

**Attorney Timothy P. Crawford, CPA, CELA\*, CAP\*\***  
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## **Tax Considerations For Caregiver Children**

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While handling a parent's care, a child may avail herself of certain tax benefits. A child who is supporting a parent may be entitled, under certain circumstances, to claim the parent as a dependent on the child's tax return and may deduct certain medical and nursing home expenses. See, IRC Section 152.

Internal Revenue Code Section 213 (a) allows a deduction for the expenses paid for the medical care of a taxpayer and the taxpayer's spouse or dependent (if not compensated by insurance) to the extent that the expenses exceed seven and a half percent (7.5%) of adjusted gross income.

If the child contributed more than half of the total spent for the parent's support, if the parent is a citizen, income does not exceed a certain amount and the parent is not filing a joint tax return, the child may claim the parent as a dependent.

Even where the child contributes less than half of the parent's support, if the child is part of a group that provides more than half of the support, where such child contributed at least ten percent (10%) of the support, no other person contributed more than fifty percent (50%), and each other person who contributed at least ten percent (10%) signs a waiver agreeing that she will not claim the parent as a dependent, the child may claim the parent as a dependent. In calculating support, the parent's income, including social security, is taken into account.

If a taxpayer is not married and supports a parent, she may be also entitled to the "head of household" filing status. Even if one cannot claim a parent as a dependent, a dependent care credit may still be available under certain circumstances.

The definition of medical care includes the "diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body, or for transportation to such care". See, IRC Section 213(d). Amounts paid for qualified long term

care services are also deductible, such as necessary “diagnostic, preventive, therapeutic, curing, treating, mitigating and rehabilitative services, maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health practitioner.” See, IRC Section 7702 B.

Non-prescription equipment, supplies and diagnostic devices are also deductible to the extent that the medical care expenses exceed seven and a half percent (7.5%) of adjusted gross income. See, Revenue Rule 2003-58.

In contrast to non-prescription equipment and supplies, over the counter drugs are generally not deductible. See, IRC Section 213 (b). A prescribed drug is defined in IRC Section 213(d)(3) as one that requires a prescription of a physician. Since aspirin does not require a physician’s prescription, it is not deductible. Insulin, however, is deductible according to IRC Section 213(b).

The amount of the cost of a nursing home that a taxpayer may deduct as a medical expense depends on whether the patient’s presence in a nursing home is for medical reasons or not. If a parent requires nursing home care for medical reasons, the entire cost of the care may be deductible as a medical expense. However, if the principal reason for the nursing home placement is not medical care, then only that part attributable to the medical care is deductible.

If a patient needs medical care, it is unsafe for the person to remain at home, and institutional care is medically required, the cost of that care is deductible as a medical expense. IRC Regulation 1.213-1 (e)(1)(v)(a) provides, for example, that medical care includes the “entire cost of institutional care for a person who is mentally ill and unsafe when left alone.” This cost of care includes meals and lodging. See, Counts v Commissioner, 42 T.C. 755 (1964), acq., 1964-2 C.B. 4 (1964); PLR8215023 and PLR 8518061; See, also, IRC Section 7702 B (c).

If the parent’s principal reason for placement at the nursing home is not medical care, then only that part of the cost of care in the nursing home that is attributable to medical care is treated as an expense for medical care. In such a situation, the cost of meals and lodging are not treated as an expense for medical care. See, IRC Regulation 1.213-1 (e)(1)(v)(b) and Ball v Commissioner, T.C. Memo 1978-384, 37 T.C.M. 1573 (1978). In such event, the tax preparer should obtain a breakdown from the nursing home as to the medical fees component.

Internal Revenue Publication number 502 provides a list of items including medical expenses, that are deductible, including but not limited to expenses to cure alcohol addiction, ambulance service, artificial limb, artificial teeth, bandages, birth control pills, Braille books and magazines (to the extent that the cost is greater than the cost of regular printed editions), chiropractor, contact lenses, crutches, certain dental procedures, certain drugs, eyeglasses for medical reasons, eye surgery, hearing aids, hospital service, lab fees, prescription medicines, nursing services, optometrist, psychiatric care, psychological care, wheelchair and x-rays.

A taxpayer can also deduct as medical expenses, subject to the seven and a half percent (7.5%) floor, amounts paid for special equipment installed in a home or for improvements, if their main purpose is medical care for the taxpayer, her spouse or dependent. The cost of the improvement

is reduced by the increase in the value of the property, and the difference is considered a medical expense.

Some improvements which do not usually increase the value of the home include the construction of entrances or exit ramps, widening doorways, modifying hallways, installing railing or support bars, lowering or modifying kitchen cabinets and equipment, installing lifts, modifying stairways or adding handrails or grab bars. See, IRS Publication Number 502.

Cosmetic surgery is not deductible unless it is necessary to “ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from a car accident or trauma, or a disfiguring disease.” See, Rev Rule. 2003-57, citing, IRC Section 213(d)(9)(A). Cosmetic surgery that improves the taxpayer’s appearance, but does not substantially promote the proper function of the body or prevent or treat illness or disease is not deductible. See, Rev. Rule 2003-57, citing, IRC Section 213(d)(9)(B).

Cosmetic surgery, such as breast reconstruction surgery after cancer, that minimizes a deformity due to the disease, is deductible as medical care, subject to the seven and a half percent (7.5%) floor. Similarly, the cost of laser eye surgery is deductible under IRC Section 213(d)(9) because it promotes the proper functioning of the eyes. See, Rev Rule 2003-57, citing, CB-83. Rev. Rule 74-429, 1974-2 C.B.83.

Teeth whitening is considered purely cosmetic, since it does not treat a physical or mental disease or promotes the proper function of the body. Therefore, it is not deductible.

Weight loss programs may be deductible if undertaken due to a specific disease diagnosed by a physician, such as obesity, hypertension or heart disease. However, the cost of diet food or beverages are usually not deductible, as they are usually considered replacement for regular food, except under certain circumstances.

Certain payments to relatives are not treated as paid for medical care. If the medical services or qualified long term care services are provided by the person’s spouse or by certain relatives defined in IRC section 152(a) (directly or through a partnership, corporation or other entity), then they may not be deductible under Section 213 (d)(11) unless provided by a licensed professional.

If the child hires assistance for the parent, care must be taken that the appropriate tax filings are made. Although many people consider domestic help “independent contractors,” if the employer sets the hours and controls the work, the worker may be considered an “employee” rather than an “independent contractor.” With employee status comes many responsibilities, including but not limited to federal employment eligibility verification for immigration purposes, federal and state tax withholdings, Social Security, Medicare, unemployment insurance, worker’s compensation insurance and disability insurance.

The care and support of a parent is a valuable service not only to the parent, but to society as well, and our government recognizes it as such by permitting certain tax benefits.

*Sharon Kovacs Gruer, CELA, with offices in Great Neck, New York, is chairperson of the Practice Committee of the Elder Law Section of the New York State Bar association, is the immediate past chair of the Nassau County Bar Association Taxation Committee and is the Vice Chairperson of the Trust SIG of the National Academy of Elder Law Attorneys*

It is time for your clients, friends and relatives to take action NOW. They can call my office toll free at 1-888-634-6675 to set up a free consultation to discuss their situation.

Remember

**“Those Who Plan Ahead Win.  
Those Who Don’t Plan Ahead Lose.”**

This article is for informational purpose only and is not intended as legal advice. It is recommended that you call Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Crawford can be reached at 1-262-634-6659. Please refer to this article when you call.

\*Attorney Timothy P. Crawford is a Nationally Board Certified Elder Law Attorney (CELA). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

\*\*Timothy P. Crawford was invited to join the Council of Advanced Practitioners (CAP) of the National Academy of Elder Law Attorneys (NAELA) in August of 2005. CAP is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated by Martindale Hubbell, a service that provides an independent rating of the quality of attorneys, as one of the top attorneys in the nation.

Attorney Timothy P. Crawford has been selected as a **Fellow** of NAELA. **Fellow** is the highest honor bestowed by the Academy. Selection as a **Fellow** signifies that his peers recognize the lawyer as a model for others and as an exceptional lawyer and leader.

Attorney Timothy P. Crawford has a superb rating of 10 out of 10 with A V V O.

A V V O has awarded to Attorney Timothy P. Crawford the A V V O Client’s Choice Award.

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