



The Child Development Network



Tax Office Information

The following information is from the Australian Master Tax Guide

It is advisable that you seek professional advice before lodging a tax claim

[¶15-150] PAYMENTS FOR MEDICAL EXPENSES

A rebate is available to a taxpayer whose net medical expenses ([¶15-155](#)) in the year of income exceed a certain threshold (ITAA36 s [159P](#)). For 2006/07 and later years, the rebate is calculated as 20% of the excess of net medical expenses over the threshold of \$1,500.

To qualify for the rebate, the medical expenses must be paid by a resident taxpayer (ITAA36 s [159H](#)), in respect of himself/herself or a resident dependant ([¶15-160](#)). However, it is not necessary that the payments be made to a resident or that they be paid in Australia. Therefore, medical expenses paid during an overseas trip may be rebatable.

Medical expenses do not qualify for the rebate to the extent that they are reimbursed, or are eligible to be reimbursed, from a "government or public authority or a society, association or fund (whether incorporated or not)", regardless of who receives or is entitled to receive the reimbursement (s [159P\(1\)](#)). This would clearly apply to reimbursements from Medicare or a health insurance fund, but it also applies to reimbursements from a general insurance company (Case S64 [85 ATC 460](#)) or, apparently, an overseas fund (ID 2002/275). Medical expenses paid directly by the taxpayer's employer do not qualify for the rebate (unless the employer is acting as the taxpayer's agent), but medical expenses paid by the taxpayer and which are reimbursed, in whole or in part, by his/her employer may qualify (although the reimbursement may give rise to an expense payment fringe benefit: [¶35-320](#)).

Example

During the 2007/08 income year, Roy incurs medical expenses of \$12,700 in respect of his seriously ill wife. He is a member of a health fund, which reimburses him \$10,200. Roy's net medical expenses are therefore \$2,500 (ie \$12,700 - \$10,200). He is entitled to a rebate of 20% × (\$2,500 - \$1,500) = \$200.

See CCH *Master Tax Examples* [¶1-147](#), [¶1-148](#) and [¶1-165](#).

Note that the sum of all rebates may be limited by the amount of tax otherwise payable ([¶15-380](#)).

[¶15-155] ELIGIBLE MEDICAL EXPENSES

The term "medical expenses" is widely defined (ITAA36 s [159P\(4\)](#)) for the purposes of the medical expenses rebate ([¶15-150](#)) to cover payments to doctors, nurses, chemists, dentists, opticians and optometrists. It also covers payments for therapeutic treatment, medical or surgical appliances, the maintenance of a trained guide dog and remuneration paid to an attendant of an invalid or blind person.

Expenses incidental to obtaining medical treatment, such as travel and hotel expenses incurred by a person living in an outlying area in travelling to and obtaining accommodation at a place where

proper medical treatment is available, do not qualify for the rebate. Nor do contributions paid to medical or hospital benefits funds or to other health insurance funds.

The types of eligible medical expenses are considered in more detail below.

Payments to doctors, nurses and chemists

Payments to *legally qualified* medical practitioners, nurses or chemists in respect of an illness or an operation qualify as rebatable medical expenses. However, from the 2005/06 year, payments for *solely* cosmetic operations for which no Medicare benefit is payable under Pt II of the *Health Insurance Act 1973* are ineligible.

“Legally qualified” means licensed or registered to practise the profession in the place where it is being practised. A psychologist who is licensed to practise in Victoria but who is not registered under the Medical Act of any Australian state is not a medical practitioner because he is not licensed to practise medicine (*Case 9/2005 2005 ATC 193*). A nurse who at one time was registered as a mothercraft nurse, but was not registered during the relevant income year with the result that she was precluded from practising mothercraft nursing for fee or reward, was not a “legally qualified” nurse (*Case F50 74 ATC 276*).

A masseuse/masseur who is not a legally qualified nurse is not a nurse, but payments to a masseuse/masseur may sometimes qualify as therapeutic treatment (see below). Similarly, although a herbalist or chiropractor is not a doctor unless also registered as a medical practitioner, payments to herbalists and chiropractors may qualify as payments for therapeutic treatment (see below).

An “illness” includes any marked deviation from the normal healthy state, ie any disorder of body function or systems. Payments may be made in respect of an illness, even though the treatment is not intended to cure it but rather to overcome its effect; for example, in vitro fertilization procedures designed to overcome infertility will qualify (*Taxation Ruling IT 2359*). “Operation” has its ordinary meaning (*Taxation Ruling IT 2359*). Laser vision correction surgery would qualify.

The Commissioner considers that claims for life insurance medical examinations, or injections before overseas travel, are not allowable as they are not “in respect of an illness or operation”. On the same ground, toilet requisites, non-medical cosmetics, baby needs (eg dummies, nappy liners), non-prescribed vitamins and health foods in general are not considered to qualify.

Payments for chemist-type items to retail outlets, wholesale drug houses or health food stores do not qualify.

The cost of buying a milk substitute from a chemist for the taxpayer's infant child who suffered from an allergy to cow's milk qualified as a rebatable medical expense on the basis that the allergy could be regarded as an illness (*Case Q21 83 ATC 77*). Similar claims will be allowed where the product is purchased from a chemist and the taxpayer is able to provide evidence from a doctor that the expenditure is in respect of an illness (*Taxation Ruling IT 2146*).

Payments made to a company or other non-qualified employer of a medical practitioner, nurse or chemist are rebatable on the same basis as if they had been made direct to the practitioner.

Hospitals, hostels and nursing homes

Payments to a public or private hospital in relation to an illness or operation qualify as rebatable medical expenses. Payments for residential aged care (including respite care) are also rebatable, provided both the care provider and the recipient of the care are approved under the *Aged Care Act 1997*. An “approved care recipient” is a person who has been assessed as requiring care at levels 1 to 7.

Amounts retained by the care provider out of a lump sum accommodation bond provided by the taxpayer are treated as payments rather than as a bond or loan and may be eligible for the rebate (ID 2003/360).

Dental treatment

Payments to a dentist for dental services or treatment, or for the supply, alteration or repair of artificial teeth, qualify for the rebate. However, this excludes solely cosmetic dental services or treatments (braces are not considered to be solely cosmetic). Dental services include orthodontic treatment. Payments to a registered dental mechanic are also rebatable.

Payments made to a company or other non-qualified employer of a dentist or dental mechanic are rebatable on the same basis as if they had been made direct to the dentist or dental mechanic.

Therapeutic treatment

Rebatable medical expenses also include payments for therapeutic treatment provided the treatment is administered at the direction of a medical practitioner. Therapeutic treatment is healing or curing treatment.

Foods for special dietary purposes do not qualify as therapeutic treatment (*Taxation Ruling IT 2146*). Thus, the cost of buying goat’s milk for a child who was allergic to cow’s milk was not a payment for therapeutic treatment (*Case S2 85 ATC 102*), nor was the cost of buying gluten-free bread for a taxpayer suffering from coeliac disease caused by a sensitivity to gluten (*Case R95 84 ATC 633*). While the cost of buying allergy-free foods cannot qualify as therapeutic treatment, the cost may be rebatable if the product is purchased from a *chemist* rather than from some other shop and the payment to the chemist is in respect of an “illness” (see above) (*Taxation Ruling TR 93/34*).

Physiotherapy is a common example of therapeutic treatment. Massage, chiropractic treatment, diathermy, osteopathy, chiropody, dietitian’s treatment and swimming lessons may also qualify. A mere suggestion or recommendation by a doctor to a patient that the patient undergo therapeutic treatment is not enough for the associated expenses to qualify as medical expenses — the patient would have to be referred to a particular person for specific treatment (*Case A53 69 ATC 313*).

Speech therapy and **treatment for dyslexia qualify as therapeutic treatment**. Behaviour therapy conducted by a psychologist for an autistic child may also qualify (ID 2001/131). However, costs incurred in setting aside a dedicated treatment room in the patient’s house for administering therapeutic treatment do not qualify (ID 2002/57).

Optical treatment

Payments made to a legally qualified optometrist or to an eye specialist for eye tests and the prescription of spectacles are rebatable medical expenses. So also is the cost of the spectacles

prescribed. The Commissioner also allows claims for contact lenses and the cost of solutions used in the maintenance of the lenses.

Artificial limbs, surgical appliances, etc

The cost of an artificial limb or eye, or of a hearing aid, is a rebatable medical expense whether or not prescribed. Hearing aid batteries, hearing aid insurance and hearing aid telephone attachments also qualify.

The cost of any other medical or surgical appliance qualifies as a rebatable medical expense provided the appliance is prescribed by a legally qualified medical practitioner (although "prescribed" seemingly does not mean formally prescribed in writing, it is obviously desirable to have some documentary evidence: *Case L62 79 ATC 490*). To qualify, the appliance must be manufactured or distributed as, or generally recognised to be, an aid to the function or capacity of a person with a disability or illness. The mere fact that the item has a therapeutic purpose does not of itself make it a medical or surgical appliance for the purposes of the rebate (*Illes 88 ATC 4214*).

Items which the Commissioner accepts as qualifying as medical or surgical appliances for rebate purposes include adhesive plaster and strapping, neoprene bandages, wheelchairs, crutches, spinal and surgical braces, surgical shoes and boots, oxygen equipment, kidney dialysis units (including plumbing connections), colostomy appliances, invalid chairs and tricycles, car controls for the disabled, teletypewriters, Maximyst machines (for asthma sufferers), hearing aids and Auditory Trainers (very powerful hearing aids) (*Taxation Ruling TR 93/34*). Electric four-wheel scooters may also qualify (ID 2001/629). Ordinary lifts, wheelchair ramps, swimming pools, spa pools, hydrotherapy pools, air conditioners, musical keyboards, language programs and kits, heavy underclothing and squash balls (for hand exercises) are not accepted by the Commissioner as medical or surgical appliances. However, specially designed lifts specifically for a disabled person may qualify (ID 2002/332).

Cosmetic wigs are not regarded as medical or surgical appliances, but the Commissioner accepts that medical or surgical wigs do qualify where hair loss is caused by sickness or disease (but not naturally occurring baldness) or by the treatment of sickness or disease (*Taxation Ruling TR 93/34*). Camouflage make up systems specially formulated for people who have a disfigurement are also not regarded as medical or surgical appliances (*Taxation Ruling TR 93/34*).

Maintenance or repair costs of eligible appliances also qualify (*Case F25 74 ATC 130*), but apparently not the cost of travel involved in getting the repairs done (ID 2003/171), or in having the appliance fitted (*Case R12 84 ATC 165*).

While costs incurred on medical appliances such as wheelchairs, hearing aids and artificial limbs will qualify for the rebate, they will not usually qualify for tax *deductibility*, even though the appliance may be a prerequisite to the taxpayer being able to carry out income-producing activities (*Taxation Ruling IT 2217*).

Attendants and guide dogs

Payments to an attendant of a person who is blind or permanently confined to bed or to an invalid chair qualify as rebatable medical expenses. The expenses must apparently be paid to a natural person, as distinct from a body such as an association for people with a disability (*Case K30 78 ATC 284*).

Payments for the maintenance of a trained dog for guiding or assisting, but not for the social therapy of, hearing impaired or other disabled individuals are also rebatable where the Commissioner is satisfied that the dog is properly trained for these purposes.

[FTR ¶75-128, ¶75-130]

CAUTION: This is an edited and summarised record of a Tax Office decision. This record is not published as a form of advice. It is being made available for your inspection to meet FOI requirements, because it may be used by an officer in making another decision.

This ATOID provides you with the following level of protection:

If you reasonably apply this decision in good faith to your own circumstances (which are not materially different from those described in the decision), and the decision is later found to be incorrect you will not be liable to pay any penalty or interest. However, you will be required to pay any underpaid tax (or repay any over-claimed credit, grant or benefit), provided the time limits under the law allow it. If you do intend to apply this decision to your own circumstances, you will need to ensure that the relevant provisions referred to in the decision have not been amended or repealed. You may wish to obtain further advice from the Tax Office or from a professional adviser.

Issue

Whether the taxpayer can claim the medical expenses rebate under section 159P of the *Income Tax Assessment Act 1936* (ITAA 1936) for the following expenses incurred to assist a child with autism:

- (1) the cost of behavioural therapy; and
- (2) the cost of computer games, toys and books for use in the therapy.

Decision

1. The costs of program supervision, administration and therapy fees in respect of the behavioural therapy are rebatable medical expenses as payments made for therapeutic treatment administered by direction of a legally qualified medical practitioner under paragraph 159P(4)(d) (ITAA 1936).
2. Expenses incurred in respect of the purchase of materials for the program are not medical expenses under subsection 159P(4) (ITAA 1936).

Facts

The taxpayer has a child who is autistic. The child is examined by a Paediatric Register, who refers the child to a behavioural therapy program run by a clinic that specialises in treating autism and related disorders. The Paediatric Register, who is a legally qualified medical practitioner, wishes to review the progress of the treatment at regular intervals.

The child undergoes intensive behavioural therapy, which is conducted by a psychologist. The taxpayer pays the costs of program supervision, therapy and administration associated with the treatment. The taxpayer also purchases materials, such as computer games, books and toys, for use in the therapy.

Reasons For Decision

Subsection 159P(1) (ITAA 1936) provides that an amount paid by a taxpayer in the year of income as medical expenses for either the taxpayer or a resident dependant of the taxpayer, less any amount paid to the taxpayer in respect of those medical expenses, shall be treated as a rebatable

amount in respect of that year of income. The amount of the rebate of tax is determined under subsection 159P(3A) (ITAA 1936).

To qualify for the rebate, the amount paid by the taxpayer must come within the definition of 'medical expenses' in subsection 159P(4) (ITAA 1936).

Under paragraph 159P(4)(d) (ITAA 1936), the definition of 'medical expenses' includes payments made for therapeutic treatment administered by direction of a legally qualified medical practitioner.

In *Case R95 84 ATC 633*, the Tribunal found that 'therapeutic treatment' necessitated the exercise of professional skill in the medical field in some positive way, which would normally involve the person undertaking the act of administering the treatment using chemical agents or drugs or a physical or mental process of one kind or another in a manner that is directed towards the cure or management of disease or of diseased patients

Therapeutic treatment is administered by direction of a legally qualified medical practitioner when the treatment is undergone as part of the medical practitioner's care of the patient. Treatment may be administered by the direction of the medical practitioner when the patient is referred by the practitioner to a particular specialist for specific treatment: *Case A53 69 ATC 313* at 314.

In this case, the behavioural therapy is a form of therapeutic treatment, as it involves the exercise of professional skill in a manner that is directed toward the management of the child's autism. The taxpayer's child was referred to the specialist behavioural therapy program for children with autism by a legally qualified medical practitioner. The treatment is clearly undergone as part of the medical practitioner's ongoing care of the child as the physician regularly reviews the child's progress. Accordingly, the costs associated with the provision of behavioural therapy to the taxpayer's child are medical expenses under paragraph 159P(4)(d) (ITAA 1936).

Paragraph 159P(f) (ITAA1936) provides that medical expenses include payments made in respect of a medical or surgical appliance prescribed by a legally qualified medical practitioner. Taxation Ruling TR 93/34 explains the meaning of a 'medical or surgical appliance' as an instrument, apparatus or device which is manufactured as, distributed as, or generally recognised to be an aid to the function or capacity of a person with a disability or illness.

Paragraph 4 of Taxation Ruling TR 93/34 states that an appliance is an aid to function or capacity if it helps the person with the disability or illness perform the activities of daily living. As materials such as computer games, books and toys clearly do not aid function or capacity, these materials are not medical expenses that qualify for the rebate under section 159P (ITAA 1936).

Date of decision: 10 November 2000

Legislative References:

Income Tax Assessment Act 1936

[section 159P](#)

[subsection 159P\(1\)](#)

[subsection 159P\(3A\)](#)

[subsection 159P\(4\)](#)

[paragraph 159P\(4\)\(d\)](#)

[paragraph 159P\(4\)\(f\)](#)

Case References:

Case R95

[84 ATC 633](#)

Case A53

[69 ATC 313](#)

Related Public Rulings (including Determinations)

[TR 93/34](#)

Related ATO Interpretative Decisions

[ATO **ID** 2001/29](#)