

FACTS

Based on the recommendation of a physician, A purchased marijuana and used it to treat A's disease in a state whose laws permit such purchase and use.

LAW AND ANALYSIS

Section 213(a) allows a deduction for uncompensated expenses of an individual for medical care to the extent such expenses exceed 7.5 percent of adjusted gross income. Section 213(d)(1) provides, in part, that "medical care" means amounts paid for the cure, mitigation, and treatment of disease. However, under § 213(b) an amount paid for medicine or a drug is an expense for medical care under § 213(a) only if the medicine or drug is a prescribed drug or insulin. Section 213(d)(3) provides that a "prescribed drug" is a drug or biological that requires a prescription of a physician for its use by an individual.

Section 1.213-1(e)(2) of the Income Tax Regulations provides, in part, that the term "medicine and drugs" includes only items that are "legally procured." Section 1.213-1(e)(1)(ii) provides that amounts expended for illegal operations or treatments are not deductible.

Rev. Rul. 78-325, 1978-2 C.B. 124, holds that amounts paid by a taxpayer for laetrile, prescribed by a physician for the medical treatment of the taxpayer's illness, are expenses for medicine and drugs that are deductible under § 213. The revenue ruling states that the laetrile was purchased and used in a locality where its sale and use were legal.

Rev. Rul. 73-201, 1973-1 C.B. 140, holds that amounts paid for a vasectomy and an abortion are expenses for medical care that are deductible under § 213. The revenue ruling states that neither procedure was illegal under state law.

A's purchase and use of marijuana were permitted under the laws of A's state. However, marijuana is listed as a controlled substance on Schedule I of the Controlled Substances Act (CSA), 21 U.S.C. §§ 801-971. 21 U.S.C. § 812(c). Except as authorized by the CSA, it is unlawful for any person to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance. 21 U.S.C. § 841(a). Further, it is unlawful for any person knowingly or intentionally to possess a controlled sub-

stance except as authorized by the CSA. 21 U.S.C. 844(a). Generally, the CSA does not permit the possession of controlled substances listed on Schedule I, even for medical purposes, and even with a physician's prescription.

Notwithstanding state law, a controlled substance (such as marijuana), obtained in violation of the CSA, is not "legally procured" within the meaning of § 1.213-1(e)(2). Further, an amount expended to obtain a controlled substance (such as marijuana) in violation of the CSA is an amount expended for an illegal treatment within the meaning of § 1.213-1(e)(1)(ii). Accordingly, A may not deduct under § 213 the amount A paid to purchase marijuana.

HOLDING

An amount paid to obtain a controlled substance (such as marijuana) for medical purposes, in violation of federal law, is not a deductible expense for medical care under § 213. This holding applies even if the state law requires a prescription of a physician to obtain and use the controlled substance and the taxpayer obtains a prescription.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 78-325 is obsolete. Subsequent to the issuance of Rev. Rul. 78-325, the courts have upheld the Food and Drug Administration determination that generally prohibits interstate commerce in laetrile under the Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 331 and 355(a). See *United States v. Rutherford*, 442 U.S. 544 (1979); *Rutherford v. United States*, 806 F.2d 1455 (10th Cir. 1986). Thus, notwithstanding state and local law, laetrile cannot be legally procured within the meaning of § 1.213-1(e)(2). Accordingly, amounts paid to obtain laetrile are not deductible under § 213.

Rev. Rul. 73-201 is clarified to reflect that the medical procedures at issue in that revenue ruling are not illegal under federal law.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Donna M. Crisalli and Sharon Hester of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this

Section 213.—Medical, Dental, Etc., Expenses

26 CFR 1.213-1: Medical, dental, etc., expenses.

Medical and dental expenses. Amounts paid to obtain a controlled substance (such as marijuana), in violation of federal law, are not deductible expenses for medical care under section 213 of the Code.

Rev. Rul. 97-9

ISSUE

Is an amount paid to obtain a controlled substance (such as marijuana) for medical purposes, in violation of federal law, a deductible expense for medical care under § 213 of the Internal Revenue Code?

revenue ruling, contact Ms. Crisalli or Ms. Hester on (202) 622-4920 (not a toll-free call).
