Rev. Rul. 99–28

ISSUE

Are uncompensated amounts paid by taxpayers for participation in a smoking-cessation program, for prescribed drugs designed to alleviate nicotine withdrawal, and for nicotine gum and nicotine patches that do not require a prescription, expenses for medical care that are deductible under § 213 of the Internal Revenue Code?

FACTS

Taxpayers A and B were cigarette smokers. A participated in a smoking-cessation program and purchased nicotine gum and nicotine patches that did not require a prescription. A had not been diagnosed as having any specific disease, and participation in the program was not suggested by a physician. B purchased drugs that required a prescription of a physician to alleviate the effects of nicotine withdrawal. A's and B's costs were not compensated for by insurance or otherwise.

LAW AND ANALYSIS

Section 213(a) allows a deduction for uncompensated expenses for medical care of an individual, the individual’s spouse or a dependent to the extent the expenses exceed 7.5 percent of adjusted gross income. Section 213(d)(1) provides, in part, that medical care means amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.

Under § 213(b), a deduction is allowed for amounts paid during the taxable year for medicine or a drug only if the medicine or drug is a prescribed drug or insulin. Section 213(d)(3) defines a “prescribed drug” as a drug or biological that requires a prescription of a physician for its use by an individual.

Section 1.213–1(e)(1)(ii) of the Income Tax Regulations provides, in part, that the deduction for medical care expenses will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness. An expense that is merely beneficial to the general health of an individual is not an expense for medical care.

Section 262 provides that, except as otherwise expressly provided by the Code, no deduction is allowed for personal, living, or family expenses.

Rev. Rul. 79–162, 1979–1 C.B. 116, holds that a taxpayer who has no specific ailment or disease may not deduct as a medical expense under § 213 the cost of participating in a smoking-cessation program. However, the Internal Revenue Service has held that treatment for addiction to certain substances qualifies as medical care under § 213. See Rev. Rul. 73–325, 1973–2 C.B. 75 (alcoholism); Rev. Rul. 72–226, 1972–1 C.B. 96 (drug addiction).

A report of the Surgeon General, The Health Consequences of Smoking: Nicotine Addiction (1988), states that scientists in the field of drug addiction agree that nicotine, a substance common to all forms of tobacco, is a powerful addictive drug. Other reports of the Surgeon General have concluded, based on numerous studies, that a strong causal link exists between smoking and several diseases. See, e.g., Tobacco Use Among U.S. Racial/Ethnic Minority Groups (1998); Preventing Tobacco Use Among Young People (1994); The Health Benefits of Smoking Cessation (1990). Scientific evidence has thus established that nicotine is addictive and that smoking is detrimental to the health of the smoker.

Under the facts provided, the smoking-cessation program and the prescribed drugs are treatment for A's and B's addiction to nicotine. Accordingly, A's costs for the smoking-cessation program and B's costs for prescribed drugs to alleviate the effects of nicotinet withdrawal are amounts paid for medical care under § 213(d)(1). However, under § 213(b), A's costs for nicotine gum and nicotine patches are not deductible because they contain a drug (other than insulin) and do not require a prescription of a physician.

HOLDING

Uncompensated amounts paid by taxpayers for participation in a smoking-cessation program and for prescribed drugs designed to alleviate nicotine withdrawal are expenses for medical care that are deductible under § 213, subject to the 7.5 percent limitation. However, amounts paid for drugs (other than insulin) not requiring a prescription, such as nicotine gum and certain nicotine patches, are not deductible under § 213.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 79–162 is revoked.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Donna M. Crissalli and John T. Sapienza, Jr. of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Ms. Crissalli or Mr. Sapienza on (202) 622–4920 (not a toll-free call).

Section 262.—Personal, Living, and Family Expenses

26 CFR 1.262–1: Personal, living, and family expenses.

Are uncompensated amounts paid by taxpayers for participation in a smoking-cessation program, for prescribed drugs designed to alleviate nicotine withdrawal, and for nicotine gum and nicotine patches that do not require a prescription, expenses for medical care that are deductible under § 213 of the Code. See Rev. Rul. 99–28, on this page.

Section 6621.—Determination of Interest Rate

26 CFR 301.6621–1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest deter-
mined under section 6621 of the Code for the calendar quarter beginning July 1, 1999, will be 8 percent for overpayments (7 percent in the case of a corporation), 8 percent for underpayments, and 10 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 is 5.5 percent.

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Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under § 6621(a)(1), the overpayment rate beginning July 1, 1999, is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.” See § 6621(c) and § 301.6621–3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and § 301.6621–3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of ½ of 1 percent, the rate is increased to the next highest full percent).

Notice 88–59, 1988–1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding. Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of April 1999 is 5 percent. Accordingly, an overpayment rate of 8 percent (7 percent in the case of a corporation) and an underpayment rate of 8 percent are established for the calendar quarter beginning July 1, 1999. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning July 1, 1999, is 5.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning July 1, 1999, is 10 percent. These rates apply to amounts bearing interest during that calendar quarter.

Interest factors for daily compound interest for annual rates of 5.5 percent, 7 percent, 8 percent, and 10 percent are published in Tables 16, 19, 21, and 25 of Rev. Proc. 95–17, 1995–1 C.B. 556, 570, 573, 575, and 579.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

**DRAFTING INFORMATION**

The principal author of this revenue ruling is Raymond Bailey of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Bailey on (202) 622-6226 (not a toll-free call).

### TABLE OF INTEREST RATES

**PERIODS BEFORE JUL. 1, 1975 – PERIODS ENDING DEC. 31, 1986**

<table>
<thead>
<tr>
<th>PERIOD</th>
<th>RATE</th>
<th>DAILY RATE TABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before Jul. 1, 1975</td>
<td>6%</td>
<td>Table 2, pg. 557</td>
</tr>
<tr>
<td>Jul. 1, 1975–Jan. 31, 1976</td>
<td>9%</td>
<td>Table 4, pg. 559</td>
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<tr>
<td>Feb. 1, 1978–Jan. 31, 1980</td>
<td>6%</td>
<td>Table 2, pg. 557</td>
</tr>
<tr>
<td>Feb. 1, 1980–Jan. 31, 1982</td>
<td>12%</td>
<td>Table 5, pg. 560</td>
</tr>
<tr>
<td>Feb. 1, 1982–Dec. 31, 1982</td>
<td>20%</td>
<td>Table 6, pg. 560</td>
</tr>
<tr>
<td>Jan. 1, 1983–Jun. 30, 1983</td>
<td>16%</td>
<td>Table 37, pg. 591</td>
</tr>
<tr>
<td>Jul. 1, 1983–Dec. 31, 1983</td>
<td>11%</td>
<td>Table 27, pg. 581</td>
</tr>
<tr>
<td>Jan. 1, 1984–Jun. 30, 1984</td>
<td>11%</td>
<td>Table 75, pg. 629</td>
</tr>
<tr>
<td>Jul. 1, 1984–Dec. 31, 1984</td>
<td>11%</td>
<td>Table 75, pg. 629</td>
</tr>
<tr>
<td>Jul. 1, 1985–Dec. 31, 1985</td>
<td>11%</td>
<td>Table 27, pg. 581</td>
</tr>
<tr>
<td>Jul. 1, 1986–Dec. 31, 1986</td>
<td>9%</td>
<td>Table 23, pg. 577</td>
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