

Rev. Rul. 70-285

Advice has been requested whether amounts paid by a taxpayer under the circumstances described below are amounts paid for medical care within the meaning of section 213 of the Internal Revenue Code of 1954.

The taxpayer's son was mentally retarded due to a birth injury. Since the jurisdiction in which the taxpayer resided had no special education program, he enrolled his son in a neighboring jurisdiction's regular school system which had a special curriculum for the "educable mentally handicapped."

The child participated in a specially designed course to meet the needs of handicapped children whose I.Q. scores ranged between 50 and 75. This class was designed to educate students who were not able to profit from the education that was being offered through ordinary classroom instruction, but whose intellectual ability indicated the possibility of a degree of scholastic attainment with the help of specially trained teachers and special methods and materials.

The class was housed in a regular elementary school, with the handicapped students occupying a separate classroom. The classroom was larger than a standard size classroom, and there was sufficient space for movable desks and equipment specially designed for these students. The class was limited to 15 handicapped students.

Since the taxpayer resided 25 miles from the school he incurred and paid expenses for transporting his son to the <Page 53>school daily. The taxpayer also paid a tuition fee for having his son attend the specially designed course.

Section 213 of the Code allows as a deduction amounts paid during the year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent, subject to certain limitations.

The term "medical care" is defined in section 213(e)(1) of the Code as meaning 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, or for transportation primarily for and essential to medical care.

Section 1.213-1(e)(1)(v)(a) of the Income Tax Regulations provides in part as follows:

While ordinary education is not medical care, 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. In such a case, the cost of attending such a special school will include the cost of meals and lodging, if supplied, and the cost of ordinary education furnished which is incidental to the special services furnished by the school. Thus, the cost of medical care includes the cost of attending a special school designed to compensate for or overcome a physical handicap, in order to qualify the individual for future normal education or for normal living, such as a school for the teaching of braille or lip reading. Similarly, 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'.

Revenue Ruling 58-280, C.B. 1958-1, 157, holds that the cost of special education, training, and treatment afforded a mentally retarded child in an institution is deductible as a medical expense if his condition is such that the resources of the institution for alleviating his handicap are a principal reason for his presence there. Where an individual is in an institution and his condition is such that the availability of medical care in such institution is not a principal reason for his presence there, only that part of the cost of care in the institution attributable to medical care shall be considered a cost of medical care. Similarly, where the child attends a school which is not a "special school" as that term is used in paragraph 1.213-1(e) (v)(a) of the Income Tax Regulations, only amounts paid that are attributable to medical care will be considered a cost of medical care. See *C. Fink Fischer v. Commissioner*, 50 T.C. 164 (1968), acquiescence, C.B. 1969-1, 21, and *Arnold P. Grunwald v. Commissioner*, 51 T.C. 108 (1968).

As it is used in the regulations quoted above, the term special school is a limited category within the broader term institution. The distinguishing characteristic of a special school is the substantive content of its curriculum. The curriculum of a special school may include some ordinary education, but this must be incidental to the primary purpose of the school to enable the student to compensate for or overcome a handicap, in order to prepare him for future normal education and living.

The special curriculum described in the facts of the instant case meets this requirement. In addition, it is a severable aspect of the activities of the school system, thus constituting a "special school" within the meaning of the regulations.

In the instant case, the condition of the taxpayer's son is such that a principal reason for his attendance at the special school is the availability of the resources of the school for alleviating his handicap.

Revenue Ruling 65-255, C.B. 1965-2, 76, holds that the expenses incurred by a taxpayer in transporting his daughter to a public school for psychotherapeutic reasons are expenses of medical care within the meaning of section 213 of the Code.

Accordingly, the amounts paid by the taxpayer in connection with his son's attendance at the school, including transportation expenses essential thereto, are amounts paid for medical care within the meaning of section 213 of the Code.