



Financial Strategies for the Friends and Clients of...

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Issue 6
Nov/Dec 2008

MetDESK News

MetLife's Division of Estate Planning for Special Kids

Information and Support for the Special Needs Community



MetLife®

Recognizing Some Key Medical Tax Deductions for Parents of Children with Special Needs

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We are all too aware that the number of children diagnosed with autism, Asperger's syndrome, and other neurological disorders continues to skyrocket. The resultant disruption of the lives of all those involved is unmistakable – as are the costs of providing care for the child with special needs. As reported in the news media and in all major publications, as many as 1 out of 150 children are born today with an autism spectrum disorder (See Autism and Developmental Disabilities Monitoring Network at <http://www.cdc.gov.ncbddd/autism/asd.htm>). To further complicate the situation, parents with these children are often unaware of the substantial tax benefits that are available to them and forego hundreds, if not thousands, of potential tax deductions and reductions in their tax liability. Among the more significant overlooked tax benefits are deductions for medical expenses, special instruction, medical conferences, and impairment-related work expenditures. A more comprehensive discussion of the various tax benefits available for families with special needs children can be found in the November and December 2006 issues of *Exceptional Parent*.

Special Instruction Qualifying as Medical Expense Deductions

In general, any costs incurred in providing a child with a traditional education are not considered medical care and, therefore, are not deductible as a medical expense. Although the Internal Revenue Code (IRC) in Section 213 defines a medical expense as "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;" this Section's Treasury Regulation 1.213-1(e)(1)(v) permits a medical deduction for the unreimbursed cost of attending a *special school* for a mentally or physically challenged individual. The amount incurred is deductible as a medical expense if the principal reason for the individual's attendance is to alleviate the disability

through the resources of the school or institution. This deduction may also include amounts paid for lodging, meals, transportation, and the cost of ordinary education incidental to the special services provided by the school. Also, any costs incurred for the supervision, care, treatment and training of a physically and/or mentally handicapped individual are deductible if provided by the institution.

Why allow a Deduction for "Special Education and Instruction"?

Under U.S. law, all children are entitled to an equal and appropriate (public) education. However, many public schools do not have special programs and/or facilities to handle the unique needs of special needs children. As a result, it is sometimes necessary for mentally or physically challenged children to attend special schools where the focus is not only on education, but also on improving the ability of the child. The cost of these special schools is not always covered by governmental programs or the school district. As a result, parents are often required to pay for all or a portion of the tuition. However, if the school qualifies as a *special school*, the entire unreimbursed cost (subject to the 7.5% AGI limitation) incurred by the parents is deductible as a medical expense. Alternatively, parents who are eligible to participate in tax-advantaged plans through work for funding medical expenses (i.e., flexible spending accounts or health savings accounts) can set aside limited amounts of money to finance medical care expenses on a pre-tax basis while bypassing the 7.5% AGI limitation.

What is a "Special School"?

A *special school* is distinguishable from a regular school by the substantive content of its curriculum. A special school may offer ordinary education, but it must be incidental to enabling the student to compensate for or overcome a handicap (disability) so that he or she will be prepared for future typical normal education or typical living (i.e., "mainstream"). A special school is not determined by the institution as a whole, but by the nature of the services received by the individual for whom a medical care deduction is sought. The IRS considers the medical facilities and therapeutic orientation of a school as critical factors in determining whether a school is a special school for a qualifying medical care deduction. Case law and IRS

See other side

administrative rulings reveal a litany of examples considered special schools by the IRS:

- Schools for teaching Braille to the blind or sign language to the hearing impaired
- Schools for training the developmentally disabled,
- A military school that accepted a physically and mentally challenged student (the school gave personal daily attention to the student to improve upon the student's attention deficit,
- A boarding school recommended by a psychiatrist (the school had psychiatrists, psychologists, and social workers who developed a special program for each student),
- Schools for average and above average students with learning disabilities which provide an environment in which they can adjust to a typical classroom situation, and
- A regular school's curriculum that is specially designed to accommodate the needs of children with IQ scores ranging from 50 to 75.

Furthermore, regular schools with special curricula can be classified as a special school for an individual. For example, in one Revenue Ruling, the school in question had a special curriculum for children with developmental disabilities with the special curriculum representing a separate component of the school's activities. Since the school's special education curriculum was a severable aspect of the school's activities, the IRS ruled that the special curriculum was a special school (*Rev. Rul. 70-285*, 1970-1 CB 52).

In another case, the IRS specifically ruled that a taxpayer whose child suffers from severe learning disabilities caused by a neurological disorder (i.e., autism spectrum disorder) may deduct as a medical expense amounts paid for tuition and related fees for the child's education at a special school that has a program designed to "mainstream" these children so they can return to a regular school. The Ruling further held that amounts paid for private tutoring by a specially trained teacher (i.e., therapeutic and behavioral support services) qualified to deal with severe learning disabilities is also deductible. However, both the special school and tutoring need to be recommended by a physician (*Revenue Ruling 78-340* (1978-2 CB 124)).

In a Letter Ruling issued in 2005, the IRS expanded the definition of special schooling to include tuition for programs enabling children with dyslexia to deal with their disability. The IRS ruled that the children were attending the school for the principal purpose of obtaining medical care in the form of special education. The special education was required for the years in which the children were diagnosed as having a medical condition (including dyslexia) that impaired their ability to learn. As a result, the IRS ruled in favor of a medical expense deduction for the tuition paid to the school (*Letter Ruling 200521003*).

Medical Conferences and Seminars

It is not uncommon for parents of special needs children to attend medical conferences and seminars in order to learn more about their child's disability. Under Revenue Ruling *2000-24* (2000-1 CB, 1133), the amounts paid for the registration fees and travel expenses are deductible as medical expenses. However, parents should obtain the recommendation of their child's doctor to insure their

medical deduction. In addition, the Ruling did not extend medical care deductibility to any meals and/or lodging costs incurred while attending the conference. Furthermore, the conference or seminar must deal specifically with the medical condition from which the child suffers, not just general health and well-being issues. As with the special instruction and other medical expenses, the aggregate amount of all medical expenses incurred must exceed 7.5% of the taxpayers' AGI to be deductible.

Impairment-Related Work Expenditures

As individuals with special needs mature and enter the work place, many of these individuals are entitled to claim itemized deductions for their unreimbursed impairment-related work expenses. The IRC, under Section 190(b)(3), defines "handicapped individuals" as those having a physical or mental disability or impairment (i.e., blindness or deafness, or impaired sight or hearing) that is a functional limitation to employment, or substantially limits one or more major life activities. Impairment-related work expenses refer to expenses incurred by a individual with a disability that are for attendant care services at the place of employment. According to IRC Section 67(d), these expenses must represent expenditures necessary to enable the individual to maintain employment.

According to the instructions provided by the IRS in their Publication 502: Medical and Dental Expenses for 2007 (page 24), an employee can deduct impairment-related work expenses on their Form 2106 or Form 2106-EZ. These expenditures are then transferred to Form 1040's Schedule A (the expense is deducted, but not identified on Line 27 of Schedule A) as an unreimbursed business expense which is not subject to the 2% AGI limitation on miscellaneous itemized deductions.

Conclusion

As the number of individuals diagnosed with "special needs" continue to escalate at unprecedented rates in our society, both parents and their advisors need to increase their awareness and capitalize on the substantial tax benefits available for these families. A sad reality lies in the possibility that state and local governmentally funded programs may exhaust their funding streams...forcing parents to shoulder the lion's share of their children's medical care and other related expenses.

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MetDESK® is dedicated to helping families plan for the future of children and/or dependents with special needs. Helping you answer those questions, directing you to the right resources, and just being there as a resource and advocate for you, is an important part of what we do. If you'd like to find out more, or you'd like to be referred to a local MetDESK® Specialist, please call 1-877-MetDESK, or 1-877-638-3375, or visit our website at www.metlife.com/DESK.

Produced by MetLife

Printed in USA

Editorial Director: Kelly Piacenti

Metropolitan Life Insurance Company
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New York, NY 10166
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