

# 2008 Income Tax Deduction Survey

## Preface

Earlier this year (2008) the ORANJ Finance Committee circulated a questionnaire on practices regarding the deductibility of real estate tax and medical expense payments on New Jersey and U. S. personal income tax returns of residents of the 24 member CCRCs of ORANJ. The 19 CCRCs that responded provided an answer to almost all 11 questions on the survey. As there was intentionally some redundancy in the questions, this report condenses the responses (question-by-question survey responses are listed separately).

[Addendum – Survey Questions with Typical Responses and Notes](#)

It must be stated that these responses represent practices of the CCRCs in informing their residents and do not in any way suggest providing tax advice or recommendations. The same caveat applies to all information presented in this report. It is intended to inform residents as they make their own decisions, and for this they are advised to consult with appropriate tax advisors.

## Survey Results

### Real Estate tax payments that might be deductible

- All 19 CCRCs reported paying taxes on non-exempt facilities (Assisted Living and skilled Nursing facilities are typically exempt).
- For 15 CCRCs, Real Estate tax payments (typically based on the square footage of their residence) are included in monthly service fees. For four CCRCs they are billed separately.
- Two CCRCs specifically indicated that residents may only apply for NJ tax rebate but not take a real estate tax deduction.

### Medical expense payments that might be deductible

Of the 19 CCRCs that responded, 11 indicated that part of the entry fee may be considered as a medical expense deduction; the other 8 said “NO”.

With respect to monthly fees, 16 CCRCs indicated that part of the monthly fees (typically based on unreimbursed health care expenses per resident) may be considered as a medical expense deduction; 12 of these allocated the same amount for each resident and 4 specified a percentage of the monthly service fees that would be applicable to pay medical expenses. The 3 remaining CCRCs, which have fee-for-service contracts, indicated that none of the monthly service fees went to pay medical expenses.

### Background Information

The following information, excerpted from selected governmental publications and other references, is pertinent to the deductibility of real estate tax and medical expense payments made by CCRC residents.

## New Jersey Real Estate Tax Deductions

**The 2007 Form NJ-1040 Line by Line Instructions – page 30** – under “Property Tax Deduction/Credit (lines 36 and 48)” – states that “Eligible homeowners and tenants who pay property taxes, either directly or through rent, qualify for either a deduction or a refundable credit.” Furthermore, on page 31 – under “Continuing Care Communities” – it is stated that “As a resident in a continuing care retirement community, you may qualify for a property tax deduction or credit as a homeowner if the continuing care contract requires you to bear the proportionate share of property taxes attributable to your unit.”

## Federal Real Estate Tax Deductions

**The 2007 Instructions for Schedules A & B (Form 1040)** – page A-5 – under “Line 6 Real Estate Taxes” – indicates that taxes you paid on real estate that you own that is not used for business are deductible – and notes the same deductibility criteria that must be met per Publication 530.

**IRS Publication 530 – Tax Information for First Time Homeowners** – page 2, under “What You Can and Cannot Deduct”- indicates that state and local government real estate taxes paid by a homeowner are deductible on one’s federal income tax return. Deductible real estate taxes must be based on the assessment value of the property; the taxing authority must charge a uniform rate on all property in its jurisdiction; and the tax must be for the welfare of the general public and not a payment for a special privilege granted or service rendered to a homeowner. [Note the standing of CCRC residents is not specifically addressed.

## New Jersey Medical Deductions

The Form NJ-1040 Line-by-Line Instructions – Page 29, 30 – under “Line 30 – Medical Expenses – states that certain medical expenses that you paid during the year are deductible to the extent that they were not reimbursed and to the extent that they exceed 2% of your income. It is noted that “As a general rule, medical expenses allowed for Federal income tax purposes will be allowed for New Jersey income tax purposes.”

## Federal Medical Deductions

The 2007 Instructions for Schedules A & B (Form 1040) – page A-1 – under “Medical and Dental Expenses” – indicate that one can deduct only the part of medical and dental expenses that exceeds 7.5% of one’s adjusted gross income. The Instructions state that IRS Publication 502 discusses in detail the types of expenses that one can and cannot deduct.

IRS Publication 502 – Medical and Dental Expenses – page 10 – under “Lifetime Care – Advance Payments” – allows as a deduction the part of the lump sum or monthly payments which is properly allocable to medical care under an agreement with a retirement home – which requires their payment in return for the promise to provide lifetime care that includes medical care. It is also noted that a resident can use a statement from the retirement home (based on prior experience or on information from a comparable home) to prove the amount properly allocable to medical care.

## Court Cases and Other Useful References

### Addendum - Court Cases and Other Useful References

**Baker & Baker** found that CCRC residents are not required to use the actuarial method and may use the percentage method to determine portions of the monthly service fees that are allocable to medical care. **Finzer & Finzer** found that no part of the refundable portion of the entrance fee may be considered as a medical deduction, as it is really a loan to the CCRC. **Three IRS Rulings** (1975, 75-302; 1976, 76-481; and 1993, 93-72), define the deductibility of medical care payments at a CCRC more specifically. In essence, current medical expense payments for present and future medical services are only deductible if they are pursuant to a lifetime care contract. That portion of both lump sum and monthly fee payments made in connection with such life-care residence are deductible in the year paid, to the “extent that it is properly allocated to medical care.” Furthermore, any refund of the fee attributable to a prior year medical deduction would have to be included in the taxpayer’s gross income for the year in which the refund was received. **Walker & Turner** (1998) traces the history (including court rulings) of the medical expense deduction and examines its tax effects on residents of a CCRC. It also notes that since residents bear the burden of proving that a claimed deduction is valid, it behooves them to determine whether the CCRC has calculated the medical expense allocation of their fees properly.

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