



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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Dear :

I am responding to your inquiry that Senator Ron Wyden referred to us. You asked whether you may deduct, as medical expenses, attorney fees and mileage expenses to establish a guardianship for your husband, who has Alzheimer's disease.

Section 213(a) of the Internal Revenue Code allows a taxpayer to deduct expenses for medical care for the taxpayer or the taxpayer's spouse or dependent, that exceed 7.5 percent of adjusted gross income. Expenses for medical care include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting a structure or function of the body. A taxpayer also may deduct the cost of transportation that is primarily for and essential to medical care.

Expenses that are *related* to medical care may be deductible if the relationship between the expenses and the medical care is sufficiently direct. A court has held that a taxpayer could deduct legal fees to establish a guardianship to commit the taxpayer's spouse for medical treatment that could not be provided otherwise. As the commitment proceeding was necessary to provide the medical care, a direct relationship existed between the expenses and the medical care. *Gerstacker v. Commissioner*, 414 F. 2d 448 (6<sup>th</sup> Cir. 1969). We follow this decision. Revenue Ruling 71-281, 1971-2 C.B. 165. Applying this reasoning, attorney fees and mileage expenses directly related to establishing a guardianship to provide medical care are deductible under § 213.

I am enclosing Publication 502, *Medical and Dental Expenses*, which more fully explains the rules for deducting legal fees and mileage expenses related to medical care.

I hope this information is helpful. If you have any questions, please contact

Sincerely,

George J. Blaine  
Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure

cc: The Honorable Ron Wyden  
Attention: