

Section 213

Rev. Rul. 71-281

The Internal Revenue Service has reconsidered its position announced in Revenue Ruling 68-320, C.B. 1968-1, 93, that legal fees paid by a taxpayer in connection with the commitment of his son to a state mental institution are not amounts paid for medical care within the meaning of section 213 of the Internal Revenue Code of 1954.

In Revenue Ruling 68-320 the taxpayer's son suffered a severe mental breakdown making it necessary for him to leave college and be hospitalized. Because the taxpayer considered it necessary to have the boy confined in order to treat him, he took the necessary steps to have him committed to a state mental institution. He paid attorney's fees in connection with the commitment, and deducted such amounts as medical expenses under section 213 of the Code. Although not specifically stated in Revenue Ruling 68-320, it was understood that the commitment proceeding was necessary to render medical treatment to the taxpayer's son, and that the doctors who recommended that the son be committed regarded the compulsory confinement as a necessary part of his therapy.

The term "medical care" is defined in section 213(e)(1) of the Code as meaning amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A), or

(C) for insurance * * * covering medical care referred to in subparagraphs (A) and (B).

In holding that the legal fees paid by the taxpayer in connection with the commitment of his son to the state mental institution were not amounts paid for medical care within the meaning of section 213(e)(1) of the Code, the Revenue Ruling relied, in part, on the case of *Carl A. Gerstacker v. Commissioner*, 49 T.C. 522 (1968).

The facts in the *Gerstacker* case disclosed that the taxpayer's wife had a history of mental and emotional prob-

lems involving violent behavior and alcoholism and that she ran away from two mental institutions after voluntarily entering them. Her doctors advised her that she could not be successfully treated unless she were committed in order that the treatment be continuous. The question presented was whether the taxpayer was entitled to deduct as a medical expense under section 213 of the Code, amounts paid for legal services relating to guardianship proceedings for the taxpayer's wife which enabled her to receive treatment at a sanitarium for her mental and emotional condition. The court held that the legal expenses were not deductible as medical expenses and stated that the provisions of section 213(e)(1) of the Code must be narrowly construed and that a sharp distinction be made between direct and indirect expenses relating to medical care.

However, the position of the Tax Court of the United States in the *Gerstacker* case was reversed by the United States Court of Appeals for the Sixth Circuit, 414 F. 2d 448 (1969). The Court observed that the compulsory confinement of the taxpayer's wife was a part of her therapy and, hence, there was a direct or proximate relationship between a part of the legal expenses and the treatment. Accordingly, the Court held that where legal expenses are necessary to authorize a method of medical treatment for mental illness, they are "amounts paid * * * for the diagnosis, cure, mitigation, treatment, * * * of disease" and are deductible under section 213 of the Code as expenses for "medical care." The Court further held, however, that legal fees attributable to the management of the guardianship estate, and the legal fees for the conduct of the affairs of the taxpayer's wife during the guardianship are not deductible as expenses paid for "medical care" under section 213 of the Code.

The Internal Revenue Service will follow the decision of the Court of Appeals for the Sixth Circuit in the *Ger-*

stacker case. Accordingly, Revenue Ruling 68-320 is hereby revoked.

26 CFR 1.213-1: Medical, dental, etc., expenses.
(Also Sections 106, 162; 1.106-1, 1.162-1.)

Treatment of amounts paid by individual and employer subscribers to a plan providing storage and retrieval of personal medical information by a computer data bank.

Rev. Rul. 71-282

An individual taxpayer, *A*, subscribed to a plan that provided for the storage and retrieval of personal medical information by a computer data bank, and for this service he paid an initial fee and an annual fee. Another individual taxpayer, *B*, had his subscription to the same plan paid by his employer, corporation *X*, under a group subscription plan covering all of *X*'s employees. The service provided by the computer data bank consisted of storing medical information that was furnished by the personal physician of each enrolled individual, upon the written authorization of the enrollee, regarding the individual's illnesses, diseases, allergies, medication prescribed on a long-term basis, vital sign statistics, blood type, and family medical history, and rapidly retrieving and furnishing such information upon request to any physician attending him. A special identification card was furnished to each individual enrolled in the plan.

Held, since the service provided by the computer data bank facilitates the diagnosis of a physical or mental defect or illness and, thus, serves to prevent or alleviate a defect or illness, amounts paid for that service by *A* are paid for medical care and are deductible by him as medical expenses, subject to the limitations of section 213 of the Internal Revenue Code of 1954.

Held further, since the service provided by the computer data bank is a medical service, the cost of which is deductible by an individual, the group subscription to the plan purchased by corporation *X* is an accident or health

plan for compensation of its employees for personal injuries or sickness. Therefore, any payments made by *X* for *B*'s participation in the plan are excludable from *B*'s gross income under the provisions of section 106 of the Code.

Held further, the amount paid by corporation *X* for the coverage of all its employees is deductible as an ordinary and necessary business expense under section 162 of the Code.

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

Tuition, room, and board at school for the mentally retarded. See Rev. Rul. 71-347, page 114.

Section 215.—Alimony, etc., Payments

26 CFR 1.215-1: *Periodic alimony, etc., payments.*

Deductibility of amounts paid by the husband to his former wife under a State court support order, when the husband subsequently obtains a Mexican divorce decree that does not contain a written separation agreement and does not incorporate the terms of the State court support order. See Rev. Rul. 71-390, page 82.

26 CFR 1.215-1: *Periodic alimony, etc., payments.*

Whether a *nunc pro tunc* amendment to a divorce decree should be given retroactive effect so as to validate alimony deductions. See Rev. Rul. 71-416, page 83.

Section 216.—Deduction of Taxes, Interest, and Business Depreciation by Cooperative Housing Corporation Tenant-Stockholder

26 CFR 1.216-1: *Amounts representing taxes and interest paid to cooperative housing corporation.*

The creator and owner of a revocable trust that owns stock of a cooperative housing corporation and the lease of the cooperative apartment in which he resides is a tenant-stockholder; amounts paid by the trustee under the proprietary lease is considered derived from the tenant-stockholder.

Rev. Rul. 71-294

Advice has been requested whether, under the circumstances described below, an individual taxpayer qualifies as a "tenant-stockholder" of a cooperative housing corporation within the meaning of section 216(b)(2) of the Internal Revenue Code of 1954. Advice has also been requested whether the amount that is paid for the taxpayer to the cooperative corporation will be considered as derived from the taxpayer as a tenant-stockholder for purposes of determining whether 80 percent or more of the gross income of the cooperative housing corporation is derived from tenant-stockholders as required by section 216(b)(1)(D) of the Code.

The taxpayer created a revocable trust and was treated as the owner thereof for purposes of section 676 of the Code. He transferred substantially all of his real and personal property to it. The taxpayer was also a lessee and resident of an apartment. When the lessor of the apartment converted the property into a cooperative apartment building the trustee for the taxpayer purchased shares of stock of the cooperative housing corporation. This gave the taxpayer the right to the continued occupancy of the apartment. At no time while the apartment was owned by the trust was it used for other than residential purposes.

Section 216(b)(2) of the Code provides, in part, that the term "tenant-stockholder" means an individual who is a stockholder in a cooperative housing corporation. Section 216(b)(1) of the Code states, in part, that the term "cooperative housing corporation" means a corporation "each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation," and "80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred is derived from tenant-stockholders."

Section 671 of the Code states the general rule that where the grantor is regarded as the owner of any portion of a trust, there shall be included in computing the taxable income and credits of the grantor those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account in computing taxable income or credits against the tax of an individual.

In this case the taxpayer is the owner of the entire corpus of the trust, for purposes of section 216 of the Code, which includes the stock of the cooperative housing corporation.

Accordingly, in the instant case it is held that the taxpayer is the "tenant-stockholder" within the meaning of section 216 of the Code, and that the amount paid by the trustee under the proprietary lease to the corporation is to be considered derived from him for purposes of determining whether 80 percent or more of the gross income of the cooperative housing corporation is derived from tenant-stockholders as required by section 216(b)(1)(D) of the Code.

Part IX. Items not Deductible

Section 262.—Personal, Living and Family Expenses

26 CFR 1.262-1: *Personal, living and family expenses.*
(Also Sections 162, 212; 1.162-1, 1.212-1.)

Fees paid for a basic examination and counseling service to a psychological study organization whose efforts directly resulted in the taxpayer securing employment are deductible as a business expense.

Rev. Rul. 71-308

Advice has been requested whether fees paid by a taxpayer to a psychological study organization under the circumstances described below are deductible for Federal income tax purposes.

The taxpayer paid a fee to a psychological study organization for a