Deducting the cost of life in an assisted living facility

by Marc J. Soss

Many individuals in our aging population are transitioning from home ownership to life in an assisted living facility (ALF). Many ALFs require a one-time entry fee and ongoing monthly charges for housing and services (meal plans, housekeeping, transportation and social/recreational activities). The benefit of an ALF is that when a resident's health and personal care needs become more acute, they are not forced to move to a new facility, as their level of service can be increased to include long-term care and skilled nursing care. Although the costs of an ALF can be substantial,[1] a percentage or all of the costs can be deducted as a medical expense income tax deduction either by the individual or by a third party if that taxpayer is providing more than half of the resident's support.

Section 213(a) of the Internal Revenue Code (IRC) allows as a deduction any expenses that are paid during the taxable year for the medical care of the taxpayer, his or her spouse and dependents who are not compensated by insurance or otherwise. *Estate of Smith v. Commissioner,* 79 T.C. 313, 318 (1982). The deduction is allowed only to the extent the amount exceeds 7.5 percent of adjusted gross income. Sec. 213(a); sec. 1.213-1(a)(3), Income Tax Regs. For purposes of Sec. 213, the term medical care includes amounts paid "for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body."

The entire ALF cost, including room and board, can be fully deducted on a federal income tax return as a medical expense if the individual's health problems are classified as being chronically ill and if the appropriate services are "provided pursuant to a plan of care prescribed by a licensed health care practitioner" (physician, registered professional nurse or licensed social worker). An individual will qualify as chronically ill if a licensed health care practitioner certifies that the individual: 1) is unable to perform at least two basic activities of daily living (including eating, toileting, transferring, bathing, dressing) without assistance from another individual due to loss of functional capacity for at least 90 days; or 2) requires substantial supervision to be protected from threats to health and safety due to severe cognitive impairment.

For elders in our community who are paying these significant costs out of pocket, and are reaching into their taxable investments such as individual retirement accounts to do so, this deduction opportunity could represent a significant cost savings.

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Endnote

1 The monthly cost of an ALF in Florida is approximately $2,500 to $5,000 for regular assisted living and $5,000 to $7,500 for memory care.

Judicial performance feedback sought from Bar members

The Judicial Administration & Evaluation Committee is encouraging all Bar members to participate in the Confidential Judicial Feedback Program developed by the committee and approved by The Florida Bar Board of Governors.

The purpose of the Confidential Judicial Feedback Program is to promote judicial self-improvement and enhance the quality of our judiciary as a whole. Attorneys are asked to evaluate the judge's demeanor, knowledge, fairness, and other factors, but not to discuss issues of their specific cases. The commenting attorney's identity is kept confidential and the comments are provided only to the judge who is the subject of the review. All feedback is and remains confidential pursuant to Florida Rule of Judicial Administration 2.051(c)(4).

There are separate forms for trial court judges and appellate court judges. Feedback may be provided two ways" by competing the forms online at www.floridabar.org/JudicialFeedback or by downloading the forms at www.floridabar.org/JAEC and following the instructions.