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TITLE 26--INTERNAL REVENUE CODE

Subtitle A--Income Taxes

CHAPTER 1--NORMAL TAXES AND SURTAXES

Subchapter B--Computation of Taxable Income

PART VII--ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

Sec. 213. Medical, dental, etc., expenses

(a) Allowance of deduction

There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152), to the extent that such expenses exceed 7.5 percent of adjusted gross income.

(b) Limitation with respect to medicine and drugs

An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

(c) Special rule for decedents

(1) Treatment of expenses paid after death

For purposes of subsection (a), expenses for the medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation

Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed-

- (A) a statement that such amount has not been allowed as a deduction under section 2053, and
- (B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(d) Definitions

For purposes of this section-

- (1) The term "medical care" means 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),

- (C) for qualified long-term care services (as defined in section 7702B(c)), or
- (D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long-term care insurance contract (as defined in section 7702B(b)).

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).

- (2) Amounts paid for certain lodging away from home treated as paid for medical care. Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—
 - (A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and
 - (B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed \$50 for each night for each individual.

- (3) Prescribed drug.--The term "prescribed drug" means a drug or biological which requires a prescription of a physician for its use by an individual.
- (4) Physician.--The term "physician" has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C.1395x(r)).
- (5) Special rule in the case of child of divorced parents, etc.—Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section.
- (6) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A), (B), and (C) of paragraph (1)-
 - (A) no amount shall be treated as paid for insurance to which paragraph (1)(D) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,
 - (B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

- (7) Subject to the limitations of paragraph (6), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A), (B), and (C) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).
- (8) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).
- (9) Cosmetic surgery—
- (A) In general—The term “medical care” does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.
- (B) Cosmetic surgery defined—For purposes of this paragraph, the term “cosmetic surgery” means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.
- (10) Eligible long-term care premiums—
- (A) In general—For purposes of this section, the term “eligible long-term care premiums” means the amount paid during a taxable year for any qualified long-term care insurance contract (as defined in section 7702B(b)) covering an individual, to the extent such amount does not exceed the limitation determined under the following table:

In the case of an individual with an attained age before the close of the taxable year of: The limitation is:

40 or less	\$ 200
More than 40 but not more than 50	\$ 375
More than 50 but not more than 60	\$ 750
More than 60 but not more than 70	\$ 2,000
More than 70	\$ 2,500

- (B) Indexing—
- (i) In general.--In the case of any taxable year beginning in a calendar year after 1997, each dollar amount contained in subparagraph (A) shall be increased by the medical care cost adjustment of such amount for such calendar year. If any increase determined under the preceding sentence is not a multiple of \$10, such increase shall be rounded to the nearest multiple of \$10.
- (ii) Medical care cost adjustment.--For purposes of clause (i), the medical care cost adjustment for any calendar year is the percentage (if any) by which—
- (I) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds
- (II) such component for August of 1996.

The Secretary shall, in consultation with the Secretary of Health and Human Services, prescribe an adjustment which the Secretary determines is more appropriate for purposes of this paragraph than the adjustment described in the preceding sentence, and the adjustment so prescribed shall apply in lieu of the adjustment described in the preceding sentence.

- (11) Certain payments to relatives treated as not paid for medical care—An amount paid for a qualified long-term care service (as defined in section 7702B(c)) provided to an individual shall be treated as not paid for medical care if such service is provided—
- (A) by the spouse of the individual or by a relative (directly or through a partnership, corporation, or other entity) unless the service is provided by a licensed professional with respect to such service, or
- (B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this paragraph, the term “relative” means an individual bearing a relationship to the individual which is described in any of paragraphs (1) through (8) of

section 152(a). This paragraph shall not apply for purposes of section 105(b) with respect to reimbursements through insurance.

(e) Exclusion of amounts allowed for care of certain dependents

Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

Aug. 16, 1954, ch. 736, 68A Stat. 69; Pub. L. 85-866, title I, Secs. 16, 17(a), (b), Sept. 2, 1958, 72 Stat. 1613, 1614; Pub. L. 86-470, Sec. 3(a), May 14, 1960, 74 Stat. 133; Pub. L. 87-863, Sec. 1(a), (b), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 88-272, title II, Sec. 211(a), Feb. 26, 1964, 78 Stat. 49; Pub. L. 89-97, title I, Sec. 106(a)-(d)(1), July 30, 1965, 79 Stat. 336, 337; Pub. L. 94-455, title V, Sec. 504(c)(1), title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1565, 1834; Pub. L. 97-248, title II, Sec. 202(a)-(b)(3)(B), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98-369, div. A, title IV, Secs. 423(b)(1), (3), 474(r)(9), 482(a), (b)(1), title VII, Sec. 711(b), July 18, 1984, 98 Stat. 800, 841, 847, 848, 943; Pub. L. 99-514, title I, Sec. 133, Oct. 22, 1986, 100 Stat. 2116; Pub. L. 101-508, title XI, Secs. 11111(d)(1), 11342(a), Nov. 5, 1990, 104 Stat. 1388-412, 1388-471; Pub. L. 103-66, title XIII, Sec. 13131(d)(3), Aug. 10, 1993, 107 Stat. 435; Pub. L. 104-191, title III, Sec. 322(a)-(b)(2)(A), (C), (3), (4), Aug. 21, 1996, 110 Stat. 2060-2062.)

Adjustment of Long-Term Care Premium Limitation for Tax Years Beginning in 2001

For adjustment of limitation of amount of eligible long-term care premiums includible in term "medical care" under subsection (d) of this section for tax years beginning in 2001, see section 3.10 of Revenue Procedure 2001-13, set out as a note under section 1 of this title.

References In Text

The Social Security Act, referred to in subsec. (d)(1)(D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XVIII of the Social Security Act is classified generally to part B (Sec. 1395j et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Amendments

1996--Subsec. (d)(1). Pub. L. 104-191, Sec. 322(b)(2)(A), inserted concluding provisions "In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D)."
 Subsec. (d)(1)(B). Pub. L. 104-191, Sec. 322(a), struck out "or" at end.
 Subsec. (d)(1)(C). Pub. L. 104-191, Sec. 322(a), added subpar. (C).
 Former subpar. (C) redesignated (D).

Subsec. (d)(1)(D). Pub. L. 104-191, Sec. 322(b)(1), inserted before period "or for any qualified long-term care insurance contract (as defined in section 7702B(b))."

Pub. L. 104-191, Sec. 322(a), redesignated subpar. (C) as (D).

Subsec. (d)(6). Pub. L. 104-191, Sec. 322(b)(3)(A), substituted "subparagraphs (A), (B), and (C)" for "subparagraphs (A) and (B)" in introductory provisions.

Subsec. (d)(6)(A). Pub. L. 104-191, Sec. 322(b)(3)(B), substituted "paragraph (1)(D)" for "paragraph (1)(C)."

Subsec. (d)(7). Pub. L. 104-191, Sec. 322(b)(4), substituted "subparagraphs (A), (B), and (C)" for "subparagraphs (A) and (B)."

Subsec. (d)(10), (11). Pub. L. 104-191, Sec. 322(b)(2)(C), added pars. (10) and (11).

1993--Subsec. (f). Pub. L. 103-66 struck out heading and text of subsec. (f). Text read as follows: "The amount otherwise taken into account under subsection (a) as expenses paid for medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32."

1990--Subsec. (d)(9). Pub. L. 101-508, Sec. 11342(a), added par. (9).

Subsec. (f). Pub. L. 101-508, Sec. 11111(d)(1), added subsec. (f).

1986--Subsec. (a). Pub. L. 99-514 substituted "7.5 percent" for "5 percent."

1984--Subsec. (d)(2), (3). Pub. L. 98-369, Sec. 482(a), added par. (2) and redesignated former par. (2) as (3).

Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 98-369, Sec. 482(a), redesignated par. (3) as (4). Former par. (4), as added by Pub. L. 98-369, Sec. 423(b)(1), redesignated (5). Pub. L. 98-369, Sec. 423(b)(1), added par. (4). Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 98-369, Sec. 482(a), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98-369, Sec. 423(b)(1), redesignated former par. (4) as (5). Former par. (5) redesignated (6). Pub. L. 98-369, Sec. 711(b), substituted "paragraph (4)" for "paragraph (2)."

Subsec. (d)(6). Pub. L. 98-369, Sec. 482(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 98-369, Sec. 423(b)(1), (3), redesignated former par. (5) as (6) and substituted therein "limitations of paragraph (5)" for "limitations of paragraph (4)." Former par. (6) redesignated (7).

Subsec. (d)(7). Pub. L. 98-369, Sec. 482(a), (b)(1), redesignated par. (6) as (7) and substituted therein "paragraph (6)" for "paragraph (5)." Former par. (7) redesignated (8). Pub. L. 98-369, Sec. 423(b)(1), redesignated former par. (6) as (7).

Subsec. (d)(8). Pub. L. 98-369, Sec. 482(a), redesignated par. (7) as (8).

Subsec. (e). Pub. L. 98-369, Sec. 474(r)(9), substituted "section 21" for "section 44A."

Internal Revenue Code: Section 213

1982--Subsec. (a). Pub. L. 97-248, Sec. 202(a), substituted provisions that there shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152), to the extent that such expenses exceed 5 percent of adjusted gross income, for provision allowing as deductions the amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under paragraph (2)) for medical care of the taxpayer, his spouse, and dependents (as defined in section 152) exceeded 3 percent of the adjusted gross income, and an amount (not in excess of \$150) equal to one-half of the expenses paid during the taxable year for insurance which constituted medical care for the taxpayer, his spouse, and dependents.

Subsec. (b). Pub. L. 97-248, Sec. 202(b)(1), amended subsec. (b) generally, substituting provision that an amount paid during the taxable year for medicine or a drug shall be taken into account under subsec. (a) only if such medicine or drug is a prescribed drug or is insulin for former provision that amounts paid during the taxable year for medicine and drugs which (but for this subsection) would have been taken into account in computing the deduction under subsec. (a) would be taken into account only to the extent that the aggregate of such amounts exceeded 1 percent of the adjusted gross income.

Subsec. (c). Pub. L. 97-248, Sec. 202(b)(3)(B), redesignated subsec. (d) as (c). Former subsec. (c) was repealed by Pub. L. 89-97.

Subsec. (d). Pub. L. 97-248, Sec. 202(b)(2), (3)(A), (B), redesignated subsec. (e) as (d), added pars. (2) and (3), and redesignated former pars. (2), (3), and (4) as (4), (5), and (6), respectively. Former subsec. (d) redesignated (c). Subsecs. (e), (f). Pub. L. 97-248, Sec. 202(b)(3)(B), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1976--Subsec. (d)(2). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out "or his delegate" after "Secretary."

Subsec. (f). Pub. L. 94-455, Sec. 504(c)(1), substituted "a credit under section 44A" for "a deduction under section 214" after "allowed as."

1965--Subsec. (a). Pub. L. 89-97, Sec. 106(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There shall be allowed as a deduction the following amounts of the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152):

- "(1) If neither the taxpayer nor his spouse has attained the age of 65 before the close of the taxable year--
 - "(A) the amount of such expenses for the care of any dependent who--
 - "(i) is the mother or father of the taxpayer or of his spouse, and

- "(ii) has attained the age of 65 before the close of the taxable year, and

- "(B) the amount by which such expenses for the care of the taxpayer, his spouse, and such dependents (other than any dependent described in subparagraph (A)) exceed 3 percent of the adjusted gross income.

- "(2) If either the taxpayer or his spouse has attained the age of 65 before the close of the taxable year--

- "(A) the amount of such expenses for the care of the taxpayer and his spouse.

- "(B) the amount of such expenses for the care of any dependent described in paragraph (1)(A), and

- "(C) the amount by which such expenses for the care of such dependents (other than any dependent described in paragraph (1)(A)) exceed 3 percent of the adjusted gross income."

Subsec. (b). Pub. L. 89-97, Sec. 106(b), struck out second sentence which read:

"The preceding sentence shall not apply to amounts paid for the care of--

- "(1) the taxpayer and his spouse, if either of them has attained the age of 65 before the close of the taxable year, or

- "(2) any dependent described in subsection (a)(1)(A)."

Subsec. (c). Pub. L. 89-97, Sec. 106(d)(1), struck out subsec. (c) relating to maximum limitations on medical and dental expenses under this section.

Subsec. (e). Pub. L. 89-97, Sec. 106(c), struck out from par. (1)(A) "including amounts paid for accident or health insurance" after "function of the body," added pars. (1)(C), (2), and (3), and renumbered former par. (2) as (4).

Subsec. (g). Pub. L. 89-97, Sec. 106(d)(1), struck out provisions relating to maximum limitation if taxpayer or spouse has attained age 65 and is disabled, special rule, amounts taken into account, meaning of disabled, and determination of status.

1964--Subsec. (b). Pub. L. 88-272 excluded persons attaining age 65 before the close of the taxable year from the limitation, whether they are the taxpayer and his spouse, or the mother or father of the taxpayer and his spouse.

1962--Subsec. (c). Pub. L. 87-863, Sec. 1(a), substituted "\$5,000" for "\$2,500," "\$10,000" for "\$5,000," and "\$20,000" for "\$10,000."

Subsec. (g). Pub. L. 87-863, Sec. 1(b), substituted "\$20,000" for "\$15,000" in three places, and "\$40,000" for "\$30,000."

1960--Subsec. (a). Pub. L. 86-470 authorized a taxpayer to deduct medical care expenses for dependent parents of the taxpayer or his spouse who have attained the age of 65 before the close of the taxable year without applying the three percent limitation.

1958—Subsec. (c). Pub. L. 85-866, Sec. 17(b), substituted “Except as provided in subsection (g), the” for “The”. Subsec. (d)(2)(A). Pub. L. 85-866, Sec. 16, struck out “claimed or” before “allowed.” Subsec. (g). Pub. L. 85-866, Sec. 17(A), added subsec.(g).

Effective Date of 1996 Amendment

Amendment by Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 322(c) of Pub. L. 104-191, set out as a note under section 162 of this title.

Effective Date of 1993 Amendment

Amendment by Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103-66, set out as a note under section 32 of this title.

Effective Date of 1990 Amendment

Amendment by section 11111(d)(1) of Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 11111(f) of Pub. L. 101-508, set out as a note under section 32 of this title.

Section 11342(b) of Pub. L. 101-508 provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1990.”

Effective Date of 1986 Amendment

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Effective Date of 1984 Amendment

Amendment by section 423(b) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98-369, set out as a note under section 2 of this title. Amendment by section 474(r)(9) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 482(c) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section and section 152 of this title] shall apply to taxable years beginning after December 31, 1983.”

Amendment by section 711(b) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Effective Date of 1982 Amendment

Section 202(c) of Pub. L. 97-248 provided that: “(1) Subsection (a).--The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982.

“(2) Subsection (b).--The amendments made by subsection (b) [amending this section and section 105 of this title] shall apply to taxable years beginning after December 31, 1983.”

Effective Date of 1976 Amendment

Amendment by section 504(c)(1) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as a note under section 3 of this title.

Effective Date of 1965 Amendment

Section 106(e) of Pub. L. 89-97 provided that: “The amendments made by this section [amending this section and sections 72, 79, 401, and 405 of this title] shall apply to taxable years beginning after December 31, 1966.”

Effective Date of 1964 Amendment

Section 211(b) of Pub. L. 88-272 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.”

Effective Date of 1962 Amendment

Section 1(c) of Pub. L. 87-863 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1961.”

Effective Date of 1960 Amendment

Section 3(b) of Pub. L. 86-470 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1959.”

Effective Date of 1958 Amendment

Amendment by section 16 of Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

Section 17(c) of Pub. L. 85-866 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1957.”

Section Referred to in Other Sections

This section is referred to in sections 56, 67, 68, 72, 104, 105, 152, 162, 220, 419A, 501, 2503, 4980B, 7702B, 9832 of this title; title 29 section 1167.