

Deducting Educational Costs for Children with Disabilities



Ordinary educational expenses are not deductible for federal income tax purposes. However, educational expenses may qualify as a deductible medical expense if your child has a disability and attends a special school whose resources are designed to alleviate your child's condition and is a principal reason for your child's presence at the school. Medical expenses include tuition, transportation, meals, lodging and the cost of any incidental ordinary education furnished by the school. Total medical expenses, including special schooling costs, are deductible to the extent they exceed 7.5% of your adjusted gross income and you itemize deductions on your tax return. If your child's condition is such that the availability of medical care in the school is not a principal reason for his presence there, then only that part of care attributable to medical care is deductible, so meals and lodging ordinarily would not qualify as a deductible medical expense. For example, a school that does not provide a special program, but is beneficial because of small class size or because it provides added services within a normal academic setting, is not a special school, since the primary purpose of the school is academic. However, if your child attends a school which does not qualify as a special school, the extra costs of a special program or special treatment may still be a deductible medical expense even though the cost of regular tuition or meals and lodging may not be.

The distinguishing characteristic of a "special" school is the content of its curriculum. It may include some ordinary education, but this must be incidental to the school's primary purpose, which is to enable students to compensate for or overcome handicaps, to prepare them for future normal education or normal living. For example, the IRS has ruled that a school providing a curriculum designed to meet the

needs of children with I.Q.s between 50 and 75, in order to educate students

who are not able to profit from the education being offered through ordinary classroom instruction, but whose intellectual ability indicates the possibility of scholastic attainment with special teachers, methods and materials, qualified as a special school. A school with programs for treating severe learning disorders due to neurological disorders or dyslexia may qualify as a special school, so long as the principal reason for attending is overcoming such learning disabilities. A school can have a traditional education program for most students and a special education program for those who need it and thus be a "special" school for some students so long as the regular school is "incidental." If an ordinary school develops a special program that meets a child's needs, the school will qualify as a special school, since the determination is made on the basis of the child's curriculum, not the school curriculum as a whole.

Deductibility of educational expenses as a medical expense depends upon the circumstances of each case and the type of school or curriculum a child utilizes. Consult a tax professional about the opportunity to deduct some or all of these costs.



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LEGISLATIVE UPDATE



A Gift to Taxpayers

The "Mortgage Forgiveness Debt Relief Act of 2007," enacted December 20 of last year to ease the foreclosure crisis by protecting homeowners from paying taxes on cancelled mortgage debt, contained another gift to taxpayers. It added a provision to the Internal Revenue Code to allow a surviving spouse to sell his or her home and exclude \$500,000 of gain from the sale if 1) the sale occurs not later than two years after the date of death of the deceased spouse, 2) during the five-year period ending on the date of sale either spouse had owned the home and both spouses had used the home as their principal residence for periods aggregating two years or more, and 3) neither spouse had previously excluded gain from the sale of a residence during the two-year period ending on the date of sale. Before the new law, a surviving spouse would have had the benefit of excluding \$500,000 of gain only if the last two requirements above were met and the sale occurred during the calendar year of the deceased spouse's death and the surviving spouse filed a joint return with the deceased spouse for that year. If that same sale occurred after the year of death, but still within the two years allowed by the new law, the surviving spouse would have had to meet the final two requirements above without regard to the deceased spouse's ownership and use and the limit for gain exclusion would have been only \$250,000. This significant benefit has not been highly publicized.

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