LEGAL EASE

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Caregiving services may be tax deductible

Expenses related to long term care are very expensive even if the recipient is still living at home. However, many people may not be aware the some expenses may be deductible from their taxes. Elder Law Answers (www.elderlawanswers.com) reported recently about two U.S. Tax Court decisions that are important when considering deducting caregiving services as expenses.

Under current tax law, expenses for medical care can be claimed as an itemized deduction if they exceed 7.5 percent of the adjusted gross income. (Note that such expenses will need to exceed 10 percent of the adjusted gross income in 2012). Once a person has met this threshold or "floor," medical expenses, including those for long term care, can be deducted. To qualify as expenses that meet the definition of long term care, the illness needs to be certified as chronic. In other words, the person seeking care must need assistance with some activities of daily living, such as dressing, eating, walking, bathing, toileting, etc. Additionally, a person may require substantial supervision due to cognitive impairments in order to meet the definition.

If someone is able to stay at home with caregivers, the caregivers that are hired to provide that care may not be medical personnel. For instance, they might be hired to assist a person with dementia with her activities of daily living because she is not safe in the home without a caregiver present. There may not be a need for medical-type intervention during many hours of the day. The U.S. Tax Court ruled in a recent case that caregivers need not be medical personnel because a physician certified that the services provided were necessary due to the fact that the recipient had dementia.

Family members often provide care for loved ones at home. If a written caregiver agreement is in place, a parent might be paying for the adult child to provide care; however, providing care to a parent, or other relative, often results in financial hardship to the caregiver, and the parent wants to compensate the adult child for a portion of lost income. As in the first case before the U.S. Tax Court, having untrained, non-medical family members provide care will allow the recipient of that care to deduct the cost from the parents' income taxes, provided that the recipient met the threshold to allow the deduction.

The second case referred to above involves a son in New Jersey who provided nearly full-time care to his mother from 1994 to 2003, essentially abandoning his law practice. After the death of his mother, the son filed an inheritance tax return, claiming a deduction of $1.24 million as a debt that was owed by mother to son for caregiving over the years. The son stated that his mother orally agreed to compensate him at her death. However, in the absence of a written agreement between mother and son, the court ruled that the estate was not entitled to the deduction. The law in New Jersey, as in many other states, holds that family members living in the same household are presumed to provide services to other household members for free, unless there is a written agreement to the contrary.

Both cases highlight the importance of a written care agreement when family members, especially family living in the same household, provide much needed care to a loved one. This type of care is happening every day, but without a *written* care agreement, tax benefits, and perhaps Medicaid benefits, will be lost. See an elder law attorney for more information.