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June 11, 2018

VIA HAND DELIVERY

Amy Wei
1111 Constitution Ave, NW
Room 4143
CC:ITA:B02
Washington, DC 20224

Re: Request for Information Letter and Meeting Regarding Classification of
Certain Medical Expenditures as Deductible Medical Expenses Under Code
Section 213

Dear Ms. Wei:

We are writing to inquire as to whether certain medically related expenses might qualify under Section 213(d) as deductible medical expenses. Because of the recurring nature and automated structure of medical expense reimbursement arrangements under health flexible spending arrangements (HFSAs) and health reimbursement arrangements (HRAs) general guidance by the Service under Section 213(d) will help address hundreds of thousands of similar claims. For sunscreen and insect repellent, we are also requesting confirmation that even though such expenses (as noted herein) qualify under Section 213(d), they are not a “medicine or drug” that requires a prescription.

We understand that a binding ruling may not be possible, but that you may be able to provide general information in response to an information letter request as you did in 2009 when similar questions were presented.¹ While the issues raised here relate to the excludability of health care expenses under Section 105(b), the eligibility of each expense is contingent on the deductibility of the expense under Section 213(d). Accordingly, we expect that the Office of Division Counsel/Associate Chief Counsel (Income Tax and Accounting) is the associate office that would have jurisdiction over matters involving Code Section 213.

¹ INFO 2009-0209 (Jul. 14, 2009), available at <https://www.irs.gov/pub/irs-wd/09-0209.pdf> (last visited Apr. 18, 2018).

Statement of Facts

We represent SIGIS: Special Interest Group for IIAS Standards, Inc. ("SIGIS" or the "Taxpayer"), 111 Deerwood Rd. Suite 200, San Ramon, CA 94583 , Phone # (925) 855-3228, EIN #75-3262530. SIGIS exists for the primary purpose of adopting and maintaining uniform standards that enable health care merchants, card processors, card issuers, and card networks to facilitate a system of claims adjudication that would be compliant with the IRS industry information approval system (IIAS) requirements set forth in IRS Notice 2006-69. SIGIS supports over 14,000 member companies with IIAS and 90% rule standards. Every day, millions of purchases are made using debit cards issued for health flexible spending arrangements ("HFSA") and health reimbursement arrangements ("HRA"), and the IIAS codes have become an efficient and practical method for quickly and automatically substantiating expenses at retailers.

For many over-the-counter ("OTC") medical goods (e.g., crutches) there is little question as to whether the expense would qualify under Section 213(d). For other expenses it would seem that they should qualify, but little direct guidance exists as to whether the specific expenses qualify as a "medical expense" under 213(d). While these items could arguably have some non-medical use, we believe that expenditures made for these items are *primarily* for medical care. See Havey v. Commissioner, 12 T.C. 409, 412 (1949) (dual-purpose expenditures qualify when made primarily for medical care); *also see* IRS Information Letter to Bonnie Whyte, July 28, 1995. In fact, as noted herein, many of these items appear to have no purpose other than for treatment of a medical condition.

Additionally, Code § 106(f), as added by the Affordable Care Act ("ACA"), provides that, for purposes of Code §§ 106 and 105, expenses incurred for a medicine or drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin. In other words, the ACA now requires a prescription for medicine and drugs to be reimbursable.

Accordingly, we request that the Service review the list below to help us assist in determining eligibility under Code § 213(d), as it has done in the past. For sunscreen and insect repellent, we also request that the Service clarify that they are not a "medicine or drug" that would require a prescription for reimbursement by a HFSA or HRA.

Statement of Law

As a general rule, absent an exception or exclusion, any income received is taxable as gross income under Code § 61. Code §§ 105 and 106 operate together to exclude the value of medical care expenses from income. Code § 106(a) operates to exclude the value of employer coverage under an accident or health plan from the employee's income; Code § 105(b) excludes from income amounts reimbursed from an employer plan for medical care expenses (as defined in Code § 213(d)). An "accident or health plan" is defined in the regulations as "an arrangement for the payment of amounts to employees in the event of personal injuries or sickness."² Accordingly, to the extent a benefit constitutes medical care expenses under Code Section 213(d), and to the extent such benefit is offered through an accident or health plan, the cost of the employer coverage and the value of the benefit received should be excludable from the employee's income.

² Treas. Reg. § 1.105-5(a).

Section 9003 of the Affordable Care Act added Code § 106(f), which revised the definition of medical expenses for employer-provided accident and health plans, including HFSA and HRA. Code § 106(f) provides that, for purposes of Code §§ 106 and 105, expenses incurred for a medicine or a drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin. Thus, under Code § 106(f), expenses incurred for medicines or drugs may be paid or reimbursed by an employer-provided plan, including a HFSA or HRA, only if (1) the medicine or drug requires a prescription, (2) is available without a prescription (an OTC medicine or drug) and the individual obtains a prescription, or (3) is insulin. The ACA's changes also apply to distributions from health savings accounts ("HSAs") and Archer medical savings accounts ("MSAs").³

Code § 213(d) states that medical care is limited to expenses paid primarily "for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body."⁴ The regulations add that, "payments for the following are payments for medical care: hospital services, nursing services (including nurse's board where paid by the taxpayer), medical, laboratory, surgical, dental and other diagnostic and healing services, X-rays, medicine and drugs." An expense qualifies as medical care as preventing disease only if there is a present existence or an imminent probability of developing a disease, physical or mental defect, or illness.⁵ "However, an expenditure which is merely beneficial to the general health of an individual, such as an expenditure for a vacation, is not an expenditure for medical care."⁶

Code § 213(d)(3) defines a prescribed drug as a drug or biological that requires a prescription of a physician for its use by an individual. For purposes of Code §§ 106(f), 223(d)(2)(A) and 220(d)(2)(A), a "prescription" means a written or electronic order for a medicine or drug that meets the legal requirements of a prescription in the state in which the medical expense is incurred and that is issued by an individual who is legally authorized to issue a prescription in that state.

A taxpayer who claims that an expense of a peculiarly personal nature is primarily for medical care must establish that fact. Among the objective factors that indicate that an otherwise personal expense is for medical care are the taxpayer's motive or purpose for making the expenditure, whether a physician has diagnosed a medical condition and recommended the item as treatment or mitigation, linkage between the treatment and the illness, treatment effectiveness, and proximity in time to the onset or recurrence of a disease. *Havey v. Commissioner*, 12 T.C. 409 (1949). The taxpayer also must establish that the expense would not have been paid "but for" the disease or illness. A personal expense is not deductible as medical care if the taxpayer would have paid the expense even in the absence of a medical condition. *Commissioner v. Jacobs*, 62 T.C. 813 (1974).

³ Code § 223(d)(2)(A); Code § 220(d)(2)(A).

⁴ Treas. Reg. § 1.213-1(e)(2)(ii).

⁵ IRS Information Letter 2009-0209, citing *Daniels v. Commissioner*, 41 T.C. 324 (1963) and *Stringham v. Commissioner*, 12 T.C. 580 (1949).

⁶ Treas. Reg. § 1.213-1(e)(1)(ii).

The rules in Code §§ 106(f), 223(d)(2)(A), and 220(d)(2)(A) apply by their terms only to medicines and drugs; thus the rules do not apply to items that are not medicines or drugs, including equipment (such as crutches), supplies (such as bandages), and diagnostic devices (such as blood sugar test kits). The Code does not offer a definition of medicines or drugs. The Service also has not provided a definition of a medicine or drug. Instead, IRS regulations clarify what is *not* a medicine or drug, by providing expressly that the term medicine and drug does not include cosmetics (such as face creams, deodorants, hand lotions or similar preparation used for ordinary cosmetic purposes).⁷ Similarly, the regulations exclude toiletries from the category of medicines and drugs, providing examples of toothpaste, shaving lotion, and shaving cream.⁸

Items for Consideration as 213(d) Medical Expenses. The first column in the chart below lists several items that we believe *should* qualify as a Code § 213(d) medical expense. The second column includes a brief discussion of why the item ought to qualify, including comparisons to existing rulings for similar items (where applicable). For a number of these items, we reference prior informal IRS representative comments. While we recognize that these comments are non-binding, we believe that more formal Information Letter guidance on these issues would be helpful. In addition, we reference the Federal FSA Program Quick Reference Guide to Over-the-Counter Medicines & Products (the “Federal FSA Guide”), <https://www.fsafeds.com/explore/hcfsa/expenses> (last visited April 18, 2018). We realize that the Federal FSA Guide is not formal authority, but we think that items identified as “medical expenses” under the Federal government’s own HFSA plan provides persuasive support for our position.

OTC Items:	Discussion:
1. Sunscreen	<p>In 2012 we submitted a letter request regarding sunscreen, which provides a thorough discussion of why we believe that sunscreen is a deductible medical expense. We have attached that letter (the “2012 Letter”) as background to our current request. However, given the imminent pendency of regulations at that time, we did not pursue the issue further. We understand that comprehensive Section 213 regulations are not currently pending.</p> <p>Sunburn is a painful medical; condition for which there is a medical diagnosis (ICD-10-CM) code of L55.9.⁹ More significantly, unregulated exposure to sun and its harmful effects leads to skin cancer-- the most common form of cancer in the United States. Approximately 1 in 5 Americans will develop skin cancer in their lifetime.¹⁰ According to the American Academy of Dermatology, the major risk factor for melanoma, the most deadly form of skin cancer, is exposure to ultraviolet light. An immediate effect of not using sunscreen is a sunburn. Research has</p>

⁷ Treas. Reg. § 1.213-1(e)(2).

⁸ *Id.*

⁹ <https://www.icd10data.com/ICD10CM/Codes/L00-L99/L55-L59/L55-/L55.9>

¹⁰ <https://www.aad.org/media/stats/prevention-and-care/sunscreen-faqs> (as visited April 23, 2018).

	<p>found that even a single blistering sunburn in childhood or adolescence can more than doubles a persons’ chances of developing melanoma later in life. Research in 2010 found that daily sunscreen use cut the incidence of melanoma, the deadliest form of skin cancer, in half. The American Academy of Dermatology recommends that <i>everyone</i> use sunscreen every day that they will be outside. The CDC has directed individuals to:</p> <ul style="list-style-type: none"> • Use sunscreen with SPF 15 or higher and both UVA and UVB (broad spectrum) protection. • Remember to reapply sunscreen at least every 2 hours and after swimming, sweating, or toweling off.¹¹ <p>In other words, sunscreen qualifies as medical care under Code § 213 because it addresses the “imminent probability of developing a disease, physical or mental defect, or illness”, namely skin cancer as a result of a sunburn. We note that the federal FSA Guide permits reimbursement of “sunscreen with SPF 15+ and “broad spectrum”. Based on the foregoing, as well as the robust discussion in the attached 2012 Letter, sunscreen with a SPF 15+ that provides broad spectrum (UVA and UVB) should qualify as a deductible medical expense.</p> <p>Also, we feel that sunscreen should not be characterized as a “medicine or drug” for excludability/deductibility purposes. As discussed in more detail in the 2012 Letter, defining “medicine or drug” to include sunscreen would cause it not to be a reimbursable medical expense unless a participant in a HFSA or HRA has a prescription. Moreover, defining sunscreen as a medicine or drug would not be consistent with how sunscreen works. Sunscreen is more like a medical device than a medicine or drug because its primary mode of action, or characteristic to achieve its purpose, is not dependent on being metabolized by the body. Instead, the most common ingredients in sunscreen, zinc oxide and titanium oxide, sit on the surface of the skin to block and prevent the sun’s ultra violet rays from hitting the skin.</p>
<p>2. Insect Repellant</p>	<p>Like sunburn, insect bites are independently a medical condition that have their own ICD-10 codes for reimbursement purposes.¹² In addition, an immediate effect of being bitten by an infected insect, such as a mosquito or tick, is disease. The Centers for Disease Control and Prevention (“CDC”) state that the most effective way to avoid getting a virus from mosquitos at home or during travel is to prevent mosquito bites.¹³ The CDC recommends use of an EPA-registered insect repellant to prevent bites.¹⁴ The CDC notes that, “For most viruses spread by</p>

¹¹ <https://www.cdc.gov/cancer/dcpc/resources/features/skincancer/>

¹² https://www.cms.gov/icd10manual/fullcode_cms/P0358.html (as visited April 23, 2018).

¹³ <https://www.cdc.gov/features/stopmosquitoes/index.html> (as visited April 23, 2018).

¹⁴ <https://www.epa.gov/insect-repellents> (as visited April 23, 2018).

	<p>mosquitos, there are no vaccines or medicines available.”¹⁵ Mosquitos carry many viruses, including Zika, West Nile, malaria, dengue fever, yellow fever, Chikungunya, encephalitis and malaria. While West Nile is the most common potentially deadly virus transmitted by mosquitoes in the United States, Zika transmission by mosquitoes has been reported in Texas and Florida.¹⁶ Zika can cause significant and costly birth defects, including microcephaly.¹⁷ According to the CDC, “babies affected by Zika virus will continue to require specialized care from many types of healthcare providers and caregivers as they age.”¹⁸</p> <p>Insect repellants are also effective against tick borne diseases like Lyme disease, Rocky Mountain Spotted Fever, encephalitis and ehrlichiosis. In 2015, the CDC confirmed 28,453 cases of Lyme disease in the United States.¹⁹ Lyme disease is the most commonly reported vector borne illness in the United States.²⁰ Given the frequency that diseases that are caused by insect bites are diagnosed in the United States, as well as the variety of diseases that can be caused by insect bites, insect repellant appears to be medical care under Code § 213 because it prevents the “imminent probability of developing a disease, physical or mental defect, or illness”.</p> <p>Additionally, insect repellants are pesticides rather than a “medicine or drug”.²¹ According to the Environmental Protection Agency (“EPA”), a pesticide is any substance or mixture of substances intended for: (i) preventing; (ii) destroying; (iii) repelling, or (iv) mitigating any pest.²² Like sunscreen, insect repellants are more like a medical device than a medicine or drug because their primary mode of action, or characteristic to achieve its purpose, is not dependent on being metabolized by the body. Instead, common ingredients in insect repellants, like DEET, sit on the surface of the skin to prevent insects from being able to locate a person or animal.²³ According to the National Pesticide Information Center, the skin only absorbs a small amount of DEET, which is broken down by the liver and eliminated from the body mainly through the</p>
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¹⁵ *Id.*

¹⁶ <https://www.cdc.gov/zika/geo/index.html> (as visited April 23, 2018).

¹⁷ https://www.cdc.gov/zika/healtheffects/birth_defects.html (as visited April 23, 2018).

¹⁸ *Id.*

¹⁹ <https://www.cdc.gov/lyme/stats/tables.html> (as visited April 23, 2018).

²⁰ *Id.* A vector borne illness is a disease transmitted by mosquitoes, ticks or fleas (see <https://www.cdc.gov/ncezid/dvbd/index.html>).

²¹ <https://www.epa.gov/insect-repellents/what-insect-repellent> (as visited April 23, 2018).

²² *Id.*

²³ <http://npic.orst.edu/factsheets/DEETgen.html> (as visited April 23, 2018).

	urine. ²⁴ Accordingly, insect repellent is not a “medicine or drug” that requires a prescription under Code § 106(f) and should automatically qualify as a deductible medical expense.
3. Compression Hose	<p>In Information Letter 2009-0209, the Service stated that compression hosiery “may qualify as an expense for medical care.” However, “while these items are probably most commonly used to treat or alleviate a medical condition, we are reluctant to conclude that they could not also have a personal or preventive use.” Since then, IRS representatives have informally indicated in several cases that high compression hose might satisfy the “but for” test and qualify for a deduction under Code § 213. While these non-binding informal comments are not binding on the Service, they help guide the industry as to how such items should be treated.</p> <p>Compression hose treat vein and other circulatory problems.²⁵ Generally, “low compression refers to pressure of less than 20 mm Hg or class 1; medium compression to pressure of 20–30 mm Hg or class 2; and high compression to pressure of greater than 30 mm Hg, or class 3 or higher.”²⁶ In many cases, compression hose are available OTC without a prescription. High compression hose (30 mm Hg) has no personal purpose, is not marketed for general health, and would not be purchased “but for” the disease or illness. As a result, high compression hose should automatically qualify as a deductible medical expense.</p>
4. Inversion Table	<p>Inversion tables are used to treat back pain. According to the Mayo Clinic, “inversion therapy takes gravitational pressure off the nerve roots and discs in your spine and increases the space between vertebrae... [S]ome people find traction temporarily helpful as part of a more comprehensive treatment program for lower back pain caused by spinal disk compression.”²⁷ An FAQ from Harvard Medical School states, “Some physical therapists may incorporate short-term inversion table therapy, under supervision, in a comprehensive program for back pain.”²⁸</p> <p>Inversion affects a structure of the body by increasing the space between vertebrae and are used primarily as medical care to treat and prevent back pain. Accordingly, inversion tables should automatically qualify as a deductible medical expense.</p>

²⁴ *Id.*

²⁵ <https://medlineplus.gov/ency/patientinstructions/000597.htm> (as visited April 23, 2018).

²⁶ Chung Sim Lim and Alun H. Davies, *Graduated compression stockings*, Canadian Medical Association Journal, July 8, 2014 (available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4081237/>, as visited April 23, 2018).

²⁷ <https://www.mayoclinic.org/diseases-conditions/back-pain/expert-answers/inversion-therapy/faq-20057951> (as visited April 24, 2018).

²⁸ https://www.health.harvard.edu/newsletter_article/do-inversion-tables-work

<p>5. Prenatal Vitamins</p>	<p>OB/GYN's almost universally recommend pre-natal vitamins to women working to conceive and who are pregnant. As stated by a OB/GYN practice, "The fight for good prenatal health starts with a commitment to prenatal vitamins."²⁹ The Federal FSA guide indicates that prenatal vitamins are eligible expenses.</p> <p>Prenatal vitamins provide additional nutrients, such as folic acid to reduce birth defects.³⁰ Iodine in prenatal vitamins help reduce the risk of miscarriage and stillbirth. The additional calcium in prenatal vitamins prevents the mother from losing bone density since the baby is using calcium the mother would otherwise use for its own bone growth.</p> <p>The Mayo Clinic has stated, "if you're not pregnant and not planning to become pregnant, high levels of certain nutrients over a long period of time may actually be more harmful than helpful."³¹ Accordingly, prenatal vitamins are used primarily as medical care and should automatically qualify as a deductible medical expense.</p>
<p>6. Sports Physicals</p>	<p>Students and others often need to obtain physicals before participating in organized sporting activities. According to the Cleveland Clinic, "Sports physicals are intended to determine if an athlete is healthy enough to participate in sports and to help minimize the risk of sports-related injuries... The physical is designed to identify any high-risk disorder or condition that might affect an athlete's ability to play."³² Sports physicals can "Identify any life threatening medical conditions such as heart conditions."³³ In connection with sports physicals, IRS representatives have informally indicated previously that any kind of medical physical is a diagnosis that qualifies as a deductible medical expense. Sports physicals should automatically qualify as a medical deductible expense because they diagnose conditions of the body.</p>
<p>7. Diagnostic devices to test for oxygen in the blood (e.g., oximeters)</p>	<p>Devices that test for oxygen in the blood measure a condition of the body. Similar to a blood glucose monitor that measures blood sugar, an oximeter measures the blood's oxygen content.³⁴ They are commonly used by individuals with respiratory and cardiac ailments like COPD. IRS representatives have informally indicated that devices that measure a condition of the body would likely qualify for a deduction because they</p>

²⁹ <http://wny-obgyn.com/2017/01/prenatal-vitamins/> (as visited April 24, 2018).

³⁰ <https://www.webmd.com/baby/guide/prenatal-vitamins#1> (as visited April 24, 2018).

³¹ <https://www.mayoclinic.org/healthy-lifestyle/nutrition-and-healthy-eating/expert-answers/prenatal-vitamins/faq-20057922> (as visited April 24, 2018).

³² <https://my.clevelandclinic.org/health/treatments/11694-sports-physicals> (as visited April 24, 2018).

³³ <https://share.upmc.com/2014/05/importance-sports-physicals/> (as visited April 24, 2018).

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http://www.who.int/patientsafety/safesurgery/pulse_oximetry/who_ps_pulse_oxymetry_tutorial1_the_basics_en.pdf (as visited April 24, 2018).

	diagnose a condition of the body. An oximeter has no other purpose than to measure oxygen levels of the blood and should automatically qualify as a deductible medical expense.
8. Diagnostic devices to test for alcohol	Devices that test for alcohol in the blood measure a condition of the body. Similar to a blood glucose monitor that measures blood sugar, a breathalyzer measures the body's blood alcohol content. ³⁵ IRS representatives have informally indicated that devices that measure a condition of the body, including breathalyzers, would likely qualify as a medical expense because they diagnose a condition of the body. A breathalyzer has no other purpose than to measure blood alcohol content in the body and should automatically qualify as a deductible medical expense.
9. Drug testing kits	Drug tests diagnose a condition of the body, namely the presence of drugs in the blood. ³⁶ Individuals might need to obtain drug test results to be employed or volunteer. In some case, the organization does not pay for those tests. ³⁷ Drug tests have no purpose other than to measure the presence of a substance in the body and should automatically qualify as a deductible medical expense.
10. Genetic test kits and expenses	<p>Genetic test kits and expenses are diagnostic tests. According to the National Institutes of Health ("NIH"):</p> <p style="padding-left: 40px;">"Genetic testing is a type of medical test that identifies changes in chromosomes, genes, or proteins. The results of a genetic test can confirm or rule out a suspected genetic condition or help determine a person's chance of developing or passing on a genetic disorder."³⁸</p> <p>Further, "Several methods can be used for genetic testing:</p> <ul style="list-style-type: none"> • Molecular genetic tests (or gene tests) study single genes or short lengths of DNA to identify variations or mutations that lead to a genetic disorder. • Chromosomal genetic tests analyze whole chromosomes or long lengths of DNA to see if there are large genetic changes, such as an extra copy of a chromosome, that cause a genetic condition.

³⁵ <https://teens.drugabuse.gov/blog/post/science-drug-testing-how-alcohol-breath-tests-work> (as visited April 24, 2018).

³⁶ <https://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/InVitroDiagnostics/DrugsofAbuseTests/ucm125722.htm>

³⁷ <https://blog.validityscreening.com/volunteer-background-checks-pay> (as visited April 27, 2018).

³⁸ <https://ghr.nlm.nih.gov/primer/testing/genetic-testing> (as visited April 25, 2018).

	<ul style="list-style-type: none"> • Biochemical genetic tests study the amount or activity level of proteins; abnormalities in either can indicate changes to the DNA that result in a genetic disorder.” <p>In other words, genetic testing measures a condition of the body. Specifically, genetic testing measures changes in chromosomes, genes, or proteins in the body.</p> <p>Significantly, even data from ancestry DNA testing can be used by the recipient for medical purposes. Ancestry DNA test providers typically provide raw DNA data, which the recipient can then upload to other sites to learn more about their health.³⁹ This information can then be shared with health care providers, much like a person might share their blood sugar or blood pressure readings for the month with their health care provider.</p>
11. Downloadable apps with medical functions	<p>Tablets and smartphones can be used to download many applications with medical functions that monitor conditions of the body. For example, rather than purchase an ovulation monitor, an individual might download an app that has similar functions.⁴⁰ Apps can even turn smartphones into pulse oximeters. For example, one study concluded recently that, “Smartphone-based pulse oximetry is not inferior to standard pulse oximetry in pediatric patients without hypoxia.”⁴¹ In other words, apps are in some cases replacing traditional medical devices that have automatically qualified as medical expenses. Moreover, apps can be downloaded to interface with external medical devices. Thus, downloadable apps that primarily provide medical care and diagnose conditions of the body should automatically qualify as a deductible medical expense.</p>
12. Nasal Strips	<p>Nasal strips treat conditions like nasal congestion, sleep apnea, and sleep disruption due to snoring.⁴² Nasal strips work by attaching to the bridge of the nose with adhesive and physically expanding outward, opening the nasal passage, which allows for an increased flow of air through the nasal passage. They do not contain any medicine or drugs and work by physical action alone.</p>

³⁹ See, e.g., <http://medicalfuturist.com/analyse-your-dna-in-your-living-room/>; <https://promethease.com/> (as visited April 25, 2018).

⁴⁰ See, e.g., <https://www.refinery29.com/best-fertility-app> (as visited April 25, 2018).

⁴¹ S. Tomlinson, S. Behrmann, J. Cranford, M. Louie, and A. Hashikawa, *Accuracy of Smartphone-Based Pulse Oximetry Compared with Hospital-Grade Pulse Oximetry in Healthy Children*, *Telemedicine Journal and E-Health*, Dec. 7, 2017 (abstract available at <https://www.ncbi.nlm.nih.gov/pubmed/29215972#>, as visited April 25, 2018).

⁴² See, e.g., J. Gosepath, R.G. Amedee, S. Romantschuck, and W.J. Mann, *Breathe Right nasal strips and the respiratory disturbance index in sleep related breathing disorders*, *The American Journal of Rhinology & Allergy*, 1999 Sep-Oct;13(5):385-9 (abstract available at <https://www.ncbi.nlm.nih.gov/pubmed/10582117>, as visited April 25, 2018).

	<p>The Federal FSA Guide indicates that OTC nasal strips are an eligible expense. Nasal strips are available without a prescription. They have no personal use and would not be used but for treatment of a medical condition and should qualify automatically as a deductible medical expense.</p>
<p>13. Supplements without non-medical purposes (for example, St. John’s Wort)</p>	<p>Glucosamine and chondroitin are structural components of cartilage, the tissue that cushions the joints.⁴³ Both are produced naturally in the body. Glucosamine and chondroitin supplements typically are used to treat arthritis rather than for general health.⁴⁴ For example, the AARP stated that, “A combo of 500 milligrams (mg) of glucosamine hydrochloride and 400 mg of chondroitin sulfate three times a day relieved moderate to severe osteoarthritis pain as effectively as the drug celecoxib (Celebrex) in a recent study.”⁴⁵</p> <p>Glucosamine and chondroitin are also taken for other conditions, including joint pain caused by drugs that lower estrogen levels, painful bladder syndrome, joint pain, knee pain, multiple sclerosis, temporomandibular disorder, and glaucoma.⁴⁶</p> <p>In prior Information Letter guidance, the Service has indicated that glucosamine and chondroitin should automatically qualify as a deductible medical expense because they are used primarily to treat medical conditions and are not typically taken for general health.⁴⁷ We think that supplements which similarly have no non-medical purpose should likewise qualify. For example, St. John’s Wort is “widely prescribed for depression in Europe.”⁴⁸ St. John’s Wort is not promoted for general health, but only for mental health conditions.⁴⁹</p> <p>Supplements without a non-medical purpose differ from supplements that have non-medical purposes, such as cayenne pepper, which the IRS addressed in INFO 2001-0297. With regard to cayenne pepper that a naturopathic physician recommended for treatment of Raynaud’s</p>

⁴³ <https://nccih.nih.gov/health/glucosaminechondroitin> (as visited May 2, 2018).

⁴⁴ See, e.g., <https://www.arthritis.org/living-with-arthritis/treatments/natural/supplements-herbs/guide/glucosamine.php>; <https://medlineplus.gov/druginfo/natural/807.html> (as visited April 25, 2018).

⁴⁵ <https://www.aarp.org/health/conditions-treatments/info-2017/knee-pain-joints-surgery.html> (as visited May 2, 2018).

⁴⁶ <https://medlineplus.gov/druginfo/natural/747.html> (as visited May 2, 2018).

⁴⁷ INFO 2009-0209 (Jul. 14, 2009), available at <https://www.irs.gov/pub/irs-wd/09-0209.pdf> (last visited Apr. 18, 2018).

⁴⁸ <https://nccih.nih.gov/health/stjohnswort/sjw-and-depression.htm> (as visited April 25, 2018)

⁴⁹ See, e.g., <https://www.webmd.com/vitamins/ai/ingredientmono-329/st-johns-wort> (as visited May 2, 2018).

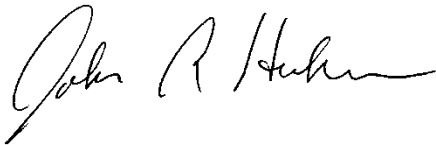
	<p>disease, the IRS stated it would qualify as a deductible medical expense if the taxpayer could substantiate that: “(1) he or she (or a spouse or dependent) has a medical condition (disease, illness, or injury); (2) his or her purpose in purchasing the cayenne pepper is to treat or alleviate the medical condition; (3) he or she would not have purchased the cayenne pepper ‘but for’ the medical condition; and (4) he or she is not consuming the cayenne pepper to satisfy normal nutritional requirements.”</p> <p>Unlike cayenne pepper, supplements that only have a medical purpose, such as St. John’s Wort, generally are: (1) not considered useful unless the person has a medical condition (e.g., St. John’s Wort is not taken to make a content person more content); (2) would not be purchased except to treat alleviate a medical condition (e.g., depression in the case of St. John’s Wort); (3) would not be purchased “but for” a medical condition; and (4) do not satisfy any nutritional requirement (St. John’s Wort cannot be used as a cooking ingredient or taken as a vitamin). Thus, supplements without a non-medical purpose should automatically qualify as a deductible medical expense.</p>
<p>14. Supplements provided in a form not conducive for use for non-medical purposes (for example, turmeric)</p>	<p>Other supplements are widely recommended by health care practitioners to treat medical conditions. For example, turmeric is used to treat cancer, inflammation, arthritis, stomach, skin, liver, and gallbladder problems, cancer, and other conditions.⁵⁰ According to the NIH, preliminary studies found that turmeric may:</p> <ul style="list-style-type: none"> • Reduce the number of heart attacks bypass patients had after surgery • Control knee pain from osteoarthritis as well as ibuprofen did • Reduce the skin irritation that often occurs after radiation treatments for breast cancer. <p>Supplements that have a known medical purpose, are often recommended by medical practitioners to treat an existing illness or disease, and are provided in a form that does not lend itself to non-medical uses (e.g., a pill) should automatically qualify as a deductible medical expense. For example, turmeric is also used as a spice in cooking, but it would make little sense to buy turmeric as a pill for cooking.</p>
<p>15. Ace Bandage/ Athletic Tape/ Braces/ Elastic bandage/</p>	<p>Support braces for any part of the body, bandages and crutches (Rev. Rul. 2003-58, 2003-22 I.R.B. 959), are used to protect and facilitate use of an injured joint. Support braces for specific body parts are functionally no different than elastic bandages (although such specialized products may be easier to use or may perform better than a regular elastic bandage), which do qualify as a medical expense when</p>

⁵⁰ <https://nccih.nih.gov/health/turmeric/atagance.htm> (last visited April 26, 2018).

<p>Hot/cold therapy/ Orthopedic supports/ braces/ rib belts/ back braces</p>	<p>purchased as part of a first aid kits. Braces for abdominal, back, ankles, and elbows, as well as foot and arch supports and insoles, are most likely purchased primarily for the purpose of reinforcing a weak or injured joint, thereby treating an existing injury and preventing further injury, and therefore should automatically qualify as medical expenses if they are marketed for medical purposes rather than performance enhancement. The Federal FSA guide indicates that “athletic treatments/braces”, as well as orthopedic and surgical supports, are eligible.</p> <p>Similarly, hot/cold therapy packs are generally used to treat pain and inflammation.⁵¹ Hot/cold therapy would not take place but to treat an injury, so it should automatically qualify as a deductible medical expense.</p>
<p>16. Mobility aids and modifications attributable to aging or limitations to activities of daily living such as shower grab bar, elevated toilet, walk-in tub)</p>	<p>Generally, expenses due to age related changes are not deductible. However, expenses related to the loss of mobility are deductible for any reason, including aging. Moreover, a loss of mobility is typically not caused by aging itself, but by illnesses and diseases that become more likely with advanced age (for example, arthritis). Mobility aids and modifications mitigate the effects of disease illness, including diseases and illnesses that become more common with age, and should qualify automatically as a deductible medical expense.</p>

Thank you for your assistance in this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,



John R. Hickman
JRH

cc (by email): Amy Wei
Bridget Tombul

⁵¹ <https://www.livestrong.com/article/113446-benefits-hot-cold-therapy/> (as visited April 26, 2018).