
IS SELF-QUARANTINING A DEDUCTIBLE MEDICAL EXPENSE?

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I. INTRODUCTION

The Snow Queen, who is in otherwise perfect health, has an unfortunate disability. If she touches another person, or even merely flutters her hands carelessly in that person's direction, that person will be frozen. Accordingly, she self-quarantines in the Ice Palace. She receives no medical care whatsoever. In fact, her motivation is solely for the medical well-being of others, not herself. Are the expenses of her self-quarantine deductible as medical expenses?¹

To take a more real-world example, Taxpayer recently came in close contact with someone who has tested positive for the COVID-19 virus.² Alternatively, she has just returned home from an international trip.³ In either event, Taxpayer self-quarantines for fourteen days,⁴ pursuant to government guidelines.⁵ In order to protect society in general and Taxpayer's household in

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1. The Snow Queen built the Ice Palace herself, out of inexpensive materials. Moreover, she is immensely wealthy, so the expenses of her quarantine are hardly a significant financial burden to her. Finally, for the reasons set forth below, the medical expense deduction is not all that helpful to anyone these days. Perhaps she would do better simply to let it go. See generally JOEL NEWMAN, A SHORT & HAPPY GUIDE TO FEDERAL INCOME TAXATION 161–63 (2d ed. 2019).

2. Arguably, it does not matter if Taxpayer herself has tested positive for the virus. It is possible that Taxpayer was unable to be tested, or that Taxpayer was tested, but did not obtain the results of the test right away. Either way, it is appropriate for her to self-quarantine now.

3. *Returning from International Travel*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/after-travel-precautions.html> (last visited June 18, 2020).

4. Isolation separates sick people with a contagious disease from people who are not sick. Quarantine separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick. *Quarantine and Isolation*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/quarantine/index.html> (last visited June 18, 2020).

5. Laurel Wamsley & Selena Simmons-Duffin, *The Science Behind a 14-Day Quarantine After Possible COVID-19 Exposure*, NAT'L PUB. RADIO (Apr. 1 2020, 1:45 PM), <https://www.npr.org/sections/health-shots/2020/04/01/824903684/the-science-behind-a-14-day-quarantine-after-possible-covid-19-exposure>; *Home Quarantine Guidance for Close Contacts to Coronavirus Disease 2019 (COVID-19)*, L.A. COUNTY DEP'T PUB. HEALTH (last updated June 1, 2020), <http://publichealth.lacounty.gov/acd/docs/COVHomeQuarantine.pdf>; *Isolation for coronavirus (COVID-19)*, AUSTRL. GOV'T DEP'T HEALTH (June 18, 2020), <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/how-to-protect-yourself-and-others-from-coronavirus-covid-19/isolation-for-coronavirus-covid-19>. See *State Quarantine and Isolation Statutes*, NAT'L CONF. ST. LEGISLATURES, [ncsl.org/research/health/state-quarantine-and-isolation-statutes.aspx](https://www.ncsl.org/research/health/state-quarantine-and-isolation-statutes.aspx) (last visited June 18, 2020) for a list of state statutes. Medical quarantines have a long history. In the

particular, she spends the fourteen days in a nearby hotel. Can Taxpayer deduct the fourteen days of meals and lodging as a medical expense?

Probably not, but that's a shame.

II. CURRENT STATUTES AND CASELAW

To analyze medical quarantining under current tax law, it is helpful to determine how it is different from other, clearly deductible medical expenses. Consider the quintessential medical expense. Patient feels sick. She consults with a licensed medical professional, who diagnoses and treats her condition, perhaps with prescription drugs. Patient pays the doctor's fee, and pays for the prescription drugs.

Self-quarantining is different in at least three respects. First, the patient leaves her home and stays away for fourteen days. Second, there is no consultation, diagnosis or treatment by a licensed medical professional, nor are there prescription drugs administered. Third, Patient incurs expenses not for her own health, but for the health of others. How do these differences impact on the deduction?

A. *Away from Home*

Taxpayers often move to a different place—typically from a cold climate to a warmer one—in order to alleviate a medical condition. Before the enactment of the 1954 Code, these travel expenditures were usually deductible in full. For example, in *Watkins v. Commissioner*, the taxpayer was allowed a deduction for the costs of moving from Cleveland to Florida for the winters, in the hope that the warmer climate of Florida would alleviate his ear condition.⁶

After 1954, things changed. In *Commissioner v. Bilder*,⁷ the taxpayer, a New Jersey resident who had suffered four heart attacks, was advised by his physician to move to a warmer climate. Accordingly, he and his family spent two winters in Florida, claiming the Florida rental expenses as a medical deduction. The Supreme Court allowed a deduction for the expenses of transportation to and from Florida, but not for the living expenses while in Florida. It noted the clear legislative history of the enactment of the 1954 Code, showing that Congress had

Nineteenth Century, sanitariums for tuberculosis were quite common. At that time, there was no cure for tuberculosis, so, just as is true with COVID-19, there was no treatment of the medical condition during the quarantine. However, in contrast to most COVID-19 quarantines, the sanitariums were administered by medical professionals. Annika Neklason, *A Historical Lesson in Disease Containment*, THE ATLANTIC (Mar. 21, 2020), <https://www.theatlantic.com/health/archive/2020/03/tuberculosis-sanatoriums-were-quarantine-experiment/608335/>.

6. 13 T.C.M. (CCH) 320 (1954); see also *Embry's Estate v. Gray*, 143 F. Supp. 603 (W.D. Ky. 1956) (move to Florida after stroke). But see *Flett v. Comm'r*, 19 T.C.M. (CCH) 825 (1960) (no deduction for living expenses after a move from Illinois to Arizona to alleviate chronic arthritis).

7. 369 U.S. 499 (1962).

replaced the broad term “travel” with the much narrower “transportation.”⁸ The Supreme Court quoted the House Report:

For example, if a doctor prescribes that a patient must go to Florida in order to alleviate specific chronic ailments and to escape unfavorable climatic conditions which have proven injurious to the health of the taxpayer, and the travel is prescribed for reasons other than the general improvement of a patient’s health, the cost of the patient’s transportation to Florida would be deductible but not his living expenses while there.⁹

Therefore, when one goes away from home for medical reasons, the costs of *getting there* are a deductible medical expense, but the costs of *being there* are not.

Congress has since mitigated the effect of the *Bilder* case. Section 213(e)(2) of the Internal Revenue Code provides:

2. Amounts paid for certain lodging away from home treated as paid for medical care.

Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care ... shall be treated as amounts paid for medical care if—

(A) the medical care... is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed \$50 for each night for each individual.¹⁰

Note that Section 213(e)(2) would be of no help in the self-quarantining situation, since it requires that the medical care is provided by a physician, in a hospital, or hospital equivalent.

The logic of *Bilder*, then, is that, in a self-quarantine situation, the transportation costs of *getting* to the place of quarantine would be deductible, but the meals and lodging costs of *being* at the place of quarantine would not. Since the quarantine lodging would typically be in the same town as one’s primary residence, the costs of getting there would be minimal. *Bilder* would essentially make the quarantining expenses nondeductible.

8. The current statutory language is “transportation primarily for and essential to medical care.” I.R.C. § 213(d)(1)(B).

9. *Id.* at 502. H. Rept. 1337, to accompany H.R. 8300 (Pub. L. No. 591), 83d Cong., 2d Sess. A60 (1954); 5. Rept. 1622, to accompany H.R. 8300 (Pub. L. No. 591), 83d Cong., 2d Sess. 219-220 (1954); *see also* Polyak v. Comm’r, 94 T.C.M. (CCH) 337 (1990) (rental expenses of stay in Florida to alleviate chronic heart disease nondeductible).

10. I.R.C. § 213(e)(2).

B. Treatment by a Licensed Professional

In the typical medical expenditure, there is treatment by a licensed medical professional. In the case of self-quarantining, there is not. Note, however, that in *Bilder*, the essential medical care was the move to a warmer climate, not any treatment by a licensed professional. Yet, some of the expenses were allowed as medical care. *Bilder*, then, stands for the proposition that treatment by a licensed professional is not absolutely required for the medical care deduction under Section 213.¹¹

C. Expenses Incurred for the Benefit of One Other than the Payor

Regulation Section 1.213-1(a)(i) provides that “[f]or medical expenses paid (including expenses paid for medicine and drugs) to be deductible, they must be for medical care of the taxpayer, his spouse, or a dependent of the taxpayer.”¹² Presumably, if the taxpayer chooses to leave her home to self-quarantine at a hotel, she does so in order to protect the other members of her household. One or more of those household members would be, typically, taxpayer’s spouse or dependents.

Moreover, Section 213(e)(1)(i) of the Internal Revenue Code provides that “[t]he term medical care includes the diagnosis, cure, mitigation, treatment, or prevention of disease.”¹³ Therefore, self-quarantining at a hotel to “prevent” one’s spouse or dependents from contracting COVID-19 would appear to satisfy the definition of medical care. The fact that the intended beneficiary is one other than the taxpayer/payor would be irrelevant.

Accordingly, the facts that (1) there is no treatment by a licensed medical professional, and (2) that the intended beneficiary is one other than the taxpayer/payor, would not, in themselves, defeat the medical expense deduction. However, the fact that the quarantining is away from home would make the deduction essentially unusable, under *Bilder*.

D. Do Other Provisions of the Internal Revenue Code Address the Problem?

Two provisions provide some help, but not enough. The Families First Coronavirus Response Act provides a tax credit for paid leave payments, and Section 139 provides for tax-free payments in the event of a qualified disaster.¹⁴

Pursuant to the Families First Coronavirus Response Act enacted in March of this year, an employer can obtain a refundable credit against payroll taxes if it provides paid sick leave to an employee who self-quarantines due to COVID-19 concerns. There are limits on the nature of the employer, and on the number of

11. See also *Cohn v. Comm’r*, 38 T.C.M. (CCH) 387 (1962) (trips from South Bend, Indiana to Florida to mitigate lung infections).

12. Treas. Reg. § 1.213-1(a)(i).

13. I.R.C. § 213(e)(1)(i).

14. I.R.C. § 139.

days and dollars.¹⁵ Of course, that provision only helps employers and employees. Moreover, it credits payments for sick leave, not quarantining expenses.

Also, Internal Revenue Code Section 139 would allow an individual to receive tax-free payments for personal, family living expenses incurred as a result of a qualified disaster.¹⁶ Covid-19 has duly been determined to be a qualified disaster under the Stafford Act.¹⁷ Of course, there is nothing that requires that such payments be made. Presumably, they would also be most likely when there is an employment relationship. Therefore, neither of these provisions address the problem of medical quarantines satisfactorily.

III. A PROPOSED STATUTE

A medical expense deduction would be unavailable for self-quarantining under existing statutory and caselaw. Other existing provisions do not help enough. Accordingly, I propose a statutory solution. However, before drafting the statute, three problems must be addressed—the weakness of Section 213, the problem of abuse, and the difference between incoming and outgoing quarantines.

A. *The Weakness of Section 213*

Under Section 213, medical expenses must exceed 10 percent of adjusted gross income before they are deductible.¹⁸ Given the Affordable Care Act and the prevalence of medical insurance, it is quite rare for a taxpayer's medical expenses to exceed that adjusted gross income threshold. Moreover, with the dramatic increases in the standard deduction, far fewer taxpayers find the itemized medical care deduction to be worthwhile. Accordingly, one might well ask if expanding the scope of such a weak provision is even worth the candle. Yet, Section 213 of the Internal Revenue Code is clearly where any tax relief for medical quarantining belongs. Ideally, this expansion of the scope of Section 213 should be a first step, followed by a general strengthening of the entire deduction.

15. Families First Coronavirus Response Act, Sections 7001–7003 (2020). Only those who employ less than 500 employees are eligible. There are caps of the amount of daily payments for family leave and sick leave, and there are comparable provisions for self-employed individuals.

16. I.R.C. § 139.

17. COVID-19-Related Employee Retention Credits: Special Issues for Employees: Income and Deduction FAQs 84. Are qualified wages excluded from gross income as “qualified disaster relief payments”? *COVID-19-Related Employee Retention Credits: Special Issues for Employees: Income and Deduction FAQs*, INTERNAL REVENUE SERV., <https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-special-issues-for-employees-income-and-deduction-faqs> (last visited June 21, 2020). Qualified disaster is defined in I.R.C. § 165(i)(5)(A).

18. I.R.C. § 213(a).

B. Abuse

Admittedly, self-quarantines are no fun. But there are those who would prefer a two-week stay in a luxury hotel to their present surroundings, quarantine or not. How can we prevent the abuse?

The easiest part is to follow the guidelines of current Section 213(e)(2), by putting a daily cap on the deductible expenditure, and forbidding expenditures which are lavish or extravagant under the circumstances.

There is, however, a further problem. Many who self-quarantine could do so within their own homes, at no expense. How do we distinguish those who can quarantine at home from those who really have no reasonable choice but to move to a hotel? The easy cases are those who live in a household with others at risk, and those who live in such crowded conditions that staying at home would be too dangerous to the entire neighborhood. I propose to limit the deduction to those who have no reasonable choice other than moving somewhere else, and then let the regulations and caselaw flesh things out.

C. Incoming vs. Outgoing Quarantines

I began with the case of a taxpayer who is returning from a trip abroad, and must self-quarantine for fourteen days. That is the incoming situation, and the analysis is relatively straightforward. The outgoing situation is somewhat different.

Imagine a taxpayer who quits her job in New York, and accepts a new job in Honolulu. Alternatively, imagine a couple travelling to Hawaii for their honeymoon. In Hawaii, visitors to the islands must self-quarantine upon arrival for fourteen days. Failure to do so results in fines and jail time.¹⁹ Often, violators are simply escorted back to the airport and sent home.²⁰

The best response of the honeymooners would be to cancel the trip, or at least to postpone it until the quarantine order is lifted. The business traveler, however, would probably have to suck it up, and spend her first two weeks in quarantine. Should that business traveler's quarantine expense be deductible as a medical expense? Arguably not. Had there been no pandemic, she still would have incurred lodging expenses for those first two weeks in Hawaii. The discomfort of the quarantine should not turn a nondeductible personal expense into a deductible medical expense.²¹ Admittedly, there might be special cases, but, to keep things relatively simple, I propose a bright line rule: Quarantining expenses resulting from incoming travel should be potentially deductible; quarantining expenses resulting from outgoing travel, whether for business or pleasure, should not.

19. Mark Ladao & Rosemarie Bernado, *Visitor Who Violated Hawaii's Travel Quarantine Rules to be Escorted Back to Airport*, STAR ADVERTISER (Apr. 17, 2020), <https://www.staradvertiser.com/2020/04/17/breaking-news/visitor-to-hawaii-is-arrested-for-violating-travel-quarantine-rules/>.

20. *Id.*

21. However, had the business trip to Hawaii been temporary, she could have deducted her travel expenses pursuant to I.R.C. § 162(a)(2).

D. A New Statute

I propose to add a new Section 213(e)(3) after current Section 213(e)(2):

3. Amounts paid for certain meals and lodging expenses while quarantining away from home treated as paid for medical care.

Amounts paid for meals and lodging (not lavish or extravagant under the circumstances) while away from home for the purpose of medical quarantining shall be treated as amounts paid for medical care if—

(A) the quarantine is required or mandated by the Centers for Disease Control, or comparable state and local governmental authorities;

(B) there is no reasonable alternative to moving out of the taxpayer's home in order to effectuate the quarantine; and

(C) the place of quarantine is within 25 miles of taxpayer's principal residence.²²

The amount taken into account under the preceding sentence shall not exceed \$200 for each night for no more than fourteen nights for each individual.

IV. CONCLUSION

The tax burden should be based upon ability to pay taxes. Those with more ability to pay should pay more; those with less ability to pay should pay less. We tax income because income is a decent measurement of ability to pay.

However, income—even adjusted gross income—is not always a perfect measure of ability to pay. Consider, for example, two taxpayers, Sick and Well, each with identical adjusted gross income of \$100,000. Sick incurred \$25,000 in unreimbursed medical expenses last year; Well did not. Clearly Sick's ability to pay is considerably less than Well.

That is the point of Section 213. If a taxpayer incurs extraordinary medical expenses—in excess of 10% of adjusted gross income—that excess should be deducted, to adjust for the decline in ability to pay taxes. For this purpose, there is really no difference between the expenses of a medical quarantine, and the more traditional medical expenses, such as doctor fees, hospital stays, and prescription drugs. All of them need to be taken into account, to make a proper adjustment to ability to pay.

There is a further reason to allow the expenses of medical quarantines as medical expense deductions. All law, and perhaps tax law especially, communicates to us, and to the world, who we are and what we are about. Medical quarantining is not only legally required; it is morally right.²³ We do so out of a concern for others—not just ourselves. Recognizing this behavior as a deductible medical expense is a necessary statement that we as a nation understand what is truly important.

22. This subparagraph (C) would eliminate the deduction in the outgoing quarantining situation.

23. Under German tax law, if a taxpayer incurs an expense because she felt morally obligated to do so, that expense is allowable as a deduction against income. Einkommensteuergesetz § 33 (1983). I would not suggest that we go so far, but I do think they are on to something in Germany.

We are, indeed, in this together, and that includes the IRS.