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Department of the Treasury

Washington, DC 20224

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Date:
March 28, 2001

Dear

Commissioner Rossotti has asked me to respond to your letter of March 2, 2001. You requested the Internal Revenue Service to change its regulations to provide tax favored treatment of expenses for self-prescribed vitamins and herbs. You state that such substances prevent illness and that therefore their cost should not be considered a personal expense but an expense for medical care.

Section 213(a) allows as a deduction the expenses paid during the taxable year for medical care of the taxpayer, spouse, or dependent. Under § 213(d)(1)(A), an expense is for "medical care" if its primary purpose is the diagnosis, cure, mitigation, treatment, or prevention of disease.

The Income Tax Regulations state 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 1.213-1(e)(1)(ii).

A taxpayer who claims that an expense of a peculiarly personal nature is primarily for medical care must establish that fact. Among the objective factors that indicate that an otherwise personal expense is for medical care are the taxpayer's motive or purpose, recommendation by a physician, linkage between the treatment and the illness, treatment effectiveness, and proximity in time to the onset or recurrence of a disease. *Havey v. Commissioner*, 12 T.C. 409 (1949).

Many expenses that may be claimed to "prevent" disease are peculiarly personal in nature and therefore subject to this analysis. Furthermore, the distinction between preventing disease and merely maintaining general health is a difficult one. To preclude the improper characterization of personal expenses as medical care in this context, the IRS and the courts have long held that, for an expense to qualify as medical care on the basis of preventing disease, there must be an imminent probability of contracting a disease. *Stringham v. Commissioner*, 12 T.C. 580 (1949), *aff'd*, 183 F.2d 579 (6th Cir. 1950); *Daniels v. Commissioner*, 41 T.C. 324 (1963).

Because an individual may use vitamins or herbs for purposes that do not satisfy the definition of medical care under these standards, whether vitamins and herbs constitute medical care in any given case is a question of fact.

We also note two other possible impediments to allowing the cost of vitamins and herbs as medical care. Expenses for medicines and drugs can be for medical care only if the medicine or drug is a prescribed drug or insulin. A “prescribed drug” is a drug or biological that requires a prescription of a physician for use by an individual. Sections 213(b) and (d)(3). The term "drug or biological" is not further defined in the statute. If vitamins and herbs are drugs or biologicals, by statute they would not qualify as medical care because they do not require a prescription of a physician for use by an individual.

Additionally, the cost of food is not an expense for medical care to the extent the food constitutes a substitute for the food that an individual would normally consume to meet nutritional requirements. Rev. Rul. 55-261, 1955-1 C.B. 307; *Harris v. Commissioner*, 46 T.C. 672 (1966). Since vitamins are contained in food and are necessary to meet nutritional requirements, again whether they are medical care is a question of fact that must be determined on a case by case basis.

Accordingly, we cannot conclude that expenses for vitamins and herbs *per se* qualify as medical care. If you have any questions or require additional information please contact Donna M. Crisalli at (202) 622-4920.

Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

By: _____
Robert A. Berkovsky
Chief, Branch 2