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Medical Deduction Allowed for In-Home Personal Care

BY DANNY A. PANNese, CPA/ABV/CFF, MST, CVA, CSEP

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The Tax Court held that payments made to an elderly woman's providers of personal care that she required due to her diminished capacity qualified as long-term-care services and were therefore deductible under IRC § 213(d)(1)(C).

Lillian Baral was diagnosed with dementia by her physician in 2004. After she was hospitalized repeatedly, the physician evaluated her ability to take her required medications and live independently. In 2006, he determined her speech was impaired and that she was confused. She also required supervision and assistance with the activities of daily living and was at risk of falling. For all these reasons, she needed 24-hour-a-day home care services, the physician said.

Baral's brother, David Baral, her attorney-in-fact, hired two caregivers who assisted Lillian Baral with bathing, dressing, trips to doctors, medications and getting in and out of a wheelchair. They also paid for miscellaneous supplies and were later reimbursed. During 2007, David Baral paid the caregivers \$49,580 for their services, plus \$5,566 to reimburse the miscellaneous expenses and \$760 for physicians, none of which was reimbursed by insurance or otherwise.

Lillian Baral's federal income tax return for 2007 was not timely filed, and payment was not made. The Service prepared a substitute for return for 2007 and subsequently issued a statutory notice of deficiency with adjusted gross income (AGI) of \$94,229 and an income tax deficiency of \$17,681, with no deductions or credits other than a personal exemption and standard deduction.

In 2008, Lillian Baral died. Her estate petitioned the Tax Court, first arguing that she was not required to file a return or pay income tax for 2007 because of her dementia. The court granted summary judgment to the IRS on that issue, holding she or her estate was not excused from filing. The court then ruled on the estate's further objection to the government's motion for summary judgment, that Baral was entitled to deductions for medical and long-term care.

IRC § 213 allows a deduction for medical care to the extent expenses exceed 7.5% of AGI. Medical care is defined as including long-term-care services as defined in section 7702B(c)(1) that "are required by a chronically ill individual and are provided pursuant to a plan of care prescribed by a licensed health care practitioner." Chronic illness is defined as an inability (certified within the previous 12 months by a licensed health care practitioner) to perform certain activities of daily living, or "requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment."

The court agreed with Baral's estate that the amounts paid to the caregivers for their services were deductible as qualified long-term-care services. Baral was chronically ill, and the care was medically necessary to protect her from threats to her health and safety, as determined by her physician. The court also held the amounts paid for physicians were qualified medical expenses. However, the amounts paid to reimburse the caregivers for miscellaneous expenses were disallowed due to lack of substantiation.

■ *Estate of Lillian Baral v. Commissioner*, 137 TC no. 1

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