TR 93/14 - Income tax: medical expenses rebate - fees paid to a hostel for aged or disabled persons

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Australian Taxation Office

Taxation Ruling
Income tax: medical expenses rebate - fees paid to a hostel for aged or disabled persons

other Rulings on this topic

IT 261

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This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the ***Taxation Administration Act 1953****, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Ruling is about

1. Section 159P of the *Income Tax Assessment Act 1936* (ITAA) allows a partial rebate for net medical expenses over $1 000. The term 'medical expenses' is defined in subsection 159P(4) of the ITAA. Paragraph (a) of the definition includes payments 'to...a public or private hospital, in respect of an illness or operation'.

2. This Ruling considers whether fees paid to a hostel approved under the *Aged or Disabled Persons Homes Act 1954* (Cwlth) are payments to a 'hospital, in respect of an illness or operation' for the purposes of paragraph (a) of the definition of 'medical expenses' in subsection 159P(4) of the ITAA and whether they therefore qualify for the medical expenses rebate.

3. This Ruling is not concerned with fees paid to nursing homes approved under the *National Health Act 1953* (Cwlth). In Taxation Ruling IT 261, we accept that fees paid to those nursing homes qualify as 'medical expenses'.

Ruling

4. Whether fees paid to a hostel approved under the *Aged or Disabled Persons Homes Act* qualify for the medical expenses rebate depends on the type of subsidy paid by the Commonwealth Government to the hostel in respect of the particular hostel resident.

5. If the Commonwealth Government pays a **personal care subsidy** in respect of the hostel resident, the fees **qualify** for the medical expenses rebate. (For the purposes of this Ruling, a respite

care subsidy paid at the personal care subsidy rate counts as a personal care subsidy.) In these circumstances, we accept both that the payment is to a hospital and that it is in respect of an illness or operation.

6. On the other hand, if the Commonwealth Government pays only a **hostel care subsidy** in respect of the hostel resident, the fees **do not qualify** for the medical expenses rebate. Although we accept that the payment is made to a hospital, we do not accept that it is in respect of an illness or operation.

7. The position outlined in paragraphs 4 to 6 above still applies if the hostel pools all the personal care and hostel care subsidies it receives from the Commonwealth Government and then provides care (including, if appropriate, personal care services) to all its residents as and when needed. Only fees paid for a resident in respect of whom the Commonwealth Government pays to the hostel a personal care subsidy qualify for the medical expenses rebate.

Date of effect

8. This Ruling applies to years commencing both before and after its date of issue. However, 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).

Explanations

General background

9. The Commonwealth Department of Health, Housing, Local Government and Community Services administers the *Aged or Disabled Persons Homes Act.* To be approved, a hostel must be able to provide adequate accommodation and 'approved personal care services' to aged or disabled persons (subsection 10B(1) of the *Aged or Disabled Persons Homes Act*). Although all approved hostels are able to provide personal care services, not every hostel resident necessarily receives personal care services. Commonwealth subsidies are paid for two levels of care: personal care (the higher) and hostel care.

10. The following services are '**approved personal care services**':

(a) personal assistance with bathing, showering, personal hygiene, toileting, dressing, undressing, mobility, transfer,

meals and refreshments, sensory communications or the fitting of sensory communication aids;

(b) the provision of a special diet, if required;

(c) supervision of the taking of prescribed medication;

(d) the provision of rehabilitative support;

(e) the provision of treatment such as eye drops, back rubs, dressings and urine tests;

(f) the provision of such personal assistance as should be needed to a resident who contracts a short-term illness;

(g) the provision of long-term emotional support to, and direct supervision of, patients diagnosed as suffering from a form of dementia or a functional psychotic condition requiring long-term medication; and

(h) the provision of emotional support to patients suffering from an emotional condition, for example grief or depression.

(Schedule 2 of *Commonwealth Special Gazette S4*, 5 January 1989.)

11. The following services are '**approved hostel care services**':

(a) the provision of meals and refreshments which are of an adequate quality;

(b) the provision of heavy laundry facilities and services;

(c) the provision of room cleaning, bed making and personal laundry services without extra charge;

(d) the provision of programs which promote and encourage participation in social activities and community life;

(e) the provision of emergency assistance on call; and

(f) the provision of aids for aged, frail or disabled residents.

(Schedule 1 of *Commonwealth Special Gazette S4*, 5 January 1989.)

Is an approved hostel a hospital?

12. The term 'hospital' is not defined for the purposes of section 159P of the ITAA. It therefore has its ordinary meaning. The *Macquarie Dictionary* defines 'hospital' as 'an institution in which sick or injured persons are given medical or surgical treatment'. Where a hostel is approved by the Department because it provides personal care services and taking into account the nature of personal care services, we accept that only an approved hostel is a hospital for the purposes of

paragraph (a) of the definition of 'medical expenses' in subsection 159P(4) of the ITAA.

13. It has been suggested that because of the wide definition of 'hospital' in paragraph 12 any hostel or institution providing personal care services should be accepted as a hospital for the definition of medical expenses. We do not accept such an interpretation. The approval by the Government is recognition that the hostel is capable of and does provide personal care services, and thereby qualifies for payment of a personal care subsidy for at least some of their residents.

Is there a payment in respect of an illness or operation?

14. To be rebatable, the payment to the hospital (in this case, the approved hostel) must be 'in respect of an illness or operation'. In our view, the question of whether this requirement is satisfied is one of characterisation. If the Commonwealth subsidy received by an approved hostel in respect of the hostel resident is a personal care subsidy, we accept that there is a sufficient nexus between the payment of the fees and an illness or operation to stamp the fees with the character of being 'in respect of an illness or operation'. On the other hand if the subsidy is only a hostel care subsidy, we consider that there is an insufficient nexus between the payment and an illness or operation to satisfy the requirements of section 159P of the ITAA.

15. In many cases, an approved hostel will pool all the personal care and hostel care subsidies that it receives from the Commonwealth Government and then provide care (including, if appropriate, personal care services) to all of its residents as and when needed. If the Commonwealth subsidy paid to the hostel in respect of the resident is only a hostel care subsidy, we consider that there is an insufficient nexus between the fees paid and an illness or operation to satisfy the requirements of section 159P. This is the case even if the resident at times may receive some personal care services under the pooling arrangements.

Examples

Example 1

16. Robert is a resident of an approved hostel which provides personal care services to some of its residents. He does not require any personal care services on a regular basis. Occasionally, he needs help with bathing. The hostel receives only a **hostel care subsidy**

from the Commonwealth Government in respect of Robert. Robert's fees **do not qualify** as medical expenses for the purposes of the medical expenses rebate.

Example 2

17. Mary suffers from a form of dementia. She is a resident at the same hostel as Robert. She needs help with her personal hygiene and the taking of her medications. The hostel receives a **personal care subsidy** from the Commonwealth Government in respect of her. Mary's fees **qualify** as medical expenses for the purposes of the medical expenses rebate.

Example 3

18. Stan and Jack are residents of an approved hostel which pools all personal care and hostel care subsidies that it receives from the Commonwealth Government. It provides care (including, if appropriate, personal care) to all its residents as and when needed.

19. Stan occasionally needs help with mobility. The hostel receives only a **hostel care subsidy** from the Commonwealth Government in respect of him. Stan's fees do **not qualify** as medical expenses for the purposes of the medical expenses rebate.

20. Jack suffers from long-term severe depression. The hostel receives a **personal care subsidy** from the Commonwealth Government in respect of him. Jack's fees **qualify** as medical expenses for the purposes of the medical expenses rebate.

Example 4

21. Susan is a temporary resident at an approved hostel as her brother, who normally cares for her, is on holidays. She needs help with feeding, bathing and mobility. The respite subsidy paid to the hostel by the Commonwealth Government in respect of her is paid at the **personal care subsidy** rate. Susan's fees **qualify** as medical expenses for the purposes of the medical expenses rebate.

Commissioner of Taxation

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