

'Wide latitude' for what can be deducted as a medical expense

By Robert W. Wood

Most lawyers understand a thing or two about laws that seem quirky. Most lawyers can reel off a few laws that are not uniformly interpreted, much less uniformly enforced. That's especially true with tax law. Besides, many lawyers have a love-hate relationship with taxes and the tax code.

Some tax rules seem downright unfair in design, in application, or both. Many attorney fees are deductible for regular tax but not under the AMT. What's more, many costs in a contingent fee practice cannot be deducted until the conclusion of the case.

There are also times when you have to wonder whether the legal technocrats toiling away at the IRS's fortress-like Washington headquarters have lost touch with the public. Take, for example, the IRS position on deducting infant formula as a medical expense.

In Private Letter Ruling 200941003 (July 1, 2009), a mother underwent a double-mastectomy. At times, it may seem best to just claim the desired tax treatment, but there are penalties and interest to consider. So, this mother asked the IRS for permission to deduct the cost of her baby's infant formula as a medical expense. Medically, she couldn't breastfeed her child, so the deduction was legit, right?

You guessed it, no deduction. The baby didn't need *special* food so there was no medical expense. And yet you would be surprised at what has been considered medical treatment by the IRS.

In one case, a 78-year-old lawyer (a tax lawyer, I'm sad to say) claimed medical deductions for therapeutic "treatments." The treating therapists were members of the world's oldest profession. He deducted the purchase of pornography, too.

In *Halby v. Commissioner*, TC Memo 2009-204, the tax court cut him off. The tax court had an easy time upholding the IRS's decision to disallow the lawyer's medical deductions. The lawyer had no doctor's note saying he needed this "cure." Besides, the self-prescribed treatment was illegal.

Few taxpayers try to write off prostitutes. However, 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. Effective January 1, 2013, medical expenses are deductible as a "miscellaneous itemized deduction" only to the extent they exceed 10% of your adjusted gross income instead of the previous 7.5% threshold. If you or your spouse is 65 or over, you are temporarily exempt from the increase until 2017.

Thus, if your adjusted gross income is \$100,000, the first \$10,000 of medical expenses are on you. Still, with medical expenses ever rising, more Americans are meeting that hurdle. In fact, 10.4 million taxpayers deducted an estimated \$85.3 billion in medical expenses in 2010. It's easier than you might think to exceed 10% requirement, since there is 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 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 and contact lenses qualify. So do laser eye surgery, hearing aids, wheelchairs and guide dogs for the blind or deaf. They 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

10% 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.

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 consume. For that reason, prescribed low calorie foods don't qualify as medical expenses.

After all, such foods are substitutes for the food you would normally consume to satisfy nutritional requirements. This is the point the IRS made in turning down the woman who had a double-mastectomy. Her baby was healthy and the infant 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 *in addition to normal nutrition* should be deductible.

For more line drawing, compare Rev. Rul. 79-151 with Rev. Rul. 2002-19. In the former, the IRS said a weight-loss program to improve general health or appearance didn't qualify. But in the latter, the IRS said you can deduct a weight-loss program treating for a specific disease diagnosed by a physician. If you're diagnosed as obese, that should be sufficient.

An expense that is merely beneficial to general health, such as a health club membership, doesn't qualify. That means gym dues, over-the-counter medicines, toothpaste or toiletries don't 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 someday isn't going to be deductible.

In the same vein, if you need a home care attendant, only part of his or 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. In fact, many unusual medical expenses have passed muster under the tax law. Not prostitutes, but spa treatments and many others. But if you are 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. You want proof that you followed the prescribed regimen, and proof that you incurred the expenses. Proper record-keeping is a good way to ward off IRS troubles.

However, high medical deductions could make you more likely to be selected for audit. Often, this is simply done by mail. You'll be asked to produce substantiation or your deductions will be disallowed. Keep those records!