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THE TAX LAWYER

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### Medical Expense Tax Missteps

What is a medical expense for tax purposes is quite broad. Taxpayers try to write off swimming pools, vacations, medical marijuana, spa visits and patio awnings, sometimes with success. See [Tax Breaks For Alcoholics, But Not Weight Watchers](#). But some of it seems downright bizarre, as where the IRS ruled a mother with a double-mastectomy could not deduct the cost of her baby's formula as a medical expense. See [Private Letter Ruling 200941003](#). Although this baby's need for formula was clear, the formula satisfied the child's food needs and the child was normal, so there was no deduction.

More understandably, the IRS and Tax Court said no to deducting the cost of prostitutes as medical expenses. In [Halby v. Commissioner](#), a 78 year old lawyer claimed deductions for therapeutic treatments by prostitutes. He didn't even have a doctor's note! Yet he deducted these (oldest profession) professional fees and the cost of pornography. With no medical diagnosis for this "cure" and a self-prescribed treatment that was illegal, the Tax Court said no.

Medical expenses are deductible only to the extent they exceed 7.5% of your adjusted gross income. So if your adjusted gross income is \$100,000, the first \$7,500 of medical expenses is on you. That's a high threshold, but if you exceed it, you have fairly wide latitude as to what

qualifies. A deduction must be for the medical care of the taxpayer, spouse or dependent. An expense for the diagnosis, cure, mitigation, treatment or prevention of disease qualifies, while an expense merely beneficial to general health doesn't.

The cost of false teeth, prescription eyeglasses, contact lenses, laser eye surgery, hearing aids, crutches, wheelchairs, and guide dogs for the blind or deaf are deductible medical expenses. However, you can't deduct funeral or burial expenses, health club dues, over-the-counter medicines, toothpaste, toiletries, or cosmetics. No-no's include most cosmetic surgery, dancing or swimming lessons.

The cost of special foods and beverages qualifies if they are prescribed by a doctor to alleviate or treat a specific illness, are in addition to the taxpayer's normal diet, and are not a part of the patient's nutritional needs. See [Revenue Ruling 55-261](#). If it's special food you're claiming, you'll need a statement from your doctor, and the food can't substitute for something *else* you would otherwise be consuming. Prescribed low calorie foods don't qualify, since they are substitutes for the food you would *normally* consume to satisfy nutritional requirements.

You want written advice from your doctor prescribing the particular treatment regimen, proof that you followed the prescribed regimen, and proof that you incurred the expenses. For more on which medical expenses qualify and why, see [Tax Breaks For Alcoholics, But Not Weight Watchers](#).

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