



Expert View

## Tax Breaks For Alcoholics, But Not Weight Watchers

Robert W. Wood, 10.27.09, 3:00 PM ET

Long before *Dirty Jobs* premiered on reality TV, we all understood that some jobs are ickier than others and that we really shouldn't hold an unpleasant job against the person doing it. Hence, the cliché: "Don't shoot the messenger."

In the U.S. today, tax collection is seen by many as a dirty job. In fact, some Internal Revenue Service workers are so worried about harassment, violence or just shunning that they use pseudonyms when interacting with the public.

You don't want to hold the tax code against IRS employees whose job it is to interpret, administer and enforce it. Still, there are times when you have to wonder whether the legal technocrats toiling away at the IRS' fortress-like Washington headquarters have lost touch with the common man.

That's how I felt when I read the IRS' take on deducting baby formula as a medical expense. In [Private Letter Ruling 200941003](#), released publicly this month, the IRS denied the request of a mother who had undergone a double-mastectomy that she be allowed to deduct as a medical expense the cost of her baby's infant formula.

The IRS presumably gets more public sympathy for its successful position in another recent case, this time before the Tax Court. The topic? Prostitution expenses. In this case, a 78-year-old lawyer (a putative tax lawyer, I'm sad to say) claimed medical deductions for therapeutic "treatments" from members of the world's oldest profession, as well as for the purchase of pornography. In *Halby v. Commissioner*, TC Memo 2009-204 (2009), the Tax Court cut him off, although [Halby is appealing](#).

The Tax Court had an easy time backing the IRS, since the lawyer had no doctor's note saying he needed this "cure." Besides, the self-prescribed treatment was illegal.

Few taxpayers have the chutzpah to try to write off prostitutes. Still, over the years, taxpayers have successfully written off everything from swimming pools to patio awnings to clarinet lessons (needed for a dental problem) as medical expenses.

For more surprising medical write offs click [here](#).

If you're considering deducting medical expenses, here's what you need to know.

The dollar hurdle is high.

Medical expenses are deductible as a "miscellaneous itemized deduction" 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. Still, with medical expenses rising, more Americans are meeting that hurdle--10.5 million taxpayers deducted an estimated \$76 billion in medical expenses in 2007, up from 8.6 million who deducted \$56 billion in 2004.

But a lot qualifies.

It's easier than you might think to exceed 7.5%, since you have fairly wide latitude as to what qualifies. The deduction is allowed for out of pocket spending on the medical care of a taxpayer, spouse or a dependent. Medical care includes diagnosis, cure, mitigation, treatment or prevention of a disease or disability. Dental, vision and psychiatric conditions all qualify.

Mitigation, in particular, covers a lot of expensive territory. The IRS has said that false teeth, prescription eyeglasses or contact lenses, laser eye surgery, hearing aids, crutches, wheelchairs and guide dogs for the blind or deaf are all deductible medical expenses. You can also deduct premiums you pay for nursing home and health insurance. (If you're self-employed,

you don't have to meet the 7.5% threshold to deduct health insurance.)

Not surprisingly, you can't deduct expenses covered by insurance or those paid from otherwise tax-advantage accounts, such as Flexible Spending Accounts or Health Savings Accounts.

Normal living expenses don't qualify.

If it's special, medically required food you're claiming, you'll need a statement from your doctor. Plus, no matter what your doctor says, you need to make sure the food items don't substitute for something else you would otherwise be consuming. For that reason, prescribed low calorie foods don't qualify as medical expenses, since they are substitutes for the food you would normally consume to satisfy nutritional requirements.

This is the point the IRS letter made in turning down the woman who had a double mastectomy--her infant was healthy and the formula was satisfying his normal nutritional needs.

In fact, the IRS has ruled Weight Watchers meals aren't deductible, even if weight reduction has been ordered by a doctor. Even a special diet for a sufferer of Crohn's disease--a serious inflammatory disease affecting the gastrointestinal tract--isn't deductible because the patient has to eat to survive. (On the other hand, a doctor-prescribed supplement taken on top of normal nutrition would be deductible.)

An expense that is merely beneficial to general health, such as a health club membership, doesn't qualify, so no health club dues, over-the-counter medicines, toothpaste or toiletries qualify. Other expenses that usually don't qualify: cosmetic surgery and dancing lessons. Divorce costs are nondeductible even if your psychiatrist recommends the split.

Medically needed modifications to your home are deductible, but only to the extent they don't add value to your home. So that ugly wheelchair ramp you build to accommodate mom when she moves in is [likely to be deductible](#). But a home renovation that includes a luxurious wheelchair accessible bathroom that you figure you might need some day [isn't going to be deductible](#).

In the same vein, if you need a home care attendant, only part of his/her salary is likely to be deductible. The nursing services the aide performs, such as changing dressings, are qualified medical expenses. But other household services the attendant provides aren't deductible.

Written documents are key.

Lots of unusual medical expenses have passed muster under the tax law. Perhaps not prostitutes, but spa treatments and many others. But one point is crucial: If you're hoping to write off an exotic medical cost, or even a routine one, documentation is where the rubber meets the road. 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.

[Proper record-keeping](#) is always a good way to ward off IRS troubles. But high medical deductions could make you more likely to be picked for an audit, particularly a by-mail audit where you'll be asked to produce substantiation or your deductions will be disallowed. So keep those records.

### [In Depth: Seven Surprising Medical Expense Deductions](#)

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