

TONI S. LOGGINS
139 TALL TIMBER ROAD
ALABASTER, AL 35007,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 04-1043

FINAL ORDER ON TAXPAYER'S APPLICATION FOR REHEARING

The Revenue Department denied a 2003 Alabama income tax refund requested by Toni S. Loggins ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A Final Order was entered on April 28, 2005 affirming the denial of the refund because the Taxpayer failed to comply with a Preliminary Order. See, Code of Ala. 1975, §40-2A-9(b). The Taxpayer timely applied for a rehearing, and a hearing was conducted on August 3, 2005. CPA Bill Palmer represented the Taxpayer. Assistant Counsel David Avery represented the Department.

The issue in this case is whether the Taxpayer should be allowed a medical deduction for the amounts she paid to have her son treated for moderate major depression at a special facility in Montana.

The Taxpayer's 16 year old son, Carl Loggins, displayed oppositional defiant behavior and was diagnosed with moderate major depression in early 2003. The Taxpayer had her son treated locally, but his behavior and depression worsened and the Taxpayer began worrying about his physical wellbeing.

The Taxpayer researched the disease and determined that despite the cost, the best way to treat her son would be to send him for an extended period to a special facility,

Spring Creek Lodge, in Montana. She borrowed the money needed and enrolled her son in the Lodge in July 2003. Carl received specialized individual and group therapy at the Lodge, as well as an academic curriculum suited to his needs. His treatment program also required the Taxpayer to attend and participate in various seminars and treatment sessions.¹ His condition improved as a result of his stay at the facility.

The Taxpayer deducted as medical expenses on Schedule A of her 2003 Alabama return the various costs she incurred relating to her son's treatment at the Lodge. The adjusted amount of \$27,302 claimed by the Taxpayer included \$23,595 for her son's tuition, room, board, and incidental fees; \$2,441 for transportation for herself and her son; \$1,216 for her own lodging while attending the seminars and treatment sessions; and \$50 for prescription drugs.

The Department audited the Taxpayer's return and requested that the Taxpayer identify that portion of the payments to the Lodge that were for the treatment of her son's medical condition. The Taxpayer failed to provide that information. Consequently, the Department disallowed the medical deduction in full. The disallowed deduction resulted in the disallowance of the \$1,251 refund claimed by the Taxpayer on the return.

Section 40-18-15(a)(13) allows a deduction for medical and dental expenses as determined in accordance with the federal medical deduction, 26 U.S.C. §213.

The Department denied the expenses in issue based on paragraphs 5 and 7 of Rev. Rul. 58-280. Paragraph 5 provides that where an individual is in an institution and the

¹ The Taxpayer was required to travel to San Diego, California, Fort Lauderdale, Florida, and Montana to attend the required seminars and treatment sessions.

medical care provided is not the principle reason he is there, only that part of the cost attributable to the medical care is deductible. Paragraph 7 states that if a child attends a special school where the curriculum and disciplining methods help the child's attitude, the costs are not deductible.

The above paragraphs do not apply in this case. Paragraph 5 does not apply because the primary purpose the Taxpayer's son was at the Lodge was to treat and improve his major depression. Paragraph 7 does not apply because it concerns children with only behavioral or "attitude" problems, not medical conditions such as the major depression suffered by the Taxpayer's son in this case. Rather, paragraphs 3, 4, and 8 of Rev. Rul. 58-280 apply. Those paragraphs read as follows:

However, it is now concluded that where an individual is in an institution because his condition is such that the availability of medical care in such institution is a principal reason for his presence there and meals and lodging are furnished as a necessary incident to such care, the entire cost of medical care and meals and lodging at the institution, which are furnished while the individual requires continual medical care, constitute an expense for medical care. In other words, medical care includes the entire cost of institutional care for a person who is mentally ill and unsafe when left alone.

While ordinary education is not medical care, the cost of medical care is considered to include the cost of attending a special school for a mentally or physically handicapped individual, if his condition is such that the resources of the institution for alleviating such mental or physical handicap are the principal reasons for his presence there. In such a case, the cost of attending such a special school will include the cost of meals and lodging, if supplied, and the cost of ordinary education furnished which is incidental to the special services furnished by the school. Thus, the cost of medical care includes the cost of attending a special school designed to compensate for or overcome a physical handicap, in order to qualify the individual for future normal education or for normal living such as a school for the teaching of Braille or lip reading. Similarly, care, supervision, treatment and training of a mentally retarded individual at an institution is within the meaning of the term "medical care."

* * *

Accordingly, it is held that (1) the cost of special education, training, and

treatment afforded a mentally retarded child in an institution is deductible as a medical expense; (2) the total cost of meals, lodging and ordinary education, furnished a mentally retarded child attending a special school, is deductible as a medical expense only if his condition is such that the resources of the institution for alleviating such mental or physical handicap is a principal reason for the child's presence there; and (3) it is immaterial whether medical care is furnished in a public or private institution.

The above conclusion is affirmed by IRS Regulation 1.213-1(e)(1)(v). "Section 1.213-1(e)(1)(v), Income Tax Regs., provides that a taxpayer is entitled to a medical care deduction for ordinary costs of education ONLY where the availability of medical care is a principle reason for his presence at the school, and the expenses are incidental to the special services provided by the school." *Urbauer v. C.I.R.*, T.C. Memo. 1992-170, at 8, citing *Atkinson v. Commissioner*, 44 T.C. 39, 51 (1965). The education curriculum provided to the Taxpayer's son at the Lodge was incidental to and a part of his treatment for depression. Consequently, the entire cost of the Lodge was deductible.

Likewise, the Taxpayer's costs incurred in traveling to and attending the required seminars and therapy sessions were also deductible. Again quoting from *Urbauer*, at 8:

Petitioners' participation in John's treatment required their attendance at some therapy sessions. To attend these sessions, they incurred costs for airfare and rental cars. On the record, it is obvious that the only reason petitioners traveled to and from DeSisto was to attend and participate in John's therapy sessions. Accordingly, the petitioners' transportation was primarily for and essential to medical care, and they are entitled to deduct these costs. Sect. 213(d)(1).

Because the expenses claimed by the Taxpayer were deductible, the Taxpayer is entitled to the adjusted refund claimed in 2003. The April 28, 2005 Final Order is voided. The Department is directed to issue the Taxpayer her 2003 refund of \$1,251 in due course.

This Final Order on Taxpayer's Application for Rehearing may be appealed to circuit

court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 11, 2005.

BILL THOMPSON
Chief Administrative Law Judge