

taxpayer first to determine under section 213 his deductible medical expenses of \$370 ( $\$520 - [\$5,000 \times 3\%]$ ) and then claim the \$150 balance as employment-related expenses for purposes of section 214. This result is reached because the \$150 balance has been treated as a medical expense in determining the amount deductible under section 213.

*Example 3.* A taxpayer incurs and pays \$1,000 of employment-related expenses each month during the taxable year for the care of his child. These expenses are incurred for services performed in the taxpayer's household, and they also qualify as medical expenses under section 213. The taxpayer's adjusted gross income for the taxable year is \$18,000. No reduction in the amount of the expenses is required under § 1.214A-3, and the taxpayer takes \$4,800 ( $\$400 \times 12$ ) of such expenses into account under section 214. The balance, or \$7,200, he treats as medical expenses for purposes of section 213. The allowable deduction under section 213 for such expenses is limited to the excess of such balance of \$7,200 over \$540 (3 percent of the taxpayer's adjusted gross income of \$18,000), or \$6,600.

[T.D. 7411, 41 FR 15410, Apr. 13, 1976]

#### § 1.215-1 Periodic alimony, etc., payments.

(a) A deduction is allowable under section 215 with respect to periodic payments in the nature of, or in lieu of, alimony or an allowance for support actually paid by the taxpayer during his taxable year and required to be included in the income of the payee wife or former wife, as the case may be, under section 71. As to the amounts required to be included in the income of such wife or former wife, see section 71 and the regulations thereunder. For definition of *husband* and *wife* see section 7701(a) (17).

(b) The deduction under section 215 is allowed only to the obligor spouse. It is not allowed to an estate, trust, corporation, or any other person who may pay the alimony obligation of such obligor spouse. The obligor spouse, however, is not allowed a deduction for any periodic payment includible under section 71 in the income of the wife or former wife, which payment is attributable to property transferred in discharge of his obligation and which, under section 71(d) or section 682, is not includible in his gross income.

(c) The following examples, in which both H and W file their income tax returns on the basis of a calendar year,

illustrate cases in which a deduction is or is not allowed under section 215:

*Example 1.* Pursuant to the terms of a decree of divorce, H, in 1956, transferred securities valued at \$100,000 in trust for the benefit of W, which fully discharged all his obligations to W. The periodic payments made by the trust to W are required to be included in W's income under section 71. Such payments are stated in section 71(d) not to be includible in H's income and, therefore, under section 215 are not deductible from his income.

*Example 2.* A decree of divorce obtained by W from H incorporated a previous agreement of H to establish a trust, the trustees of which were instructed to pay W \$5,000 a year for the remainder of her life. The court retained jurisdiction to order H to provide further payments if necessary for the support of W. In 1956 the trustee paid to W \$4,000 from the income of the trust and \$1,000 from the corpus of the trust. Under the provisions of sections 71 and 682(b), W would include \$5,000 in her income for 1956. H would not include any part of the \$5,000 in his income nor take a deduction therefor. If H had paid the \$1,000 to W pursuant to court order rather than allowing the trustees to pay it out of corpus, he would have been entitled to a deduction of \$1,000 under the provisions of section 215.

(d) For other examples, see sections 71 and 682 and the regulations thereunder.

#### § 1.215-1T Alimony, etc., payments (temporary).

Q-1 What information is required by the Internal Revenue Service when an alimony or separate maintenance payment is claimed as a deduction by a payor?

A-1 The payor spouse must include on his/her first filed return of tax (Form 1040) for the taxable year in which the payment is made the payee's social security number, which the payee is required to furnish to the payor. For penalties applicable to a payor spouse who fails to include such information on his/her return of tax or to a payee spouse who fails to furnish his/her social security number to the payor spouse, see section 6676.

(98 Stat. 798, 26 U.S.C. 1041(d)(4); 98 Stat. 802, 26 U.S.C. 152(e)(2)(A); 98 Stat. 800, 26 U.S.C. 215(c); 68A Stat. 917, 26 U.S.C. 7805)

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