

Part I

Section 213.--Medical, dental, etc., expenses

26 CFR 1.213-1: Medical, dental, etc., expenses.

(Also § 262; 1.262-1.)

Rev. Rul. 99-28

#### ISSUE

Are uncompensated amounts paid by taxpayers for participation in a smoking-cessation program, for prescribed drugs designed to alleviate nicotine withdrawal, and for nicotine gum and nicotine patches that do not require a prescription, expenses for medical care that are deductible under § 213 of the Internal Revenue Code?

#### FACTS

Taxpayers A and B were cigarette smokers. A participated in a smoking-cessation program and purchased nicotine gum and nicotine patches that did not require a prescription. A had not been diagnosed as having any specific disease, and participation in the program was not suggested by a physician. B purchased drugs that required a prescription of a physician to alleviate

the effects of nicotine withdrawal. A's and B's costs were not compensated for by insurance or otherwise.

#### LAW AND ANALYSIS

Section 213(a) allows a deduction for uncompensated expenses for medical care of an individual, his 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 § 213(b), a deduction is allowed for amounts paid during the taxable year for medicine or a drug only if the medicine or drug is a prescribed drug or insulin. Section 213(d)(3) defines a "prescribed drug" as a drug or biological that requires a prescription of a physician for its use by an individual.

Section 1.213-1(e)(1)(ii) of the Income Tax Regulations provides, in part, 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 262 provides that, except as otherwise expressly provided by the Code, no deduction is allowed for personal, living, or family expenses.

Rev. Rul. 79-162, 1979-1 C.B. 116, holds that a taxpayer who has no specific ailment or disease may not deduct as a medical expense under § 213 the cost of participating in a smoking-cessation program. However, the Internal Revenue Service has held that treatment for addiction to certain substances qualifies as medical care under § 213. See Rev. Rul. 73-325, 1973-2 C.B. 75 (alcoholism); Rev. Rul. 72-226, 1972-1 C.B. 96 (drug addiction).

A report of the Surgeon General, The Health Consequences of Smoking: Nicotine Addiction (1988), states that scientists in the field of drug addiction agree that nicotine, a substance common to all forms of tobacco, is a powerfully addictive drug. Other reports of the Surgeon General have concluded, based on numerous studies, that a strong causal link exists between smoking and several diseases. See, e.g., Tobacco Use Among U.S. Racial/Ethnic Minority Groups (1998); Preventing Tobacco Use Among Young People (1994); The Health Benefits of Smoking Cessation (1990). Scientific evidence has thus established that nicotine is addictive and that smoking is detrimental to the health of the smoker.

Under the facts provided, the smoking-cessation program and the prescribed drugs are treatment for A's and B's addiction to nicotine. Accordingly, A's costs for the smoking-cessation program and B'S costs for prescribed drugs to alleviate the effects of nicotine withdrawal are amounts paid for medical care

under § 213(d)(1). However, under § 213(b), A's costs for nicotine gum and nicotine patches are not deductible because they contain a drug (other than insulin) and do not require a prescription of a physician.

#### HOLDING

Uncompensated amounts paid by taxpayers for participation in a smoking-cessation program and for prescribed drugs designed to alleviate nicotine withdrawal are expenses for medical care that are deductible under § 213, subject to the 7.5 percent limitation. However, amounts paid for drugs (other than insulin) not requiring a prescription, such as nicotine gum and certain nicotine patches, are not deductible under § 213.

#### EFFECT ON OTHER DOCUMENTS

Rev. Rul. 79-162 is revoked.

#### DRAFTING INFORMATION

The principal authors of this revenue ruling are Donna M. Crisalli and John T. Sapienza, Jr. of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Ms. Crisalli or Mr. Sapienza on (202) 622-4920 (not a toll-free call).