

Edward N. Goldsberry, CPA
Edward N. Goldsberry, P.C.
eddie@engoldsberrycpa.com
www.engoldsberrycpa.com

Education Related Medical Expenses: A Look into the Timing of Deductions Available to Special Needs Families

Two previously published articles in *The Tax Advisor* addressed the deductibility and potential tax-favored funding mechanisms of tuition and fees as medical expenses for special needs children in the articles. See Goldsberry, et al., “Deductibility of Tuition and Related Fees as Medical Expenses”; *The Tax Advisor*, Nov., 2002:701-701 and Goldsberry, et al. “Medical Expenses: Pros and Cons of Tax Favored Funding Mechanisms”; we should be able to find this cite – it was the November, 2003 issue, I believe. These articles addressed some of the tax and tax-related issues faced by families with significant medical needs and expenses, particularly those for parents of special needs children. Since the publication of these articles, several specific taxpayer questions have been frequently asked concerning the timing of the deductions and the deductibility of incremental expenses and specific activities.

This article addresses three specific areas:

- Advance payment of tuition and fees
- Additional tuition and fee billings by non-special schools for additional “special school” types of service

- Extra-curricular activities such as tutoring, music and dance lessons, and summer camps

Advance Payments of Tuition and Fees:

This question is a common one in the case of tuition and fees for special schools. With the increase in schools designed to meet the needs of children with learning and other medically identified disabilities, fewer schools are residential in nature, and more follow the traditional academic year. Since the typical academic school year spans two calendar years, it is common for special schools to require contracts that include both the fall and the spring semesters. Families may be required to pay for the entire year in advance; or, more commonly, are given options to pay on various terms such as annually, by semester or by month. Typically, prepaid medical expenses are not deductible in the year of payment. Generally, medical expenses cannot be deducted until services have been rendered. The basis for this apparent exception to the general rules for cash-basis taxpayers is, in part, a concern that the intended annual limitation on medical expense deductions based upon adjusted gross income could thereby be avoided. (Bassett, Robert, (1956) TC 619).

Limited exceptions to this general rule are available. For example, taxpayers who make an advance payment under a contractual obligation to pay for a service in the current year may be eligible to deduct the entire expense in the year it was paid.

Rev. Rul. 75-302 (1975-2 CB 86) and Rev. Rul. 75-303 (1975-2 CB 87) may

provide limited guidance in this regard, although the relationship of these to the prepayment of special school tuition is not entirely clear since each ruling deals with prepayments for future lifetime care. Together these two rulings indicate that the taxpayer must have a contractual obligation to pay a specified amount that is allocable to the obligation of the medical provider to provide medical care in the future. In the latter ruling, the IRS deemed it permissible that the contract contain a refund clause in the event of early termination, where the refunds were conditional and subject to penalties.

On the other hand, in the Bassett case cited previously, the Tax Court ruled that a prepayment to a hospital was not currently deductible because the advance payment was made without evidence of any specific arrangements or billings from the hospital with regard to the payment made. These two rulings were distinguished from the Bassett case on the basis that contractual obligations did, in fact, exist.

Taxpayers who wish to support current deduction for advance tuition and fee payments to special schools must therefore establish that the payments are made pursuant to a contractual obligation. Where a contract does exist, advisors should also note that it is not clear that advance payments may be deducted in the year of payment if, for example, monthly payment options are available.

Rev. Rul. 93-72 (1993 CB 77) clarified the two 1975 rulings in stating that “...those rulings should not be interpreted to allow a current deduction of payments for future medical care (including medical insurance) extending

substantially beyond the close of the tax year when the future care is not purchased in connection with obtaining lifetime care of the type described in those rulings.”

The term “substantially beyond” is not explained further in the ruling, but the 1993 ruling does appear to acknowledge that the concepts behind the 1975 rulings are applicable to other types of medical expenses such as tuition and fees paid to special schools. It is difficult to see how payment in one year for services to be provided over the first five to six months of the following year would be considered to fail the “substantially beyond” test, but without further guidance, the answer is unclear.

Additional Services Provided by “Non-Special Schools”

Those taxpayers who send their special needs children to “non-special” schools may still be able to expense a portion of the tuition as medical expenses. The amount above and beyond the amount of normal tuition for regular students may qualify as medical expenses to the extent that the additional program assistance provides therapeutic value to the student (Rev. Rul. 69-607). It is not necessary for the deductible portion of tuition be paid separately from the non-deductible portion.

In the case where a school does not distinguish between normal tuition and medical care, the taxpayer may allocate normal tuition based on comparable schools and the remaining portion as qualifying medical expenses (See Fischer, 50 TC 164 and Fay, 76 TC 408)). Incremental medical care can include a special program designed for a specific psychological, physical, or mental needs student,

note-takers for deaf students, or even psychotherapy services designed to adjust students into a normal school setting. The medical care determination does not depend on the title of the person rendering the service, the nature of the institution or whether it is considered medical care to others. It is, however, pertinent that the condition qualify under the definition of Section 213.

Tutoring and Other Extra-Curricular Activities

Numerous taxpayers have made specific inquiries into the deductibility of the cost of extracurricular activities under Section 213. In general, the purpose and design of the activity must qualify under Section 213(d)(1)(A).

For example, a YMCA day camp was designed to encourage interaction and physical growth among special needs children through the use of different activities. In this case, the IRS allowed a deduction for the cost of the recreation and leisure activities, normally not deductible, as the program was determined to be primarily therapeutic in nature (Emmanuel, TC Summary Opinion 2002-127, affg.)

The Tax Court has opined that the cost of tutoring provided to students with disabilities may be deductible as a medical expense if it exceeds general tutoring, or if it is provided by an educator who is trained to teach children with learning disabilities (Sims, [TC Memo 1979-499](#) and Rev. Rul. 78-340, 1978-2 CB 124).

The cost of music lessons has been held to be deductible where lessons were of therapeutic value and prescribed for the sole purpose of alleviating a diagnosed condition (Rev. Rul. 62-210). The circumstances of this ruling were, however, very limited as the ruling addressed circumstances where the lessons were intended to help alleviate a physical deformity. Obtaining similar results in less specific circumstances or with other activities has proven to be more difficult. For example, other activities such as dance lessons, have been determined to be ineligible on the basis that they were taken for general health purposes or if they were taken prior to a condition being diagnosed (Thoene, John, (1959) 33 TC 62 and others).

Conclusion:

Taxpayers with special needs children may be able to deduct various educational costs as medical expenses. However, establishing the deductibility is often problematic and uncertain. Even where expenses are deductible, the question of when they are deductible may raise additional questions.

Disclaimer

This article is intended to be a general explanation of the tax rules and is not intended to address specific cases. Determination of whether an expense qualifies as a medical expense for income tax purposes depends upon individual facts and circumstances.

Penalty Disclosure Notice: IRS regulations require us to advise you that, unless otherwise specifically noted below within the body of our advice, any federal tax advice in this communication (including attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses.

© Edward N. Goldsberry, P.C. 2016 - All rights reserved.