

Tax Court Allows Medical Deduction for Home Health Care by Non-Professionals

By Patricio A. Suarez

In the recent case, *Estate of Baral v. Commissioner* (137 T.C. No. 1), the United States Tax Court held that payments of almost \$50,000 made to an elderly woman's caregivers qualified as deductible medical expenses under the Internal Revenue Code because the expenses were not compensated for by insurance and the services constituted qualified long-term care services as defined in section 7702B(c) of the Code.

The background of the case was as follows: Lillian Baral, now deceased, was diagnosed by her physician as suffering from dementia. The physician determined that she required round-the-clock assistance and supervision for medical reasons. Ms. Baral's brother, acting under a power of attorney, hired two unlicensed caregivers to provide 24-hour care, and the cost of that care was deducted as a medical expense on Ms. Baral's income tax return. The IRS disputed the deduction but was ultimately overruled by the Tax Court, which held the deduction to be a legitimate medical expense.

Section 213 of the Code allows a deduction for medical care to the extent expenses exceed 7.5% of adjusted gross income. In 2012 the threshold rises to 10%. Medical care is defined as including long-term care services. Section 7702B(c)(1) defines "qualified long-term care services" as necessary diagnostic, preventative, therapeutic, curing, treating, mitigation, and rehabilitative services and maintenance or personal care services required by a chronically ill individual and provided pursuant to a plan of care prescribed by a licensed health care provider. According to section 7702B(c)(2), "chronically ill individual" is an individual who has been certified by a licensed health care provider as requiring substantial supervision to protect the individual from threats to health and safety due to an inability to perform at least two activities of daily living, disability

or severe cognitive impairment. In the *Baral* case, her physician determined that Ms. Baral's dementia had left her cognitively impaired, which prevented her from properly taking her medicine. Since failure to take prescribed medicine posed a risk to her health, the physician certified Ms. Baral as requiring substantial supervision to protect her from threats to her health and safety.

In the *Baral* case, the court said that the services provided to Ms. Baral by her caregivers were necessary maintenance and personal care services that she needed because of her diminished capacity, and they were provided pursuant to a plan of care prescribed by a licensed health care provider. As such, the 24-hour care constituted qualified long-term care services under the definition provided in section 7702B(c).

The deductibility of such expenses is not limited to people with dementia or even elderly patients. Family members and practitioners should be aware of the potential applicability to much younger people having physical or mental impairments requiring the assistance of others. If provided pursuant to a plan of care prescribed by a licensed health care practitioner, the cost of personal care services can qualify as a medical expense for any patient unable to perform at least two of a list of six activities of daily living: eating, toileting, transferring, bathing, dressing and continence. But, while it is important to see the broader implications, it is just as important to note that special rules may deny a deduction

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who's who

Patricio A. Suarez is an attorney in the New York office of Anderson Kill

& Olick, P.C. Mr. Suarez's tax practice includes the full range of federal and state tax issues, as well as real estate transactions and transactions involving foreign and domestic entities.

psuarez@andersonkill.com
(212) 278-1238

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aherbst@andersonkill.com
(212) 278-1781

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as well. For example, amounts paid to a relative for long-term care services are not deductible unless the services are provided by an individual who is a licensed professional with respect to the services. In the *Baral* case, the hired caregivers were not licensed professionals, but the deduction was allowed. If they had been relatives of the patient, the payments would not have been deductible.

Housekeeping Services

While personal care services may qualify for the medical expense deduction even if rendered in the patient's residence, the cost of domestic or housekeeping services is strictly a nondeductible living expense, even if incurred only because illness makes it impossible for the afflicted individual to perform the services himself or herself. For example, in one case cooking, cleaning, and other domestic services were held nondeductible despite a physician's advice to a taxpayer with a heart condition to hire a live-in housekeeper; or in another case where lawn-care costs were not deductible even though they were incurred because a physician advised the taxpayer not to cut his own lawn due to allergies.

As is often the case, Congress seldom writes a law that covers each and every situation. For those outside-the-box situations, or even just to be safe, it is often best to consult your attorney or tax professional. ▲

Deductible or Non-Deductible?

Here are some examples from real life cases concerning various expenditures. See if you can determine whether or not the expense was held to be deductible. The answers can be found at the end.

1. Help in and out of bed, help walking and services to prevent falls and injuries (taxpayer with severe arthritis).
2. Costs of person who did house-keeping and provided baby care, who was hired on doctor's advice so that taxpayer, who had tuberculosis, would not have to do this work.
3. Help with taxpayer's wheelchair and luggage while he was away from home, help driving his car, daily removal and replacement of his prostheses, and daily administration of medication (taxpayer who had bilateral amputation of his legs).
4. Costs of someone being with ill taxpayer so as to be able to quickly summon emergency medical care.
5. Dressing, grooming and bathing an invalid taxpayer.
6. Amounts paid to persons who babysat for taxpayer's daughters so that taxpayer could travel to a warm climate, as his doctor suggested, to help in alleviating his chronic heart problem.

ANSWERS:
1, 3, 5 DEDUCTIBLE; 2, 4, 6 NOT DEDUCTIBLE

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