

## **DEDUCTING CARE EXPENSES: WHAT YOU SHOULD KNOW**

**This Weekly Newsletter is brought to you by**

by Shannon Laymon-Pecoraro, Esq.

**HOOK LAW CENTER**  
*Legal Power for Seniors*

Tel: 757-399-7506  
Fax: 757-397-1267

*Locations:*

*Virginia Beach*  
295 Bendix Road, Suite 170  
Virginia Beach, VA 23452

*Suffolk*  
5806 Harbour View Blvd.,  
Suite 203  
Suffolk, VA 23435

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It was a busy tax season, and fortunately, for many of us the hustle and bustle associated with that time of year has ended. After assisting a number of clients with questions pertaining to the deductibility of care expenses on a personal tax return, I decided it would be good to relay common concerns pertaining to the deductibility of care expenses for a loved one. To deduct care services, it is important to note who and what services you may include in the deduction.

### **1. Whose Medical Expenses May You Deduct?**

The IRS has indicated that, generally, you may "include medical expenses you pay for yourself, as well as those you pay for someone who was your spouse or your dependent when the services were provided or when you paid for them." While determining whether you were married at the time the expense was incurred or paid for is relatively simple, determining whether a person qualifies as a dependent is often more challenging.

IRS Publication 501 sets for the requirement that in order to claim someone as a dependent on your tax return, that person must be a "qualified child" or a "qualified relative." Generally, our clients seek to determine whether their loved one is a "qualified relative." To qualify as a "qualified relative," you must determine that 1) the individual is not your qualifying child or the qualifying child of another, 2) the individual lives with you all year as a member or your household or falls within a list of relatives that does not need to live with you, 3) the individual has gross income below \$3,900 for the tax year 2013, and 4) that you have provided more than half of their total support during the calendar year. That said, the IRS, in Publication 502, allows someone to include the medical expenses associated with an individual who, in addition to other things, would otherwise have been your dependent except that they failed to satisfy the gross income test.

### **2. What Medical Expenses May Be Deducted?**

Despite what many of clients may have been told in the past, not all expenses deemed "medical" are included and IRS Publication 502 sets forth a very specific list of expenses that may be included in the medical expense deduction. Of

## **DEDUCTING CARE EXPENSES: WHAT YOU SHOULD KNOW – Cont'd**

primary concern to our clients is the cost of in-home care, assisted living, or a nursing home. While nursing services and nursing home costs are specifically included by the IRS, the costs associated with an assisted living facility must be “qualified long-term care services.”

To qualify as qualified long-term care services, the services must be necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative services, and maintenance and personal care services that are required by a chronically ill individual and provided pursuant to a plan of care prescribed by a licensed health practitioner. The IRS then defines “chronically ill individual” as an individual who, within the previous 12 months, has been certified by a licensed health care practitioner as being unable to perform at least two activities of daily living (eating, toileting, transferring, bathing, dressing, and continence) without substantial assistance from another individual for at least 90 days due to a loss of functional capacity or requires substantial supervision to be protected from threats to health and safety due to severe cognitive impairment.

It is important to note that while someone’s medical expenses may be included in your deduction; you may only deduct those medical expenses that exceed 10% of your adjusted gross income, or 7.5% of your adjusted gross income if you or your spouse was born before January 2, 1949.



### **Fox Pens**

**Hook Law Center:** Kit Kat, what are fox pens?

**Kit Kat:** Well, I just learned about them recently. I, too, had never heard of them either. Fox pens are an attempt at providing hunters, hounds, and foxes with a humane way of hunting. I say an “attempt” because the fox is given a place to hide (usually in a pipe in the pen) in a fenced enclosure of at least 100 acres. Then hunting dogs are released in the enclosure to “hunt” them. I’ll leave it to you to decide whether this is humane or not. The theory is that the fox won’t get hurt, and the hound is being trained in a traditional sport. However, in reality, some foxes end up getting killed. Unfortunately, my beloved Virginia as well as the Carolinas and Georgia have almost 60% of the pens nationwide. Florida outlawed them in 2010. Obviously, there is a lot of controversy surrounding this topic.

So, as a compromise to both sides of the issue, the Virginia General Assembly passed a law in March 2014 to phase out the pens in 40 years. However, neither side is happy. Proponents say it is a time-honored sport, and opponents like Carter Dillard, director of litigation for the Animal Legal Defense Fund, say it is “...a gentrified

version of dog fighting." Opponents want the sport abolished immediately. Stay tuned as both sides vow to fight the new law.

(Ken Maguire, "Virginia Law Phasing Out 'Fox Pens' Vexes All Sides," The New York Times, 4-18-14)

## Upcoming Events

- Shannon Laymon-Pecoraro will be attending the National Association for Medicare Set Aside (NAMSAP) Conference in Las Vegas, NV on **May 8-9, 2014**.
- Andrew Hook will be speaking at the Virginia Benefits Program Organization (BPRO) Spring Conference on **May 8, 2014** in Williamsburg, VA. Mr. Hook, Natalie Hale, CECC and Jennifer Woods-Pagano, CECC will be attending the three-day conference.
- Jessica Hayes will be speaking on Special Needs Trust at the Virginia Beach Central Library on **May 10, 2014** from 2:00 pm to 4:15pm.
- Andrew Hook will be speaking on Services Available to Seniors at the Major Hillard Library on **May 13, 2014** at 10:30am.
- Andrew Hook will be speaking on Financial Services Long-Term Care Insurance at the National Academy of Elder Law Attorneys (NAELA) Conference on **May 16, 2014** in Scottsdale, AZ. Mr. Hook will be attending the two-day conference.

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