

NEVADA MENTAL HEALTH PLAN IMPLEMENTATION COMMISSION MEETING

Thursday, December 18, 2003

AGENDA ITEM IX.

**Report of the Department of Taxation Regarding
Senate Bill 8 of the 20th Special Session**

**Dino DiCianno, Deputy Executive Director – Compliance
Nevada Department of Taxation**

EXHIBIT <u>E</u>	MentalHaa.th	Document consists of <u>22</u> pages
<input checked="" type="checkbox"/>	Entire document provided.	
<input type="checkbox"/>	Due to size limitations, pages _____ through _____ provided.	
A copy of the complete document is available through the Research Library (775-684-6827 or e-mail library@lcb.state.nv.us).		
		Meeting Date <u>12-18-03</u>

Senate Bill No. 8-Committee of the Whole

CHAPTER

AN ACT relating to state financial administration; providing for the imposition and administration of certain excise taxes on financial institutions; providing for the imposition and administration of an excise tax on employers based on wages paid to their employees; replacing the casino entertainment tax with a tax on all live entertainment; eliminating the tax imposed on the privilege of conducting business in this state; revising the taxes on liquor and cigarettes; imposing a state tax on the transfer of real property and revising the provisions governing the existing tax; revising the fees charged for certain gaming licenses; establishing the Legislative Committee on Taxation, Public Revenue and Tax Policy; requiring the Legislative Auditor to conduct performance audits of certain school districts; requiring the Department of Education to prescribe a minimum amount of money that each school district must expend each year for textbooks, instructional supplies and instructional hardware; revising provisions governing the purchase of retirement credit for certain educational personnel; apportioning the State Distributive School Account in the State General Fund for the 2003-2005 biennium; making appropriations to the State Distributive School Account for purposes relating to class-size reduction; making various other changes relating to state financial administration; authorizing certain expenditures; making an additional appropriation; providing penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1-1 **Section 1.** Title 32 of NRS is hereby amended by adding
1-2 thereto a new chapter to consist of the provisions set forth as
1-3 sections 2 to 24, inclusive, of this act.
1-4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
1-5 *requires, the words and terms defined in sections 3 to 6, inclusive,*
1-6 *of this act have the meanings ascribed to them in those sections.*
1-7 **Sec. 3.** *"Commission" means the Nevada Tax Commission.*
1-8 **Sec. 4.** *"Employer" means any financial institution who is*
1-9 *required to pay a contribution pursuant to NRS 612.535 for any*
1-10 *calendar quarter, except an Indian tribe, a nonprofit organization*
1-11 *or a political subdivision. For the purposes of this section:*
1-12 1. *"Indian tribe" includes any entity described in subsection*
1-13 *10 of NRS 612.055.*
2-1 2. *"Nonprofit organization" means a nonprofit religious,*
2-2 *charitable, fraternal or other organization that qualifies as a tax*
2-3 *-exempt organization pursuant to 26 U.S.C. § 501(c).*
2-4 3. *"Political subdivision" means any entity described in*

2-5 subsection 9 of NRS 612.055.

2-6 Sec. 5. "Employment" has the meaning ascribed to it in NRS

2-7 612.065 to 612.145, inclusive.

28 Sec. 50. 1. There is hereby imposed an excise tax on each

13-29 employer at the rate of 0.7 percent of the wages, as defined in

13-30 NRS 612.190, paid by the employer during a calendar quarter

13-31 with respect to employment.

13-32 2. The tax imposed by this section must not be deducted, in

13-33 whole or in part, from any wages of persons in the employment of

13-34 the employer.

13-35 3. Each employer shall, on or before the last day of the month

13-36 immediately following each calendar quarter for which the

13-37 employer is required to pay a contribution pursuant to

13-38 NRS 612.535:

13-39 (a) File with the Department:

13-40 (1) A return on a form prescribed by the Department; and

13-41 (2) A copy of any report required by the Employment

13-42 Security Division of the Department of Employment, Training

13-43 and Rehabilitation for determining the amount of the

13-44 contribution required pursuant to NRS 612.535 for any wages

13-45 paid by the employer during that calendar quarter; and

13-46 (b) Remit to the Department any tax due pursuant to this

13-47 chapter for that calendar quarter.

14-1 4. Except as otherwise provided in subsection 5, an employer

14-2 may deduct from the total amount of wages reported and upon

14-3 which the excise tax is imposed pursuant this section any amount

14-4 authorized pursuant to this section that is paid by the employer

14-5 for health insurance or a health benefit plan for its employees in

14-6 the calendar quarter for which the tax is paid. The amounts for

14-7 which the deduction is allowed include:

14-8 (a) For an employer providing a program of self-insurance for

14-9 its employees, all amounts paid during the calendar quarter for

14-10 claims, direct administrative services costs, including such

14-11 services provided by the employer, and any premiums paid for

14-12 individual or aggregate stop-loss insurance coverage. An

14-13 employer is not authorized to deduct the costs of a program of

14-14 self-insurance unless the program is a qualified employee welfare

14-15 benefit plan pursuant to the Employee Retirement Income

14-16 Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

14-17 (b) The premiums for a policy of health insurance or

14-18 reinsurance for a health benefit plan for its employees.

14-19 (c) Any amounts paid by an employer to a Taft-Hartley trust

14-20 formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an

14-21 employee welfare benefit plan.

14-22 (d) Such other similar payments for health care or insurance

14-23 for health care for employees as are authorized by the

14-24 *Department.*

14-25 *5. An employer may not deduct from the wages upon which*
14-26 *the excise tax is imposed pursuant this section:*

14-27 *(a) Amounts paid for health care or premiums paid for*
14-28 *insurance for an industrial injury or occupational disease for*
14-29 *which coverage is required pursuant to chapters 616A to 616D,*
14-30 *inclusive, or 617 of NRS; or*

14-31 *(b) Any payments made by employees for health care or health*
14-32 *insurance or amounts deducted from the wages of employees for*
14-33 *such care or insurance.*

14-34 *6. An employer claiming the deduction allowed pursuant to*
14-35 *subsection 4 shall submit with the return filed pursuant to*
14-36 *subsection 3 proof of the amount paid in the calendar quarter that*
14-37 *qualifies for the deduction. If the amount of the deduction*
14-38 *exceeds the amount of reported wages, the excess amount may be*
14-39 *carried forward to the following calendar quarter until the*
14-40 *deduction is exhausted.*

14-41 *7. As used in this section, "employee welfare benefit plan"*
14-42 *has the meaning ascribed to it in 29 U.S.C. § 1002.*

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December 4, 2003

Mr. Chuck Chinnock
Executive Director
Department of Taxation
1550 E. College Parkway, No. 115
Carson City, Nevada 89706-7937

Attention: Mr. Dino DiCianno, Deputy Executive Director

Re: LCB File Nos. R204-03 and R205-03

Dear Mr. Chinnock:

The attached regulations adopted by the Nevada Tax Commission have been filed today with the Secretary of State pursuant to NRS 233B.067. As provided in NRS 233B.070, these regulations become effective upon filing.

Enclosed are two copies of each regulation bearing the stamp of the Secretary of State which indicates that they have been filed. One copy of each is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 5 of NRS 233B.070.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By Steven J. Coburn
Steven J. Coburn
Codification Advisor

SJC/msb

Enclosures

Secretary of State
Filing Date
2003 DEC -4 A 10 22
FILED
CARSON CITY
NEVADA

For Filing Administrative
Regulations

Agency NEVADA TAX COMMISSION

LCB FILE NO. R204-03

For Emergency
Regulations Only

Effective Date _____

Expiration Date _____

Governor's Signature _____

Classification: ☐ PROPOSED ☒ ADOPTED BY AGENCY ☐ EMERGENCY

Brief description of action: File with LCB adopted permanent additions to NAC 363B.

Authority citation other than 233B: NRS 360.090 and Senate Bill 8 of the 20th Special Session.

Notice Date: 10/24/03

Date of Adoption by Agency

Hearing Date: 11/25/03

11/25/03

Noticed proposed permanent amendments adopted:

NAC 363B Adding new regulations to Chapter 363B of the Administrative Code, to establish the administrative procedural language concerning the Modified Business Tax and the deduction for employee health benefit plans associated with Senate Bill 8 of the 20th Special Session. LCB File No. R204-03.

Chuck Chinnock, Executive Director

November 25, 2003

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R204-03

Effective December 4, 2003

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-19, NRS 360.090 and section 45 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.060).

Section 1. Chapter 363B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Commission” means the Nevada Tax Commission.*

Sec. 4. *“Department” means the Department of Taxation.*

Sec. 5. *“Division” means the Employment Security Division of the Department of Employment, Training and Rehabilitation.*

Sec. 6. *“Employer” has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).*

Sec. 7. "Health care deduction" means the deduction allowed by subsection 4 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).

Sec. 8. "Indian tribe" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).

Sec. 9. "Nonprofit organization" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).

Sec. 10. "Political subdivision" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).

Sec. 11. "Self-insured employer" means an employer that provides a program of self-insurance for its employees.

Sec. 12. For the purposes of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), the Commission interprets the term:

1. "Claims" to mean claims for those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

2. *"Direct administrative services costs" to mean, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:*

(a) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;

(b) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;

(c) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;

(d) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;

(e) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or directly to administer claims; and

(f) The depreciation of property other than medical or office supplies, as computed pursuant to section 13 of this regulation, used for the provision of medical care or the direct administration of claims.

3. *"Employees" to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.*

4. "Health benefit plan" to mean a health benefit plan that covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

5. "Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan" to mean any amounts which are:

(a) Paid by an employer to a Taft-Hartley trust which:

(1) Is formed pursuant to 29 U.S.C. § 186(c)(5); and

(2) Qualifies as an employee welfare benefit plan, as that term is defined in 29 U.S.C. § 1002; and

(b) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code.

Sec. 13. If a self-insured employer claims the depreciation of property as a direct administrative services cost for purposes of the health care deduction, the employer must compute that depreciation for each calendar quarter, beginning with the calendar quarter in which the property is first placed into service, according to a straight-line method which is based upon:

1. For tangible personal property other than a mobile home:

(a) Ninety-five percent of the cost of acquisition of the property; and

(b) A useful life determined in accordance with the Personal Property Manual adopted by the Commission for the period in which the property is first placed into service;

2. *For a mobile home which has not been converted to real property:*

(a) *Eighty percent of the cost of acquisition of the mobile home; and*

(b) *A useful life of 15 years; and*

3. *For an improvement to real property:*

(a) *Seventy-five percent of the cost of acquisition of the improvement; and*

(b) *A useful life of 50 years.*

Sec. 14. *The health care deduction does not:*

1. *Except as otherwise provided in subsection 6 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.*

2. *Allow an employer to deduct any sum paid by the employer before October 1, 2003.*

Sec. 15. 1. *An employer that fails to register with the Division pursuant to NRS 612.535 shall register with the Department for payment of the excise tax imposed by section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).*

2. *Each employer shall:*

(a) *File with the Department each quarterly return required by paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), regardless of whether any tax is due from the employer for that quarter; and*

(b) Provide to the Department, on such forms as the Department prescribes, any reports required by the Department for the administration or enforcement of this chapter or sections 40 to 63, inclusive, of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 141 to 146, inclusive (chapter 363B of NRS).

Sec. 16. 1. An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department will notify an employer if the Department is unable to obtain that information pursuant to such an agreement.

2. An employer who is in compliance with section 19 of this regulation shall be deemed to have submitted any proof required by subsection 6 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).

3. The provisions of this section do not affect any other provision of law requiring an employer to retain or provide any records requested by the Department.

Sec. 17. If an employer files a return pursuant to paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), which contains any errors, the employer shall:

1. File with the Department an amended or adjusted return which corrects those errors.

Any corrections to:

(a) The wages reported by the employer must be accompanied by an explanation of those corrections; and

(b) Any health care deduction claimed by the employer must be supported by appropriate documentation and explained to the satisfaction of the Department.

2. Remit to the Department any applicable amount due.

Sec. 18. 1. An Indian tribe, a nonprofit organization or a political subdivision is exempt from the provisions of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B:110), regardless of whether the Indian tribe, nonprofit organization or political subdivision files a written election pursuant to NRS 612.565 or 612.570.

2. Any person who claims to be a nonprofit organization exempt from the provisions of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B:110), shall, upon the request of the Department:

(a) If the person does not claim to be an exempt religious organization, provide to the Department a letter from the Internal Revenue Service indicating that the person has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or

(b) If the person claims to be an exempt religious organization, provide to the Department such records as the Department deems necessary to demonstrate that the person meets the

criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.

Sec. 19. *Each employer shall maintain and, upon the request of the Department, provide to the Department:*

- 1. Copies of any reports filed with or submitted to the Division by the employer.*
- 2. Copies of any records required to be maintained by the employer pursuant to NAC 612.020.*
- 3. If the employer claims the health care deduction:*
 - (a) Records describing the nature and amount of any contributions for health insurance or an employee benefit plan made by any employees of the employer.*
 - (b) Proof of any payments for health insurance or a health benefit plan made by the employer.*
 - (c) A copy of any policy, agreement or other document describing:*
 - (1) Any health benefit for which the health care deduction is claimed, including, without limitation, the cost of the benefit; and*
 - (2) The number of employees covered under the applicable health insurance or health benefit plan.*
 - (d) Such records as are required to explain and verify any apportionment of payments between the employer and any of its employees for any pertinent health insurance or health benefit plan.*
- 4. Any other records reasonably requested by the Department if:*
 - (a) The records are available to the employer; and*

(b) The disclosure of the records is not prohibited pursuant to NRS 49.225, 449.720, 683A.0873 or 689B.280, or any other state or federal law regarding the confidentiality of the records.

LII

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[collection home](#)**US CODE COLLECTION**[search](#)**[TITLE 26](#) > [Subtitle A](#) > [CHAPTER 1](#) > [Subchapter B](#) > [PART VII](#) > [Sec. 213.](#)**[Prev](#) | [Next](#)**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)*Search this title:*[Search Title 26](#)[Notes](#)[Updates](#)[Parallel authorities](#)[\(CFR\)](#)[Topical references](#)

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 taxable year of: 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

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Excerpt from 26 CFR 1.213-1

(ii) Amounts paid for operations or treatments affecting any portion of the body, including obstetrical expenses and expenses of therapy or X-ray treatments, are deemed to be for the purpose of affecting any structure or function of the body and are therefore paid for medical care. Amounts expended for illegal operations or treatments are not deductible. Deductions for expenditures for medical care allowable under **section 213** will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or **mental defect** or illness. Thus, payments for the following are payments for medical care: hospital services, nursing services (including nurses' board where paid by the taxpayer), medical, laboratory, surgical, dental and other diagnostic and healing services, X-rays, medicine and drugs (as defined in subparagraph (2) of this paragraph, subject to the 1-percent limitation in paragraph (b) of this section), artificial teeth or limbs, and ambulance hire. However, an expenditure which is merely beneficial to the general health of an individual, such as an expenditure for a vacation, is not an expenditure for medical care.

Footnotes to 26 U.S.C. Section 213

Treatment of husband and wife by psychiatrists for sexual inadequacy and incompatibility was deductible medical expense. Rev Rul 75-187 (1975) 1975-1 CB 92.

Fees paid by husband and wife for marriage counseling by clergyman associated with center funded by several religious organizations were not deductible even though husband and wife feel they are healthier persons and are enjoying more meaningful relationship. Counseling was not for prevention or alleviation of physical or **mental defect** or illness, but rather to help improve their marriage. Rev Rul 75-319 (1975) 1975-2 CB 88.