

TR 93/D7 - Income tax: medical expenses rebate - meaning of medical or surgical appliance



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Draft Taxation Ruling

Income tax: medical expenses rebate - meaning of medical or surgical appliance

other Rulings on this topic

IT 2164, IT 2217, ST 2018
ST 2241, ST 2327

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DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

1. This Ruling explains the meaning of a 'medical or surgical appliance' in paragraph (f) of the definition of 'medical expenses' in subsection 159P(4) of the *Income Tax Assessment Act 1936*.

2. Section 159P allows a rebate for net medical expenses exceeding \$1,000. Net medical expenses includes payments for a 'medical or surgical appliance' prescribed by a legally qualified medical practitioner.

Ruling

3. A 'medical or surgical appliance' for the purposes of paragraph (f) of the definition of 'medical expenses' in subsection 159P(4) is an instrument, apparatus or device which is:

- (a) manufactured as; or
- (b) distributed as; or
- (c) generally recognised to be

an aid to the function or capacity of a person with a disability or illness.

4. An appliance is an aid to function or capacity if it helps a person in performing activities of daily living.

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5. Generally, a household or commercial appliance is not a 'medical or surgical appliance'.

6 Whether an article is a fixture is irrelevant for the purpose of this definition.

7. The mere fact that an item gives therapeutic treatment, in that it relieves, heals or prevents a medical condition, and is prescribed by a medical practitioner for that purpose, does not make it a 'medical or surgical appliance'.

8. Examples of a 'medical or surgical appliance' include:

- (a) Adhesive plaster and strapping
- (b) Neoprene bandages/wraps to provide support
- (c) Hearing aids
- (d) Auditory Trainer (A very powerful hearing aid)
- (e) Bath seats of the kind used by invalids or aged persons
- (f) Surgical shoes and boots, braces and irons
- (g) Crutches
- (h) Spinal and surgical braces
- (i) Car controls for the disabled
- (j) Invalid chairs
- (k) Invalid carrying chairs
- (l) Invalid tricycles including motor propelled
- (m) Wheel chairs
- (n) Colostomy appliances
- (o) Kidney dialysis machines and associated plumbing installation cost
- (p) Maximyst machines (a pump which produces a fine spray of bronchodilator, antibiotic, or mucus thinner far up the airways)
- (q) Oxygen equipment
- (r) Teletypewriters
- (s) Medical or surgical wigs for use by a person which is necessitated by loss of hair through sickness or disease (other

than naturally occurring baldness) or the effects of the treatment of sickness or disease

9. We consider that the following articles are not medical or surgical appliances:

- (a) Camouflage make up systems specially formulated for people who have a disfigurement to the face or body
- (b) Commercial or household air conditioners
- (c) Cosmetic wigs
- (d) Heavy underclothing for people suffering poor circulation
- (e) Squash balls prescribed to exercise a person's hands
- (f) Musical keyboards to encourage children to raise and extend each finger independently
- (g) Language Masters
- (h) Language Programmes and kits
- (i) Hydrotherapy pools
- (j) Spa pools
- (k) Swimming pools
- (l) Wheelchair ramps

Date of effect

10. This Ruling generally applies to years commencing both before and after the date of issue. However, in any case where this Ruling is less favourable to a taxpayer than the Commissioner's previous practice, it only applies to medical expenses paid after the date of this Ruling. Furthermore, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

11. Before the Federal Court decision in *F.C. of T. v. Ildes* 88 ATC 4214; (1988) 19 ATR 952 we considered that an appliance was a medical appliance if it was prescribed by a legally qualified medical practitioner to cure or alleviate a disability or illness.

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Explanations

Appliance

12. An appliance is an "instrument, apparatus or device" (The Macquarie Dictionary (2nd revision, 1988)).

13. Whether an item is a fixture is irrelevant in determining whether that item is a medical or surgical appliance (*Ildes* ATC 4216; ATR at 954). Thus, some fixtures may be medical or surgical appliances e.g., a chairlift installed in a home and electronically operated (*Case D37* 72 ATC 210, 18 CTBR(NS) Case 7).

14. Food and medications are not appliances. However, expenditure on food and medications may be 'medical expenses' under other paragraphs of the definition.

Medical or Surgical

15. For an item to be a medical or surgical appliance, it must be an aid to function or capacity (*Ildes* ATC at 4216; ATR at 954). This test looks to the character of the appliance, not the purpose for which it is prescribed or used. It is not sufficient that a medical practitioner prescribes an appliance for medical or surgical ends.

16. It follows that an item is a medical or surgical appliance if it is manufactured as, distributed as, or generally recognised to be an aid to a person's function or capacity (*Ildes* ATC at 4216; ATR at 954, and (1963) 14 TBRD Case P29; 11 CTBR (NS) Case 63).

17. Function or capacity is not limited to a person's physical and mental capabilities. For example, Taxation Boards of Review have held that surgical wigs and electronically operated chairlifts installed in a home are medical or surgical appliances. We consider that function or capacity includes the ability to perform activities of daily living (*Case P40* 82 ATC 184 at 184; 25 CTBR (NS) Case 104 at 763, approved in *Ildes* ATC at 4216; ATR at 954).

Examples

18. The following examples consider if the prescribed item is a 'medical or surgical

appliance' within paragraph (f) of the definition of 'medical expenses' in subsection 159P(4)

Example 1.

19. A man suffers from coeliac disease (a disease affecting the internal lining of the small bowel). A doctor prescribes the use of gluten-free foods to assist him in the performance of daily living activities.

20. The gluten-free food is not 'medical or surgical appliance'. Food is not considered to be an appliance for the purposes of this definition because it is not an instrument, apparatus or device. However the purchase of this food may qualify as a 'medical expense' under paragraph (a) of the definition of 'medical expenses' in subsection 159P(4).

Example 2.

21. A person suffering from a defect of the circulatory system is advised by a doctor to wear heavy underclothing to protect them from the harmful effect of the cold.

22. The additional clothing are not 'medical or surgical appliances'. The items are normal articles of clothing and therefore not appliances manufactured as, distributed as or recognised to be aids to function or capacity.

Example 3.

23. A woman suffers from a disease that causes baldness.

She suffers extreme embarrassment and psychological stress associated with this baldness. The woman's doctor advises her that she should wear a wig.

24. If the wig is a medical or surgical wig and relieves potential incapacity it is a 'medical or surgical appliance'. A medical or surgical wig is made to measure and has a special type of construction.

Example 4.

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25. A man has a chronic back problem. On the advice of his doctor he installs a spa with extra hydrojets to help relieve the pain.

26. The spa is not a 'medical or surgical appliance'. It is not an aid to function or capacity. The fact that an article has a therapeutic purpose does not mean that the article is a 'medical or surgical appliance'.

Previous Rulings

27. Taxation Rulings IT 263, 318, 2031 and 2164 are now withdrawn. To the extent to which our views in those Rulings still apply, they have been incorporated in this Ruling.

Commissioner of Taxation

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- ITAA 159P(4)

case references

- Case P29 (1963) 14 TBRD 143;
Case 63 (1963) 11 CTBR (NS) 390
- FC of T v. Ildes 88 ATC 4214;
(1988) ATR 952
- Case D37 72 ATC 210;
Case 7 (1972) 18 CTBR (NS) 33
- Case P40 82 ATC 184;
Case 104 25 CTBR (NS) 763