

IT 2146 - Income tax : medical expenses - dietary foods and normal food substitutes for allergy sufferers

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TAXATION RULING NO. IT 2146

INCOME TAX : MEDICAL EXPENSES - DIETARY FOODS AND
NORMAL FOOD SUBSTITUTES FOR ALLERGY SUFFERERS

F.O.I. EMBARGO: May be released

REF

H.O. REF: 82/6155
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DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1172552	MEDICAL EXPENSES THERAPEUTIC TREATMENT DIETARY FOODS NORMAL FOOD SUBSTITUTES	159P(4)

PREAMBLE

The question of whether the cost of normal food substitutes which are purchased because a person has an allergic condition qualify as "medical expenses" as defined in sub-section 159P(4) was considered by Board of Review No. 3 in Case Q21, 83 ATC 77; Case 85, 26 CTBR(NS) 570 and by Board of Review No. 2 in Case R95, 84 ATC 633; Case 148, 27 CTBR(NS) 1154.

2. Board No. 3 was principally concerned with considering the claim before it under paragraph (a) of the definition of "medical expenses" while Board No. 2 confined its considerations to paragraph (d) of the definition.

FACTS

3. The situation in Case Q21 involved the purchase from a chemist of a milk substitute (Isomil) prescribed by a doctor because of an allergy to natural milk products suffered by the taxpayer's daughter. The Board, in a majority decision, accepted that the expenditure was in respect of an illness and allowed the appropriate rebate. No appeal was lodged by the Commissioner against the decision.

4. The substitute products in Case R95 were not purchased from a chemist nor were they prescribed by a doctor. The products were special gluten-free products (gluten being the substance which has been found to trigger the allergic condition of the taxpayer) and are taken in substitution of many normal foods as part of a non-gluten diet. The claim was presented on the grounds that the expenditure was in relation to therapeutic treatment. The Board did not see that to be the case and, in any event, the use of the substitute food was not administered by direction of a legally qualified medical practitioner. Consequently, the Board rejected the claim.

RULING

5. The definition of "medical expenses" includes payments to a legally qualified medical practitioner or chemist in

respect of an illness and it has been accepted for many years that there would seem to be no better evidence of the existence of an illness than a prescription written by a doctor in circumstances which qualify under the provisions of the National Health Act relating to pharmaceutical benefits. The cost of the milk substitute considered by Board No. 3 qualified for pharmaceutical benefits, after the requisite authority from the Department of Health was obtained, but only until the child reached two years of age. Its cost in these circumstances had therefore been accepted in the past as a "medical expense".

6. The decision of Board No. 3 that the milk substitute in question was more than just a special dietary food has been accepted and it is also accepted as being in respect of an illness. This is irrespective of the age of the child. Similar claims should be accepted where the taxpayer has provided evidence from a legally qualified medical practitioner that the expenditure is in respect of an illness and provided, of course, that the product is purchased from a legally qualified chemist. It is understood that, as a rule, the child would overcome the allergic condition by the time he or she is about 5 to 6 years of age.

7. The decision of Board No. 2 supports the longstanding view that the cost of foods for special dietary purposes do not qualify as therapeutic treatment. The Board came to what it saw as an inescapable conclusion that the term "therapeutic treatment" as used in sub-section 159P(4):-

"necessitates the exercise of professional skill in the medical field in some positive way, which, in our opinion, would normally involve the person undertaking the act of administering the treatment, in using chemical agents or drugs or in the use of a physical or mental process of one kind or another, which is directed towards the cure or management of disease or of diseased patients".

8. Claims for the cost of food substitutes or special dietary foods, other than those of a similar type to the one discussed in paragraphs 5 and 6 above as being in respect of an illness, should therefore continue to be disallowed.

COMMISSIONER OF TAXATION
21 March 1985

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