time to the outset..." Such relationship is not so obvious in the case of dancing lessons or a television set to mitigate a mental illness; nevertheless, there should be no discrimination between expenses paid for the cure of mental illness and those paid for physical illnesses.

In the past it has been ruled that amounts paid to psychologists come within the meaning of medical care and are deduc-

\(^{14}\)Curhan, *Deductibility of Transportation Costs as Medical Expenses Turns on Intent*, 13 J. TAXATION 31 (1960).

\(^{15}\)Rev. Rul. 55-261, supra note 1.

\(^{16}\)Rev. Rul. 58-8, supra note 2.
Moreover in the case of a child suffering from severe emotional disturbances and thereby necessitating a special treatment school, the deduction for school costs is allowed. Here the cure and the illness are closely related and the cure is clearly proximate in time to the outset of the disease, whereas in the Thoene case and our hypothetical problem, it is more difficult to see both the close relationship of the cure to the disease and the close relationship of the time of the cure to the outset of the disease.

On the other hand perhaps the court is merely laying down the rule in the Thoene case (as was suggested earlier) that certain expenses will always be personal, irrespective of whether the alleged medical expenses were incurred in seeking a cure for a mental or a physical illness. If this is the case, the courts should keep in mind the fundamental purpose of the medical deduction as expressed by the Senate Finance Committee: "This allowance is recommended in consideration of the heavy tax burden that must be borne by individuals during the existing emergency and of the desirability of maintaining the present high level of public health." Conceding that the expense should be one primarily incurred for the prevention or cure of a disease, the fact that the expense is one which is ordinarily thought of as personal in nature should not be of over-riding importance in determining the validity of a claim for a medical deduction if the purpose of the deduction as expressed in the Senate Report be taken into consideration.

Prior to the Thoene case, the Tax Court, in a memorandum decision, did take the position that an expense for a mental illness was deductible even though personal in nature. The deduction in this case was claimed for money spent by a husband to rent a car in which he took his mentally ill wife, who was confined to

a rest home, for rides. These rides through the country were suggested by the resident physician at the rest home and testimony was given to the effect that "countryside" rides were accepted therapeutic treatment for the wife's particular psychiatric condition. The court here again cites the Havey test for medical deductions and concludes that the facts here meet the test requirements. The Tax Court here allowed a deduction for expenses incurred by renting a car in which to take pleasure rides through the countryside — an expense incurred for something of no less personal nature than dancing lessons. The conclusion to be drawn is that the Court recognized that treatment for mental illnesses might not be, in terms of Havey, proximate in time to the recurrence or onset of the disease, that the expenses might be personal in nature, but that the deduction might nevertheless be allowed. The Thoene case represents a retreat from this position.\textsuperscript{21}

In conclusion, two stumbling blocks have been laid in the way of including amounts spent for items of a highly personal nature within the definition of expenses for medical care. First, is the general feeling expressed since the enactment of the medical deduction that Congress did not intend to give deductions for personal expenses. As a result certain expenses will always be of a personal nature and never deductible. A second stumbling block, not as precisely set forth as the first but seemingly present, is the notion that the cure must follow the treatment so that the one is the true occasion of the other. Thus the inclination has been to deny the deduction where the above relationship is not so obvious. This is particularly apparent in the treatment of mental diseases which is not of the precise nature of medical treatment for physical illnesses. It is clear from the purpose of the deduction as set forth in the Senate Finance Committee report\textsuperscript{22} and from

\textsuperscript{21}In passing it should be mentioned that traveling expenses incurred by parents to visit their mentally ill daughter as part of her therapy have been ruled deductible. (Rev. Rul. 58-535, 1958-2 C.B. 108). That ruling is concerned with transportation costs which have developed into a rather separate field outside the scope of this note. Also a very recent case, Namrow v. Commissioner of Internal Revenue, 33 T.C. 419 (1960), did not allow expenses for psychiatric treatment but the facts revealed that the persons concerned had undergone psychiatric treatment as part of their training program in psychiatry; this made it clear that these expenses were not incurred for any medical purposes.

\textsuperscript{22}Supra, note 19.
the appreciation of the divergencies of treatment of mental diseases that these stumbling blocks should be eliminated.

Finally, as to the solution of the hypothetical problem of the deductibility of the television set, one can only offer this answer, a television is so associated with personal pleasures that the taxpayer will have to make out an extremely exact case fitting all the requirements as set forth in the traditional medical deduction cases. The chances now seem to be that the deduction will not be allowed on a theory that such an item as a television set was never intended to be deducted. However, the better view of the overall policy behind the medical deduction seems to be that Congress intended this tax break as a means of assisting those whose medical bills had used up a good portion of their income so that some kind of a "break" was necessary. Following this line of reasoning, the "nature" of the claimed deduction should be immaterial; only a satisfactory explanation that such expenses were in fact incurred in the alleviation, mitigation, prevention, or cure of a mental or physical disease should be necessary. If this were so, the television set in the hypothetical case would clearly be deductible.

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