

## **2009 INCOME TAX GUIDE**

◆◆ *35th Year of Publication* ◆◆

**The Arc Michigan®**

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2009 Income Tax Guide prepared for persons  
supporting children and/or adults with intellectual  
and developmental disabilities.

*Prepared for persons supporting children and/or adults with intellectual and developmental disabilities*

# **2009 INCOME TAX GUIDE**

*\*for use in preparing your federal return for tax year 2008*

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## ***Introduction***

This authoritative income tax guide has proven invaluable for families and individuals concerned about tax deductions and credits related to the care and support of a child or an adult with an intellectual or developmental disability. After thirty-four issues, this booklet has become an annual “must-have” for the informed parent. Many of the figures contained within this guide are calculations by CCH, Inc., based on its Consumer Price Index estimates due to official IRS tables not being released in time for either publication.

Thomas F. Kendziorski, Attorney and Executive Director, The Arc of Oakland County, Troy, Michigan accomplished this revision and updating for the 2009 edition of the Tax Guide. **Larry Larmee**, C.P.A., of Integrity Financial Planning and Asset Management, LLC, Bingham Farms, Michigan (telephone: 248 646-6044) graciously provided expert technical tax law assistance.

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*This guide is available free of charge on-line at <http://www.arcmi.org>. The guide may be printed without permission for use by members and friends of The Arc Michigan.*

The information contained within the 2009 INCOME TAX GUIDE concerning your income tax and special deductions and/or credits is not intended to be all-inclusive. Although this guide is designed to provide accurate guidance, The Arc Michigan as publisher is not engaged in rendering legal, accounting or other professional service. Please refer to the sources referenced for complete information. Bring this Tax Guide to your appointment with a tax consultant to facilitate preparation of your return. Current materials were also verified through the 2009 U.S. MASTER TAX GUIDE, Commerce Clearing House, Inc., Chicago, IL.

## Table of Contents

<b>I.</b>	<b>Highlights of Tax Changes for Tax Year 2008.....</b>	<b>6</b>
<b>II.</b>	<b>Charitable Contributions .....</b>	<b>12</b>
	• <b>Deduction for Itemizers.....</b>	<b>12</b>
	• <b>Volunteer Activities .....</b>	<b>13</b>
	• <b>Convention Delegates.....</b>	<b>13</b>
	• <b>Clothing and Household Items .....</b>	<b>13</b>
<b>III.</b>	<b>Medical Expense Deductions .....</b>	<b>14</b>
	• <b>In General.....</b>	<b>14</b>
	• <b>Special Schools and Special Training for Children with Disabilities.....</b>	<b>14</b>
	• <b>Medicine, Drugs and Vitamins .....</b>	<b>14</b>
	• <b>Sheltered Workshop Cost.....</b>	<b>14</b>
	• <b>Transportation .....</b>	<b>15</b>
	• <b>Cost of Special Equipment to Alleviate a Disability (Including Installation) .....</b>	<b>15</b>
	• <b>Lifetime Care Payments.....</b>	<b>16</b>
	• <b>Aids for Persons with Visual Impairments.....</b>	<b>16</b>
	• <b>Expenses for Patterning Exercises .....</b>	<b>16</b>
	• <b>Wages for Nursing Service.....</b>	<b>16</b>
	• <b>Special Telephone.....</b>	<b>16</b>
	• <b>Close-Captioned TV.....</b>	<b>16</b>
	• <b>Removal of Lead-Based Paint.....</b>	<b>17</b>
	• <b>Disposable Diapers.....</b>	<b>17</b>
	• <b>Expenses Incurred for a Person with an Intellectual Impairment Residing in a Group Home or Other Community Setting.....</b>	<b>17</b>
	• <b>Special Food and Beverages.....</b>	<b>17</b>
	• <b>Legal Fees .....</b>	<b>17</b>
	• <b>Medical Conferences Attended by Parent .....</b>	<b>17</b>
	• <b>Miscellaneous .....</b>	<b>18</b>
<b>IV.</b>	<b>Taxibility of Supplemental Security Income (SSI).....</b>	<b>18</b>
<b>V.</b>	<b>Can SSI Recipients be Claimed as Dependents? .....</b>	<b>18</b>
<b>VI.</b>	<b>Taxibility of Social Security Benefits .....</b>	<b>19</b>

<b>VII.</b>	<b>Payments from the Michigan D.H.S.</b> .....	<b>19</b>
	• <b>GA, ADC, ENP, FS</b> .....	<b>19</b>
	• <b>Independent Living Services Program (Formerly, “Adult Home Help” or “Chore”)</b> .....	<b>20</b>
<b>VIII.</b>	<b>Family Support Subsidy (Michigan)</b> .....	<b>21</b>
<b>IX.</b>	<b>Disability-Related Tax Credits</b> .....	<b>21</b>
	• <b>Child and Disabled Dependent Care Credit</b> .....	<b>21</b>
	• <b>Work Opportunity Tax Credit</b> .....	<b>22</b>
	• <b>Disabled Access Credit</b> .....	<b>23</b>
	• <b>Low-Income Housing Credit</b> .....	<b>23</b>
	• <b>Credit for Persons Who are Elderly or Who are Permanently Disabled</b> .....	<b>23</b>
<b>X.</b>	<b>Dependency and Sheltered Workshop School Income</b> .....	<b>23</b>
<b>XI.</b>	<b>Deduction for “Impairment Related Work Expenses”</b> .....	<b>24</b>
<b>XII.</b>	<b>Amounts Expended by State for Training, Education, Room and Board are Not “Support” – Dependent Exemption and Deduction is Available</b> .....	<b>24</b>
<b>XIII.</b>	<b>Working SSI/SSDI Recipients: to File or Not to File?</b> .....	<b>25</b>
<b>XIV.</b>	<b>Foster Care Providers</b> .....	<b>25</b>
<b>XV.</b>	<b>Property Tax Credit - Michigan</b> .....	<b>26</b>
<b>XVI.</b>	<b>Adoption Subsidy &amp; Expenses Credit</b> .....	<b>26</b>
<b>XVII.</b>	<b>Appeal Rights</b> .....	<b>26</b>
<b>XVIII.</b>	<b>Appeal Within The Service</b> .....	<b>27</b>
<b>XIX.</b>	<b>Letter Rulings</b> .....	<b>27</b>
<b>XX.</b>	<b>Additional Taxpayer Protections</b> .....	<b>28</b>

## Highlights of Tax Changes for Tax Year 2008

Although the year 2008 produced some significant income tax law changes, not much affected persons supporting children and/or adults with intellectual impairment and other related developmental disabilities. The Emergency Economic Stabilization Act of 2008, among other things raised the alternative minimum tax (AMT) exemption amount, allowed for an additional standard deduction for real property taxes, and extended the deduction for qualified tuition and related expenses through the end of 2009. One aspect of the Housing Assistance Tax Act of 2008 increased the state housing credit volume cap for the low-income housing credit for 2008 and 2009. Finally, the Economic Stimulus Act of 2008 provided some taxpayers, including many receiving Social Security disability benefits (not SSI) with a rebate check ranging from \$300 to \$1,200.

The election season may be over, but the economic crisis most certainly is not. Our newly elected President Barack H. Obama will indeed have his hands full.

**Reminder:** Governor Granholm signed legislation in 2006 creating a refundable Michigan Earned Income Tax Credit equaling 10% of the federal credit beginning with tax year 2008 (20% in 2009). You must file a Michigan income tax return to receive this credit.

This tax booklet updates the usual myriad of numbers and dollar amounts changed due primarily to the increase in the overall cost-of-living.

This guide is for members of The Arc, and is not intended to cover every circumstance. The topics and information are provided as a “heads up” for taxpayers as we sit down during 2009 to figure our 2008 income taxes.

Professional tax advice is the key to detailed information. The highlights described below are important to each taxpayer. Read and discuss each carefully with your tax advisor to determine how things relate to your specific tax situation. This listing is NOT intended to be all-inclusive.

**★ Individual Tax Rates** - The tax brackets for tax year 2008 remain at: 10%, 15%, 25%, 28%, 33% and 35%. The 10% tax bracket, for married couples filing jointly, has the first \$16,050 of taxable income subject to this rate (\$8,025 for single persons). For married couples filing jointly, the first \$65,100 of taxable income is subject to the 15% rate (\$32,550 for single persons). Likewise, income over this amount and up to \$131,450 (\$78,850 for single persons) will be taxed at the 25% rate. Income over \$131,450 for married filing jointly (\$78,850 for single persons) and up to \$200,300 (\$164,550 for single persons) will be taxed at the 28% rate. Income over \$200,300 for married filing jointly (\$164,550 for single persons) and up to \$357,700 (both for married-joint, and single) is taxed at the 33% rate. Finally, all income over \$357,700 for both joint filers and single persons is taxed at the 35% rate.

**★ Personal Exemptions** - Adjusted for inflation each year, the personal exemption rate for tax year 2008 is \$3,500.

Senior citizens are unable to claim extra exemptions for being 65 or older. A person who is blind is also not allowed an extra exemption.

Reducing the available exemption amount phases-out the personal exemptions of higher income taxpayers. For tax year 2008, the phase-out thresholds for joint/married filers or a surviving spouse begin at \$239,950 (and for single persons the figure is \$159,950) Other filing status situations have differing numbers. (Section 133, 2009 U.S. Master Tax Guide)

★ **Personal Exemptions (Michigan)** - A parent of a minor child with a severe mental and/or physical disability is allowed to claim a special “Totally and Permanently Disabled” exemption and a regular “Child 18 and Under” exemption as well. The definition for what constitutes a disability is that used by the Social Security Administration (42 U.S.C. 416) for the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) programs.

★ **Social Security Tax Base** - The wage base for Social Security tax purposes will increase from \$102,000 in 2008 to \$106,800 for 2009. The tax rate for both employers and employees is 7.65% for both 2008 and 2009. The earnings base for the self-employed is the same as above, but the tax rate is 15.3%. Self-employed workers may deduct from gross income half of the Social Security tax as a business expense. (Sections 49 and 923, 2009 U.S. Master Tax Guide)

All wages and salaries are subject to the MEDICARE portion of the Social Security tax: 1.45% (employees), 2.9% (self-employed). The minimum MEDICARE Part B monthly premium is \$96.40 for 2008 and 2009, which is deductible as a medical expense.

★ **Standard Deductions** - Adjusted annually for inflation, the flat standard deduction for non-itemizing taxpayers is \$10,900 for joint filers, \$8,000 for heads of households, \$5,450 for single persons, and \$5,450 for married filing separately.

An extra standard deduction of \$1,050 (\$1,100 in 2009) exists for each married person age 65 and over and each blind taxpayer. The extra deduction is \$1,350 (\$1,400 in 2009) if the blind or elderly person is single. Two additional amounts will be allowed to an individual who is both over 65 and blind. Each is in addition to the full standard deduction. (Section 126, 2009 U.S. Master Tax Guide)

A child under age 18 during 2008 can use \$900 (\$950 in 2009) of his/her standard deduction to offset unearned income. The next \$900 is taxed at the child’s own tax rate, unless the following election is made:

Parents may elect to include on their return the unearned income of a child under age 18 whose income is between \$900 and \$9,000 (\$950 and \$9,500 in 2009) and consists solely of interest and dividends. Parents making this election are taxed on their child’s income in excess of \$1,800 (\$1,900 in 2009). The child is treated as having no gross income and does not have to file a tax return if the election is made for the tax year. The election is not available if estimated tax payments have been made in the child’s name and taxpayer identification number for the tax year. Form 8814 is used to make this election and to report the child’s interest and dividends on the parent’s return. (Section 114, 2009 U.S. Master Tax Guide)

★ **Social Security Number-Children** - Minors claimed as dependents must have a Social Security number. (Section 116, 2009 U.S. Master Tax Guide)

★ **Return for Persons with a Disability** -A guardian for a minor or a legally disabled person is required to file Form 1040, Form 1040A or Form 1040EZ as an agent for such person if the individual would be required to file a return. An agent making the return for another should file Form 2848 (“Power of Attorney and Declaration of Representative”) with the taxpayer’s return. Please take special note that both the agent and the taxpayer for whom the return is made may be liable for penalties. (Section 504, 2009 U.S. Master Tax Guide)

★ **Child Tax Credit (“CTC”)** - Taxpayers who have qualifying children (i.e., a child, descendant, step-child, or eligible foster child who is a U.S. citizen and for whom the taxpayer may claim a dependency exemption and who is less than 17 years old as of the close of the tax year), are entitled to a “Child Tax Credit.” The amount of the credit is \$1,000 per qualifying child for tax years through 2010. The credit will decrease to \$500 per child in tax year 2011.

Beginning in 2005, the CTC adopted the uniform definition of a qualifying child under IRC §152, as amended by the Working Families Tax Relief Act of 2004. Although the relationship requirements remain the same, the taxpayer will no longer have to prove that they supplied over one-half the support but rather that the child did not provide more than one-half of his or her own support. The same is true for the residence requirement. The qualifying child need only have the same principal place of abode as the taxpayer for more than six months in the year. This same definitional language also applies to the [Earned Income Credit](#) (see Page 8), and the [Child and Disabled Dependent Care Credit](#) (see Page 21).

This credit begins to phase out when the modified adjusted gross income reaches \$110,000 for joint filers, \$55,000 for married couples filing separately, and \$75,000 for single persons.

Taxpayers with three or more qualifying children are entitled to an alternative method for calculating this credit. (Section 1302, 2009 U.S. Master Tax Guide)

★ **Volunteer Mileage** - The charitable deduction for individuals using their passenger cars in volunteer work for qualified charities is 14¢ per mile, plus parking fees and tolls, instead of actual expenses. This rate is not indexed for inflation. (Section 1061, 2009 U.S. Master Tax Guide)

★ **Medical Deductions** - Unreimbursed medical expenses are deductible after they exceed 7.5% of adjusted gross income. (Section 1015, 2009 U.S. Master Tax Guide)

★ **Tax Rates for Trusts & Estates** - For tax year 2008, the following rates apply to income of trusts and estates:

<u>Taxable Income</u>	<u>Rate</u>
0 - 2,200	15%
2,200 - 5,150	25%
5,150 - 7,850	28%
7,850 - 10,700	33%
10,700 - over	35%

Trusts pay income tax using the same estimated tax rules as individuals. (Section 19, 2009 U.S. Master Tax Guide)

★ **Estate Tax Chart (years 2002-2011)**

<u>Year</u>	<u>Top Estate Tax Rate</u>	<u>Exemption Amount</u>
2002	.....50%	\$1 Million
2003	.....49%	\$1 Million
2004	.....48%	\$1.5 Million
2005	47%	\$1.5 Million
2006	.....46%	\$2 Million
2007	.....45%	\$2 Million
2008	.....45%	\$2 Million
2009	.....45%	\$3.5 Million
2010	Repealed	N/A
2011	.....55%	\$1 Million

★ **Earned Income Credit (“EIC”)** - The EIC is a refundable credit that is available to certain low-income individuals who have earned income, meet the adjusted gross income thresholds, and do not have more than a certain amount of disqualified income for purposes of individuals having excess investment income. Taxpayers claiming the credit must provide a Social Security number and that of their spouse. Failure to do so will be treated as a mathematical error.

Different credit percentages and phaseout percentages are provided for low-income individuals who have no qualifying children (see [CTC](#), page 8, for definitional language), one qualifying child, and more than one qualifying child. An individual who is a qualifying child may not also claim such credit in the same tax year.

An individual who does not have a qualifying child may be eligible for this credit if: (1) the principal residence of such individual is in the United States for more than one-half of the tax year, (2) the individual (or the spouse of the individual) is at least age 25 and under age 65 before the close of the tax year, and (3) the individual is not claimed as a dependent by another.

Married persons must file a joint return in order to claim this credit. A married person living apart from a spouse under certain circumstances need not file a joint return to claim the credit. Except in the case of death, the credit may be claimed only for the full 12-month tax year.

For 2008, the maximum credit is as follows: one qualifying child - \$2,917; two or more qualifying children - \$4,824; with no qualifying children, \$438 is the maximum credit.

The EIC is reduced by a limitation amount determined by multiplying the applicable phaseout percentage by the excess of the amount of the individual’s adjusted gross income (or earned income, if greater) over the phaseout amount. The earned income amount and the phaseout amount are adjusted yearly for inflation.

The amount of the earned income credit that may be received as an advance payment for individuals who have one or more qualifying children is limited to 60% of the maximum credit available to an individual with one qualifying child. The advance payment of the earned income credit is not available to an individual without a qualifying child. Taxpayers must use either Form 1040, Schedule EIC, or Form 1040A, Schedule EIC, or Form 1040EZ to determine whether they are eligible for the credit. A taxpayer claiming the Earned Income Tax Credit must include their taxpayer identification number and that of their spouse (if married) and any qualifying children on their income tax return. EIC payments are subject to interception by the Treasury Department to reimburse a state for any unpaid child-support obligations. (Section 1375, 2009 U.S. Master Tax Guide)

★ **Adult Home Help Services** - Adult Home Help Services (AHHS) is taxable income to parents who are the care providers. Please refer to page 22 for details.

★ **Standard Mileage Deduction** - The standard business mileage deduction is 50.5¢ per mile from 1/1/08-6/30/08, and 58.5¢ from 7/1/08-12/31/08. The IRS has settled on a rate of 55¢ per mile for 2009. (Section 947, 2009 U.S. Master Tax Guide)

★ **Business Expenses** - Except for certain statutory employees (generally, salespersons soliciting orders), employees are unable to deduct unreimbursed business expenses in arriving at adjusted gross income (AGI). Instead, this deduction is a miscellaneous itemized deduction. Such deductions are deductible only to the extent they exceed 2% of AGI.

No deduction is allowed for travel or other costs of attending a convention, seminar or similar meeting **unless** the activity directly relates to a trade or business of the taxpayer. For example, expenses for registration fees, travel and transportation costs, meals and lodging expenses, etc., incurred in connection with attending an investment seminar or other activity not related to a taxpayer's trade or business are not deductible.

In addition, no deduction is allowed for expenses of attending a trade or business connected convention, seminar, or similar meeting that does not offer significant business-related activities, such as participation in meetings, workshops, lectures, or exhibits held during the day. Thus, the cost of attending a seminar would not be deductible if participants are merely furnished videotapes of business-related lectures to be viewed at their own convenience.

Many other specific requirements exist relative to business expenses; so, it is always a good idea to seek the counsel of a qualified tax consultant for more detail. (Sections 910-919, 1011-12, 2009 U.S. Master Tax Guide)

### ★ **Individual Retirement Accounts (“IRAs”)**

The rules for traditional IRAs are complex. Individuals also have access to Roth IRAs and Education IRAs (discussed below). The word to the wise is to consult a tax professional about this area.

Generally, an individual who receives compensation (“earned income” in the case of a self-employed individual) that is includable in gross income may establish and make contributions to his/her own IRA. Compensation includes alimony, but does not include pensions, annuities or other forms of deferred compensation.

For tax years 2005-2007, the maximum combined contribution to a traditional IRA and Roth IRA is generally limited to \$4,000 (for 2008 and 2009 it will be \$5,000, and after that it will be adjusted for inflation). An individual who will be at least 50 years old by the end of tax year 2008 is able to make an additional maximum contribution of \$1,000 to either a traditional or Roth IRA.

IRA earnings are still tax-free for everyone until withdrawal. Distributions from an IRA to a participant before he or she has reached age 59½ are generally subject to a 10% penalty similar to such a requirement within qualified plans (e.g., 401(k)'s, 403(b)'s, or 457's). The distributions to an IRA owner must commence no later than April 1st following the calendar year in which the owner reaches age 70½. Finally, there are several penalty-free withdrawals allowed. For example: first-time home buyers, qualified higher education expenses, unemployed individuals who pay medical premiums, and for a participant who dies or becomes disabled.

- **“Roth IRA”** - an alternative to the traditional IRA. Instead of the contributions being deductible, the tax advantages will be “backloaded,” that is; the buildup of interest, dividends and appreciation within this type of IRA may be tax-free depending on how and when the taxpayer withdraws money from the account. Tax-free withdrawals typically will not be allowed within the five-taxable-year period beginning with the first taxable year for which a contribution was made. A “Roth IRA” must be designated as such when it is established.

Funds from a “Roth IRA” may be distributed tax-free if the individual has owned the IRA for five years prior to the year of withdrawal and: (1) the individual attains age 59½; (2) it is to the beneficiary or estate, after the death of the individual; (3) it is on account of the individual’s becoming disabled; or (4) made for qualified first-time homebuyer expenses.

Contributions to “Roth IRAs” are subject to income limitations. The maximum yearly contribution that can be made to a “Roth IRA” is phased out for single taxpayers with modified adjusted gross income above \$101,000 (\$159,000 for married filing jointly). No contribution to a “Roth IRA” is allowed once the modified adjusted gross income exceeds \$116,000 for the single taxpayer (\$169,000 for married filing jointly).

“Roth IRA” contributions may be made even after the individual for whom the account is maintained has reached age 70½. The regular IRA rules requiring minimum distributions to persons over 70½ do not apply.

>>(see: sections 2157 and 2168-2180G, 2009 U.S. Master Tax Guide; and “1997 Tax Law Summary” by NPI)

- **Coverdell Education Savings Account (CESA) (formerly: Education IRA)** - designed to be used by those saving for a child’s (under age 18 or with special needs) future educational expenses. Generally speaking, contributions to CESA’s are treated as gifts to the beneficiaries, but distributions are excludable from gross income once a distribution for education expenses is made. Annual non-deductible contributions of up to \$2,000 per year (excluding rollovers) per beneficiary may be made until the time the beneficiary turns age 18.

Withdrawals to pay qualified higher education expenses of the child (the designated account beneficiary) during the year are tax-free. The annual contribution is phased-out for joint filers with modified adjusted gross income at or above \$190,000 and less than \$220,000 (at or above \$95,000 and less than \$110,000 for single filers).

“Qualified expenses” are those incurred within public or private (including religious-based) elementary and secondary school settings. Such expenses incorporate services in the case of a special needs beneficiary, which includes tutoring and expenses for room, board and/or transportation. Although the IRS has not released a formal definition of a “special needs beneficiary,” it will probably use a form of the following: “an individual who because of a physical, mental or emotional condition (including a hearing disability) requires more time to complete his or her education.” Please consult IRS Publication 553 in January 2008. The age limit mentioned earlier in this section does not apply to beneficiaries with special needs. A qualified tax professional should always be consulted for specific details on this topic. (Section 898, 2009 U.S. Master Tax Guide) (Publication 970)

- ★ **Dependency Exemption For Students** - A student who is 24 years or older before the end of the year may not be claimed as a dependent unless his/her gross income is less than the exemption amount (\$3,500 for 2008). (Section 143, 2009 U.S. Master Tax Guide)

★ **Self-Employed Health Insurance Deduction** - Persons in this situation may deduct from gross income 100% of amounts paid for health insurance coverage for themselves, spouses, and dependents. (Section 908, 2009 U. S. Master Tax Guide)

★ **Domestic Employees** - The cash wage threshold for reporting and paying Social Security taxes for domestic workers, such as babysitters, housekeepers, and gardeners is \$1,600 a year (\$1,700 for 2009). Employers must report Social Security and federal unemployment tax obligations on their federal income tax forms (1040/1040A) using Schedule H. (Section 2650, 2009 U. S. Master Tax Guide)

The general wage threshold for reporting and paying Michigan and federal unemployment taxes is \$1,500 per calendar quarter during 2008, except if the total wages are paid to household employees (i.e., “domestic labor”). The wage threshold then becomes \$1,000 where state and federal unemployment taxes are due on all wages. (Section 2661, 2009 U.S. Master Tax Guide)

**Beware!** This section may also apply to families that receive respite care dollars (or other such payments termed “vouchers”) either directly from a county Community Mental Health Agency/Authority (“CMHA”) or through a contracted services entity. If the CMHA or contracted services entity pays the money directly to the parent, who in turn pays a respite provider, the threshold of \$1,000 may be exceeded not only by virtue of the CMHA dollars, but also by the parents’ own money spent to supplement respite services.

## CHARITABLE CONTRIBUTIONS

The Pension Protection Act of 2006 allows donors to make certain charitable gifts from a traditional or Roth IRA without having to pay income tax on the distribution. To make an IRA gift to a non-profit organization and not incur income tax on the donation:

- the donor must be at least 70½ years of age;
- the gift must be made directly from the IRA to the public charity (such as, The Arc);
- the amount donated from the IRA cannot exceed \$100,000 in any one year; and,
- the gift must be made either in 2008 or 2009.

It is imperative that the charity provide the donor with a specific and contemporaneous written acknowledgement of the gift. (IRC Section 1.170A-13(f) (Section 1058, 2009 U.S. Master Tax Guide)

### A. Deduction for Itemizers

Only persons who itemize deductions are allowed to deduct their charitable contributions. If a contribution is \$250 or more, it must be substantiated by a contemporaneous written acknowledgment from the charitable organization. The taxpayer must obtain this written confirmation *before* filing the tax return. Generally, the acknowledgment must include the amount of cash and a description of non-cash contributions, together with a description and a good-faith estimate of the value of any goods or services received for the contributions.

**NEW!** >>> The Pension Protection Act of 2006 changes the cash-contributions-to-charities substantiation rules. In tax years that begin after August 17, 2006 (note: for most of us this means calendar year 2007, or beginning 1/1/07), no deduction is allowed for contributions of cash, checks or other monetary gifts, *regardless of the amount*, unless the donor maintains either: (1) a bank record, or (2) a receipt, letter, or other written communication from the charity, indicating the charity’s name, the contribution date and amount. (Section 1070A, 2009 U.S. Master Tax Guide)

Contributions charged to a bank credit card are deductible in the year charged even though paid in a later year. Contributions made by payroll deduction may be substantiated with an employer-provided document, (e.g., a pay-stub or W-2) showing the amount deducted and a donee-prepared document stating that there were no goods or services provided, in whole or part, as consideration for such contributions. Substantiation is required only if \$250 or more is deducted from a single paycheck. (Sections 1058-1071, 2009 U.S. Master Tax Guide)

### **B. Volunteer Activities**

The value of services rendered to a charitable institution/organization is not deductible as a contribution, however, an out-of-pocket, unreimbursed expense, such as for transportation, travel, uniform, telephone, equipment, etc., incurred in rendering such a service is deductible as a contribution. This includes reasonable payments for necessary meals and lodging while away from home overnight donating services to a "qualified" charitable organization. (The Arc Michigan is a qualified charitable organization and this section applies to volunteer advocates.)

The cost of travel on behalf of charitable organizations is deductible as long as there is no significant amount of personal pleasure, recreation or vacation involved. In general, miscellaneous business/travel expenses are allowable for individuals only to the extent that the expenses exceed 2% of adjusted gross income. (Refer: Section 166, CCH Explanation of Tax Reform Act of 1986, p. 87); (IRC, Section 170)

In lieu of a deduction based on the actual expenses incurred in using an automobile for transportation, the IRS standard mileage rate is fourteen (14) cents per mile. A taxpayer must use this rate when computing the cost of operating an automobile where such transportation expense is deductible as a charitable contribution. (Section 1061, 2009 U.S. Master Tax Guide)

Parking fees and tolls are also deductible, but depreciation and insurance are not deductible as part of the contribution.

### **C. Convention Delegates**

Persons representing The Arc, their church, or an American Legion Post at a convention for that qualified charitable organization, may deduct as charitable contributions the unreimbursed costs of attending the convention. However, the mere fact a member of a particular church or charitable organization attends a convention "on his/her own" rather than as delegate, does not provide an entitlement to deduct expenses unless incurred while actually performing some service at the convention. (IRC Section 170)

### **D. Clothing and Household Items**

For contributions made after August 17, 2006, the deduction for a donation of clothing and household items will be allowed only if the donated property is in good, used condition or better. "Household items" do not include food, paintings, antiques, other objects of art, jewelry, gems or collections. The IRS can deny a deduction for donated property that is of minimal value. These restrictions do not apply if: (1) a deduction of more than \$500 is claimed for the single clothing or household item, and (2) a qualified appraisal for that item is attached to the income tax return. (Section 1061, 2009 U.S. Master Tax Guide)

## MEDICAL EXPENSE DEDUCTIONS

### A. In General

Unless otherwise noted, information on most medical deductions can be located in *IRS Publication 502*.

It is well established that, under the present tax law, taxpayers may include in computing their medical expense deductions amounts paid on behalf of a dependent or a person who could be claimed as a dependent except for the fact that he or she had income of \$3,500 or more.

Medical insurance premiums are just another medical expense, subject to the seven and one-half percent (7.5%) medical expense deduction floor.

### B. Special Schools and Special Training for Children with Disabilities

As you consider this area of “medical expenses,” keep in mind that some deductions may be proper under the IRS rules, but may not necessarily conform to the receipt of Supplemental Security Income (SSI) benefits or Medicaid due to income limits. (*Refer also to page 17, [part “O,”](#) and page 24, “[Amounts Expended by State ...](#)”*)

You may deduct as “medical expenses” the costs of:

1. A special school attended by your child if the principal purpose of the schooling is to *alleviate his or her disability* (including tuition, room and board as applicable); (Section 1016, 2009 U.S. Master Tax Guide) (IRC Section 213)
2. Tests and evaluations at the special school;
3. Special instruction or training such as Braille, lip reading, speech instruction;
4. Tutoring fees paid on a doctor’s recommendation for your child’s tutoring by a teacher specially trained and qualified to work with children who have severe learning disabilities; and
5. Other medical expenses that your student-child may require, even though the child has earned more than \$3,500 annual income.

### C. Medicine, Drugs and Vitamins

A deduction for the cost of medicine and drugs (except insulin) is limited to those that may be obtained **ONLY** by prescription. Vitamins and other medicines or preparations normally purchasable over-the-counter, notwithstanding a prescription from a doctor, are non-deductible. (Federal Tax Coord. 2d; K-2102) (Publication 502) (Section 1017, 2009 U.S. Master Tax Guide).

### D. Sheltered Workshop Cost

If you must pay for your adult dependent child to attend a sheltered workshop (or, “special school”), you may deduct as a “medical expense” the cost of the workshop if its primary purpose is to *alleviate the disability*. If the service of the workshop is designed to “alleviate” a disability, it will generally constitute “medical care” within the Internal Revenue Code. Usually, the service of teaching someone to perform a job is not considered “medical care.” However, services, which assist a person with an intellectual impairment toward the goal of normal community living, may be considered to “alleviate” the disability and therefore qualify as deductible

“medical care.” This service is comparable to the service of teaching Braille to a child who is blind, thus alleviating the blindness, or teaching lip reading and sign language to a child with a hearing impairment, thereby alleviating the child’s inability to hear. (Sections 59 & 1016, 2009 U.S. Master Tax Guide) (Publication 502)

#### **E. Transportation**

Transportation costs are deductible as a “medical expense” if they are incurred going to and from:

1. Special schools (as defined by IRS);
2. Institutions and hospitals;
3. Special therapy programs that have been prescribed;
4. Pharmacies or drugstores.

Medical transportation costs for taxicabs or other public transportation modes must be verified with proof of each expenditure, such as receipts or canceled checks. The transportation costs to a parent accompanying a sick child to obtain medical care are also deductible. If a parent pays for the transportation costs of a nurse to attend a sick child --- that too is a deductible expense. If a child who attends a special school cannot travel alone, the cost of someone to accompany the child to the special school is deductible. A further deduction is available for persons with physical disabilities who utilize taxicabs to and from work where a physician as part of a therapy program recommended the employment.

The costs of transportation for all of the above by private car are deductible “medical expenses” and include:

1. 19¢ per mile for 1/1/08-6/30/08; and, 27¢ from 7/1/08-12/31/08, or actual expenses, whichever is larger; the rate is set at 24¢ per mile for 2009;
2. Parking fees; and
3. Tolls.

(Section 1016, 2009 U.S. Master Tax Guide)

If your child with a disability lives away from home, transportation costs to visit your child may be deductible as a “medical expense” if medical experts deem your visit a necessary part of treatment. This applies only to transportation costs and not to meals and/or lodging. (Rev. Rul. 58-533; 1958-2 CB 108)

Away-from-home lodging expenses, such as for hospital stays, are deductible up to \$50 per night, per person primarily for and essential to medical care provided by a physician in a licensed hospital, including a medical care facility related to or the equivalent of a licensed hospital. This expense is also available to certain eligible persons accompanying the person seeking medical care.

#### **F. Cost of Special Equipment to Alleviate A Disability (Including Installation)**

In the examples of elevators for heart cases, air conditioning for persons with asthma, ramps for persons who use wheelchairs, and the like, medical experts must deem the items necessary to alleviate the disabling condition. This deduction is allowed to the extent that it exceeds the improved value of your property. (IRC Section 213). Example #1: if air conditioning your home

improves the value of your home by \$700 and the actual cost is \$1,000; you are allowed to deduct the difference of \$300. If the special equipment does not increase the value of the home, the entire cost is deductible. Example #2: The additional cost to modify a van for a wheelchair lift and raising the vehicle roof is deductible; depreciation of the van is not. Henderson v. Commissioner, T.C. Memo 2000-321. A 1987 ruling enumerates a listing of special equipment that qualifies for this type of deduction and it indicates which items will not be considered as increasing the value of property. (Rev. Rul. 87-106).

#### **G. Lifetime Care Payments**

Non-refundable advance payments to a private institution for lifetime care, supervision, treatment, and training of your dependent with physical and mental disabilities in the event of your death, or other inability to care for your dependent, are deductible, provided the payments are required as a condition for the institution's future acceptance of your dependent. (Publication 502) (Section 1015, 2009 U.S. Master Tax Guide)

#### **H. Aids for Persons with Visual Impairments**

Costs of specific aids to assist in the education of a child becoming blind, such as a tape recorder, special typewriter, projection lamp for enlarging written material, and special lenses are deductible as medical expenses because the use of such things mitigates the condition of losing the sense of sight. (Rev. Rul. 58-223, 1958-1 CB 156)

#### **I. Expenses for Patterning Exercises**

Amounts paid to a non-professional individual for administering "patterning" exercises---coordinated physical manipulation of limbs to stimulate normal movement in a child with an intellectual impairment---qualify as medical care expenses and are deductible. (Rev. Rul. 70-170, 1970-1 CB 51)

#### **J. Wages for Nursing Service**

Payments of wages for an attendant who provides nursing services are deductible medical expenses. You may also include as medical expenses the out-of-pocket amounts paid for the attendant's meals. Divide the total food expense among the household members to find the cost of the attendant's food. If you have to pay additional out-of-pocket amounts for household upkeep because of the attendant, include as a medical expense the extra amount you paid. This includes such items as extra rent you paid because you moved to a larger apartment to provide space for the attendant or extra cost of utilities for the attendant; if the attendant also provides personal and household services, you must further divide these amounts between the time spent on performing household and personal services. (Publication 502)

#### **K. Special Telephone**

The repair cost of special telephone equipment that allows a deaf person to communicate over a regular telephone is a medical deduction. (Publication 502)

#### **L. Close-Captioned TV**

The extra cost of a specially-equipped television set and the cost of an adapter that provides subtitles for a person who is deaf is deductible as a medical expense. (Publication 502)

#### **M. Removal of Lead-Based Paint**

The cost of removing lead-based paints from walls and woodwork in a home to prevent a child who has lead poisoning or had lead poisoning from eating the paint is a deductible medical expense. The areas covered with lead-based paint have to be in poor repair or be within the child's reach. (Publication 502)

#### **N. Disposable Diapers**

Disposable diapers are deductible as a medical expense when verified by a physician as being necessary for a child or adult who is totally incontinent as the result of a neurological disease or brain damage. (Fed. Tax Coord. 2d, K-2134)

#### **O. Expenses Incurred for a Person with an Intellectual Impairment Residing in a Group Home or Other Community Setting**

The cost to a person or family of maintaining a person with an intellectual impairment in a specially selected home, to aid in the adjustment from institutional to community living, qualifies as a medical expense and is deductible. (Rev. Rul. 69-499, 1967-2 CB 39) (Publication 502) Please refer to page 15, part "B" of this tax guide for possible SSI and Medicaid considerations.

#### **P. Special Food and Beverages**

The IRS has held that the cost of special foods and beverages may qualify as a deductible medical expense if prescribed by a physician for alleviation or treatment of an illness and are in addition to the taxpayer's (or dependent's) normal diet. The special food or beverage must not be a part of the nutritional needs of the patient. But, the Tax Court has allowed as a medical deduction the *additional* cost of special foods or beverages (e.g., Osmolite®, for persons requiring tube feeding) over the cost of a normal diet where prescribed by a physician for alleviation or treatment of an illness. [Randolph (1976) 67 TC 481; Cohn (1962) 38 TC 387 (NA); Rev. Rul. 76-80; Fed. Tax Coord. 2d, K-2138].

#### **Q. Legal Fees**

Legal fees and other related costs arising with respect to the commitment for treatment of an individual with a mental health disability at an institution for special care are deductible as medical expenses (Rev. Rul. 71-281, 1971-2 CB 165; distinguished by Rev. Rul. 78-266). You cannot include in medical expenses fees for the management of a guardianship estate, fees for conducting the affairs of the person being treated, or other fees that are not necessary for medical care. (Publication 502)

#### **R. Medical Conferences Attended by Parent**

Amounts paid by an individual for expenses of admission and transportation to a medical conference relating to the chronic disease of the individual's dependent is deductible as a medical expense; meals and lodging are not. (Rev Rul. 2000-24).

## **S. Miscellaneous \***

1. Dental care;
2. Eyeglasses, contacts, examinations;
3. Hearing aid; examination, batteries;
4. Wheelchair, braces or other adaptive equipment;
5. Birth control pills;
6. Psychologist fees.

*\*For a complete listing of available medical deductions, please consult the current edition of IRS Publication 502, or Section 59, 2009 U.S. Master Tax Guide.*

## **TAXABILITY OF SUPPLEMENTAL SECURITY INCOME (SSI)**

SSI is **not** taxable for the person receiving the benefit.

If the SSI recipient in Michigan is receiving benefits at the Sharing/Independent level (\$688.00 for 2009) and is paying his/her “pro-rata share” of the household expenses, then that share is not taxable income to the householder who receives the money. This is true whether the householder is a parent or other relative or an unrelated person. The share is not taxable income because it is merely a reimbursement to the householder for that portion of expenses attributed to the SSI recipient. This situation may be more easily understood by likening it to the situation where four college students share an apartment. Each student is responsible for one-fourth of the household’s expenses and no one’s share is considered income to anyone else.

In a different set of circumstances, if the SSI recipient is paying either “rent” or “room and board” to his/her parents (or anything else for that matter), then those “rent” or “room and board” payments (minus expenses incurred) are considered income to the parent (or other landlord).

## **CAN SSI RECIPIENTS BE CLAIMED AS A DEPENDENT?**

Any SSI recipients in Michigan who receive benefits at either the Sharing/Independent level (\$688.00 for 2009) or Personal Care (adult foster care home or group home) level (\$831.50 for 2009) can **not** be claimed as dependents for income tax purposes. This is because a person on SSI at a rate other than the Household of Another level (\$458.66 for 2009) is by SSI regulations defined as someone who is **not** someone else’s dependent. If the SSI recipient is claimed as dependent according to the I.R.S. regulations, then the SSI program will consider such support against the SSI recipient and only the Household of Another level of benefits will be paid.

Adult SSI recipients who receive benefits at the Household of Another level (\$458.66 for 2009) may be claimed as dependents by persons who can show that they provided more than half the SSI recipient’s support. In figuring total support, the SSI income must be counted. If the yearly total of SSI received is less than the amount of support provided by a parent or another person, the SSI recipient can be claimed as a dependent if all other dependency requirements are met.

**SPECIAL NOTE:** Michigan provides a state SSI supplement for both the Household of Another and the Sharing/Independent rates. Although recipients of SSI in Michigan will receive

a check from the **federal** government (either \$449.33-Household of Another, or \$674.00-Sharing /Independent) on the first of every month, the State of **Michigan** sends its monthly supplement amount (either \$9.33-Household of Another, or \$14.00-Sharing /Independent) on a quarterly basis included within one check (on March 10th, June 10th, September 10th and December 10th). Individual recipients in Michigan who only qualify for a “state supplement” amount of SSI each month (due to the receipt of other income like Social Security disability benefits, and/or some work earnings) must forego not only this money, but they are required to go through a local Department of Human Services office and annually apply for Medicaid benefits.

## **TAXABILITY OF SOCIAL SECURITY BENEFITS**

Social Security benefits have the possibility of becoming income taxable. This applies to benefits (**not** Supplemental Security Income [“SSI”]) received by retired persons, disabled workers, disabled adult children, survivors of deceased workers, and spouses of beneficiaries. In specific terms, up to 50% of Social Security benefits **could** become taxable if combined with other income, such as bank interest, annuities, private pensions, wages, *et cetera*, and the total is more than an adjusted base amount (\$25,000 single; \$32,000 married filing jointly).

A married couple whose “combined income” is more than \$44,000 and single persons with income over \$34,000 will pay income tax on up to 85% of their Social Security benefits.

The “combined income” mentioned above is an individual’s or married couple’s adjusted gross income as reported on the IRS Form 1040, plus one-half of the total Social Security benefits received for the year, plus non-taxable interest.

For beneficiaries whose income is below the \$25,000 or \$32,000 levels during 2008, Social Security benefits are not taxed. (Section 716, 2009 U.S. Master Tax Guide)

**This provision will not affect persons receiving Supplemental Security Income (SSI) benefits or those receiving both SSI and Social Security checks, since substantial outside income will terminate eligibility for SSI benefits long before income levels became taxable (IRS Notice 703, August 1984).**

Recipients of Social Security benefits will receive a yearly statement showing the sum of all benefits received during the year. This statement may then be used when figuring taxable income on the worksheet the Social Security Administration will enclose with its mailing.

Any questions should be directed to a qualified tax advisor.

## **PAYMENTS FROM THE MICHIGAN D.H.S.**

### **A. GA, ADC, ENP, FS**

Someone who has a disability may be receiving payments from Michigan’s “Department of Human Services” (DHS) (formerly, the “Family Independence Agency”) under General Assistance (GA), Aid to Dependent Children (ADC), Emergency Needs Program (ENP), or the Food Stamp (FS) Program, among others. **NONE** of these payments are considered taxable (gross) income to the person with a disability, even if the checks come to a parent or other person as payee on behalf of the person with a disability. However, the federal government will consider these payments as **OUTSIDE SUPPORT** for purposes of determining whether parents or

another person can claim the person with a disability as a dependent. As with SSI, if a parent or anyone else provides more financial support than the yearly total of any DHS payments and all other dependency tests are met, then the parent or other person may claim the DHS payment recipient as a dependent.

## **B. Independent Living Services Program (Formerly, “Adult Home Help” or “Chore”)**

Independent Living Services Program ("ILSP") payments are considered TAXABLE income for ALL providers of such services. Previously, such payments were not taxable income to parents who provided the services. The I.R.S. position changed during 1990.

This issue, in the past, has created much discussion among parents and professionals across the country and previous congressional legislative efforts have failed to change the situation. Chances of this issue becoming a bill and passing are limited at best. It is suggested that taxpayers contact their federal legislators about this issue, and watch for notices through The Arc Michigan or your local chapter on the topic. Specifically, a letter to Senators Carl Levin (D-MI) and Debbie Stabenow (D-MI), in support of such legislation would assist our collective advocacy effort.

As taxable income, ILSP payments are generally handled in the same manner as any other self-employment earnings. As of the writing date of this guide, it remains uncertain whether the State of Michigan will ever issue IRS Form 1099's to all caregivers in this program.

In 1994, the Michigan Department of Social Services began withholding FICA (Federal Insurance Contributions Act; a.k.a., "Social Security Tax") from all checks, and reporting it to the Internal Revenue Service for persons having the FICA responsibility. Exceptions to this withholding program include: parents, children under 21, self-employed, or agencies who are providers/caregivers of home help. Those excepted providers/caregivers will continue to receive a "full" check amount, but may still be liable for the appropriate FICA requirement.

There appears to be an arguable position about whether a parent who is the provider/caregiver must pay the FICA at all. In the Federal Tax Advisor; Section 58,655; 1992, Commerce Clearing House, Inc., it states:

“ . . . services performed by a parent for a child generally are covered employment for FICA purposes and are subject to withholding. However, an exception is provided for domestic services performed by a parent. That is, in most cases, a parent performing services of a household nature in the private home of a son or daughter will not be engaged in covered employment under FICA and will be exempt from withholding.” This issue is rather complex and the taxpayer is strongly advised to seek professional assistance for individual situations.

On a related area, the same section of the Federal Tax Advisor goes on to state: “. . . services performed by an individual for a son, daughter, husband or wife, and services performed by a child under the age of 21 in the employ of a parent, are specifically excluded from the statutory definition of “employment” under FUTA [(“Federal Unemployment Tax Act”).”

*The following article appeared in The Arc of Oakland County newsletter, **PROFILES**, in September of 1992 and an excerpt is reprinted here with permission.*

### **TAX COURT FINDS HOME HELP SERVICES TAXABLE**

**--- by Thomas F. Kendziorski, Esq.**

The Arc of Oakland County and several other local chapters have been awaiting the decision of the U.S. Tax Court in California relative to the issue of whether Adult Home Help Services

("AHHS") payments are includable as taxable income to parents who are the caregivers of their adult children within this program. AHHS payments are made by the Michigan Department of Social Services to persons who provide unskilled and non-specialized service or personal care activities essential to a person with a disabling condition who cannot perform such things without assistance. The goal of the AHHS program is to maintain the person with the disability in his/her natural home instead of in a more costly alternative residential care arrangement.

The local IRS position until tax year 1990 was that parents could exclude such payments from their gross income each year, but that opinion was reversed by the IRS national office. The decision of the U.S. Tax Court continues that position.

In *Bannon v. Commissioner of Internal Revenue*, 99 T.C. No. 3, Docket No. 26900-90 (July 20, 1992), Dorothy Bannon lost her bid to have AHHS payments declared non-taxable income to a parent or relative caregiver. The Tax Court held that under California law, Ms. Bannon's daughter was the welfare recipient under that state's version of AHHS and was "...intended to be the ultimate beneficiary..." of the welfare payments. The parent in this case was employed by her daughter to provide supportive services. Therefore, the AHHS payments are includable in the parent's income for federal income tax purposes.

[Where do we go from here? Well, certainly someone could take this type of a case through a regional U.S. Tax Court and try for a different result. Or, we all need to continue to pursue Senators Levin and Stabenow with requests to sponsor legislation in Congress to change the Internal Revenue Code.]

## **FAMILY SUPPORT SUBSIDY (Michigan)**

Since 1984, Michigan has had a Family Support Subsidy program that provides monthly payments to qualified families. These are families that have a member who is a special education student with the educational label of Cognitive Impaired-Severe (CI-S), Severely Multiply Impaired (SXI) or Autism Spectrum Disorder (ASD), **and** have a taxable income of less than \$60,000.

Family Support Subsidy payments are not counted as income for any programs administered by the Michigan Department of Human Services (GA, ADC, ENP, FS, etc.), the federal SSI Program, or Michigan Children's Special Health Care Services. Family Support Subsidy payments are also considered non-taxable to parents for both federal and Michigan state income tax purposes. This non-taxability situation results from the payments being considered as those made by a governmental unit.

**Note:** During the 2008 Michigan legislative year, no bill was introduced that would expand the coverage beyond Cognitive Impaired-Severe, SXI, or ASD.

## **DISABILITY-RELATED TAX CREDITS**

**Child and Disabled Dependent Care Credit** - If you are among the millions of parents who must pay someone to care for your child or disabled dependent while you earn a living; you may use those same expenses to help reduce your personal income tax liability!

Child and disabled dependent care expenses are handled as a tax credit, instead of a deduction, enabling you to reduce your tax liability by the amount of credit you have coming.

No credit is allowed unless you supply identifying information concerning the service provider on Form 2441 (if using Form 1040), or Schedule 2 (if using Form 1040A). If you cannot obtain this information, then attach a statement to the form describing your good faith efforts to do so. The IRS will probably allow the credit.

To be eligible for the credit, the taxpayer must maintain a household for one of the following individuals:

1. A dependent under age 13 for whom a dependent exemption may be claimed;
2. Any other dependent who is physically or mentally incapable of self-care. The taxpayer must be able to claim either (a) the person as a dependent, or (b) the person as a dependent except for the fact that the person had income exceeding the exemption amount; or
3. The taxpayer's spouse if he or she is physically or mentally incapable of self-care.

The Working Families Tax Relief Act of 2004 changed the relationship, support and residence requirements for a qualifying child and a dependent (see [Page 8](#)). The residence rule for disabled individuals and spouses incapable of self-care now only requires that they have the same principal place of abode as the taxpayer for more than half of the taxable year.

Qualifying expenses include expenses paid for household services and for the care of a qualifying individual. Services outside the home qualify if concerning the care of a child under age 13 or a disabled spouse or dependent that regularly spends at least 8 hours a day in the taxpayer's home.

The credit is equal to 35% of *employment-related expenses* for taxpayers with adjusted gross income (AGI) of not more than \$15,000 and is 20% for taxpayers with AGI of more than \$43,000. For taxpayers between these two amounts, the credit is reduced one percentage point for each \$2,000 or fraction thereof of adjusted gross income in excess of \$15,000. The maximum amount of *employment-related expenses* to which the credit can be applied is \$3,000 if one qualifying child or dependent is involved and \$6,000 if more than one is involved.

A married taxpayer generally must file a joint return to claim the credit. For married taxpayers, expenses are limited to the earned income of the spouse earning the lesser amount. Income limitations affect the percentage and amount of credit allowed. Usually, if one spouse is not working, no credit is allowed. If the non-working spouse is physically or mentally incapable of self-care or is a full-time student for at least five months during the year, then the law will assume an earned income--for each month of being disabled or going to school--of \$250 per month if there is one qualifying child or dependent or of \$500 per month if there are two or more qualifying individuals. (Section 1301, 2009 U.S. Master Tax Guide)

**Work Opportunity Tax Credit** - A part of the Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28), this important law may be elected by employers who hire individuals from within certain targeted groups (for example, those with disabling conditions). It is based on first-year wages paid to these eligible workers. The credit was expanded in 2007 to include hiring disabled veterans and individuals living in counties experiencing population losses. This most recent reauthorization extended the timeframe for employers to take advantage of the credit until September 1, 2011.

The deduction for such wages must be reduced by the amount of the credit, and is computed on Form 5884 (“Work Opportunity Credit”). No credit is allowed for wages paid to an individual for services rendered at the employer’s plant or facility that is substantially similar to services performed by employees who are participants in a strike or who are affected by a lockout.

The credit is 40% of the first \$6,000 (\$3,000 for qualified summer youth employees) of wages paid to a “targeted group” member during the first year of employment and 25% in the case of wages attributable to individuals meeting only minimum employment levels.

Included among the “targeted groups:” ... a “vocational rehabilitation referral;” a “qualified food stamp recipient;” or a “qualified SSI recipient.” The minimum employment periods include individuals who began work for an employer after 9/30/96 and before 9/1/11 - the employee must have completed a minimum of 120 hours of work. The hour-of-service test is the only measurement for a minimum employment period for Work Opportunity Tax Credit purposes. If the 120-hour test is met, an employer is entitled to a credit of 25% if the employee performs less than 400 hours of service. For 400 or more hours of service, the percentage is 40% of the employee’s wages. (Section 1342, 2009 U.S. Master Tax Guide)

**Disabled Access Credit** - An eligible small business is entitled to this non-refundable tax credit for costs incurred to make a business accessible to disabled individuals. The credit amount is 50% of the amount of eligible access expenditures for a year that exceeds \$250 but that does not exceed \$10,250. The credit is computed on Form 8826. (Section 1338, 2009 U.S. Master Tax Guide)

**Low-Income Housing Credit** – A non-refundable income tax credit is available on a per-unit basis for low-income units in qualified low-income buildings of qualified low-income housing projects. Calculate the credit on Form 8586 and claim it as a part of the general business credit. An owner must utilize an enforceable 30-year low-income use agreement with the appropriate housing agency. Credits are allowed to both profit and non-profit ventures. (Section 1334, 2009 U.S. Master Tax Guide) (IRC Section 42).

**Credit for Persons Who Are Elderly or Who Are Permanently Disabled** - A 15% tax credit that applies to persons who are either 65 years of age or older, or who are under age 65, retired on disability, and were totally and permanently disabled when they retired. An individual is considered permanently and totally disabled for credit purposes if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than 12 months. The credit is computed on Schedule R. (IRC Section 22) (Section 1304, 2009 U.S. Master Tax Guide)

## **DEPENDENCY AND SHELTERED WORKSHOP SCHOOL INCOME**

Income derived at a sheltered workshop school by an individual who is permanently and totally disabled is to be disregarded in determining that individual’s status as a dependent.

No dependency exemption is available for a student who has attained age 24 at the close of the calendar year unless the student’s gross income for the year is less than the exemption amount (\$3,500 for tax year 2008). (Section 143, 2009 U.S. Master Tax Guide)

Your individual tax advisor can assist you if there are any questions regarding what is a qualifying "sheltered workshop school" or "student". Also, please note that SSI and Medicaid rules may differ from those of the IRS when earned income is involved.

## **DEDUCTION FOR “IMPAIRMENT RELATED WORK EXPENSES”**

Expenses of an individual with a disability for attendant care services at his place of employment, other expenses in connection with his place of employment which are necessary for the individual to be able to work, and all ordinary and necessary expenses paid or incurred during the tax year in carrying on any business, are not subject to the two-percent floor. Persons with a disability include any individuals who have a physical or mental disability (including blindness or deafness) which limits employment or who have any physical or mental impairment (including sight or hearing impairments) which substantially limits one or more major life activity. (IRC Section 67(d)) (Section 1013, 2009 U.S. Master Tax Guide)

## **AMOUNTS EXPENDED BY STATE FOR TRAINING, EDUCATION, ROOM AND BOARD ARE NOT “SUPPORT” - DEPENDENT EXEMPTION AND DEDUCTION IS AVAILABLE**

- **REV. RUL. 59-379**
- **REV. RUL. 60-190 (modified by Rev. Rul. 61-186)**
- **REV. RUL. 71-347**
- **Section 147, 2009 U.S. Master Tax Guide**

While contemplating the following, please note that IRS rules differ from those of the SSI and Medicaid Program. The level of SSI benefits may determine one’s status as a dependent. (See [page 18](#) of this tax guide.)

For persons with an intellectual impairment residing in an institution where education and/or training is being provided to the individual, the amount furnished by the state for room and board and education is considered a “scholarship” and excluded from the computation of support for that individual. However, parents who may be paying for incidentals (clothing, toiletries, education, medical and dental care, gifts, transportation, church contributions and entertainment and recreation) may still claim their child as a dependent, allowing a deduction, if more than one-half of the year’s total support for that dependent child was paid by the taxpayer.

The current ruling on exemptions for dependents who are persons with an intellectual impairment extends an earlier ruling which held that the cost of room and board for dependents who reside in an institution for persons with a developmental disability may be considered a scholarship grant which will not be taken into account in determining whether the parents have provided more than one-half of his or her support. The extension no longer limits such care to state institutions, and includes all who are persons with an intellectual impairment regardless of age.

The actual ruling reads as follows: “Revenue Ruling 64-221, DB 1964-2, 46 amplifies the earlier ruling (61-186-CB 1961-2, 30) which refers to the status as ‘students’ under section 151(e)(4) of the Internal Revenue Code of 1954, of handicapped children who are placed for purposes of education and training in a state institution which specializes in the care, treatment, education and training free of charge, of minor children who are severely handicapped both physically and mentally. However, the principles therefore are not necessarily restricted to state institutions.”

“Therefore, where any institution for persons with mental retardation or division thereof, which qualified as an educational institution under section 151(e)(4) of the Code, accepts any

individuals for purposes of education and training and certifies that it is making an effort to educate or train him/her to use his/her faculties to the extent that he/she is physically or mentally able to do so, the individual will qualify as a student under section 151(e)(4) of the Code - regardless of age, the education or training received or the extent of his disability. If such certification is made, the amounts expended by the institution for room and board and tuition of the individual will be taken into account in determining whether such an individual received more than one-half of his support from his parents or step-parents for the purpose of determining exemption for dependents for Federal income tax purposes.”

*Consult with your tax advisor to determine whether specific institutions in your state qualify for the dependency exemption explained above. Keep in mind that there may also be negative implications relative to Supplemental Security Income (SSI) and/or Medicaid eligibility should this exemption be used.*

### **WORKING SSI/SSDI RECIPIENTS: TO FILE OR NOT TO FILE?**

As more persons receiving SSI/SSDI benefits begin to work, families should determine whether a Federal Income Tax Return must (or may) be filed. Refer to the Exemption Amount and Standard Deductions portions of the Tax Change Highlights to help determine if the federal return **MUST** be filed. If a federal filing were not required, it would be desirable only if the worker would be due a refund of any federal tax withheld from 2008 wages, or an earned income credit refund.

Even if federal filing is not done, families should consider filing State of Michigan tax returns if there is the likelihood of a refund due because of a **Homestead Property Tax Credit** or **Home Heating Credit**. Consult your tax advisor to assure that your family and any member who is a (working) recipient of SSI or Social Security benefits are receiving all the credits to which you may be entitled.

### **FOSTER CARE PROVIDERS**

Foster parents can exclude from income qualified reimbursements of their expenses for caring for foster children under the age of 19 who are placed in their home by a government agency, a tax-exempt child placement agency, or a placement agency that is licensed or certified by a state to make foster care payments. They can also exclude “difficulty-of-care” payments paid to care for children with disabilities, up to a maximum amount of payments for ten children. Foster parents do not have to keep records of all expenses for each child.

An exclusion from income for foster care payments (including difficulty-of-care payments) includes payments for foster care individuals age 18 and over. These individuals must have been placed in the foster care provider’s home by a government agency. The exclusion applies only to payments (including difficulty-of-care payments) up to five individuals age 18 or older.

Congress passed and President Bush signed into law the “Job Creation and Worker Assistance Act of 2002” (P.L. 107-147). A key provision expanded the exclusion beyond only a state agency or a tax-exempt child placement agency making such payments to also include payments made by a placement agency that is licensed or certified by a state to make foster care payments.

In summary, most foster care providers, for children and/or adults, can exclude from their income the foster care payments that they receive (including difficulty-of-care payments) with

the above-stated limitations and with no record-keeping of expenses. This DOES NOT apply to corporation-operated group homes.

(LTR-RUL 200039006 of June 8, 2000) (IRC Section 131) (Section 883, 2009 U.S. Master Tax Guide)

### **PROPERTY TAX CREDIT - MICHIGAN**

Persons living in rental situations, including residents of Adult Foster Care Homes, are eligible to file for Michigan's Property Tax Credit based on the portion of property taxes they pay in their rental (or AFC) payment. Instructions for filing are in Michigan's **2008 Income Tax Returns and Homestead Property Tax Credit Claims** booklet. It contains specific reference to Adult Foster Care residents.

### **ADOPTION SUBSIDY & EXPENSES CREDIT**

The State of Michigan has an "adoption subsidy" program that pays for many "non-recurring" adoption expenses in connection with adopting a child with special needs. Also, the state provides a non-taxable monthly financial stipend to adoptive families, along with limited medical coverage for qualifying children.

Michigan has offered a refundable credit, since tax year 2001, for excess adoption expenses. This credit is available to taxpayers whose expenses exceed the amount allowed under the federal adoption credit discussed immediately below. The Michigan credit is limited to the lesser of \$1,200 or the amount of excess expenses – use tax form MI-8839.

On federal returns, qualified adoption expenses and fees (including those of an attorney) may be claimed as a "tax credit" (not a "tax deduction") for up to a maximum of \$11,650 in 2008 (will increase to \$12,150 in 2009) per child. If the child is one with special needs, the full amount of the tax credit is allowed regardless of actual expenses paid or incurred in the year the adoption became final. There are other limitations as to the year in which a credit can be claimed. Generally, the higher the income, the less the credit will be. The credit is phased out ratably between \$174,730 and \$214,730 of a modified adjusted gross income (AGI). No credit is allowed to taxpayers with a modified AGI of \$214,730 or more.

For 2008, the adoption credit may offset both the regular tax and alternative minimum tax (AMT) liability, but the regular tax liability must first be reduced by the amount of any foreign tax credit.

An eligible child is an individual not yet 18 years of age as of the time of the adoption or who is physically or mentally incapable of providing self-care. To qualify as a child with special needs, the child must be a citizen or resident of the United States.

Employers are allowed to offer a fringe benefit for payment of qualified adoption expenses. Congress enhanced and made permanent this exclusion during 2001. (Section 1306, 2009 U.S. Master Tax Guide)

### **APPEAL RIGHTS**

From time-to-time some taxpayers are selected for auditing. During an audit, the IRS examiner may propose certain changes to the return(s) as filed. If you don't agree with the proposed changes of the examining officer and the examination was made in an Internal Revenue Service office, you may request an immediate conference with a supervisor and explain your

position.

Except in an unusual circumstance, such a conference will be granted. If an agreement is reached at this conference, your case will be closed. If agreement is not reached at this conference, or if the unagreed examination was made outside of an Internal Revenue office, you will receive: (1) copy of the examination report explaining proposed adjustments, and (2) a transmittal letter detailing the further appeals available to you and giving you 30 days to respond.

The "Technical and Miscellaneous Revenue Act of 1988", the "1996 Taxpayer Bill of Rights 2" (P.L. 104-168), and the IRS Restructuring and Reform Act of 1998 (P.L. 105-206) provide many safeguards against I.R.S. abuses of tax collection procedures. See your tax advisor for details.

### **APPEAL WITHIN THE SERVICE**

The Internal Revenue Service now has a single appeal level. Your appeal from the findings of the examiner is to the Appeals Office in the region. Conferences are conducted as informally as possible.

If you want an appeal conference, address your request to your district director in accordance with the transmittal letter sent to you by the Internal Revenue Service in the transmittal letter concerning your tax case.

You may represent yourself at an appeals conference. You may also engage an attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service to represent your interests.

### **LETTER RULINGS**

If your particular tax situation is unique or a "close call," it may be advantageous to secure the opinion of the Internal Revenue Services (IRS). This may be done by mail. Your tax professional will have detailed procedures, but the address for obtaining such "Letter Rulings" is as follows:

Internal Revenue Service  
Ruling Request Submission  
Attn: CC:PA:LPD:DRU  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

There is a "user" fee that must be paid to IRS when submitting a Letter Ruling Request. A taxpayer may submit a user fee request for the standard fee of \$11,500 (for all requests received after 2/1/08).

This fee is reduced to \$625 for individuals, trusts and estates that report less than \$250,000 of income on a federal tax return (as amended) for the last tax year ending before the date the Letter Ruling request is filed.

For those taxpayers reporting more than \$250,000 but less than \$1,000,000 of income, the fee increases to \$2,100. [Rev. Proc. 2008-1, at Appendix (A)(3)(c) and (d), and (A)(4)(a) and (b)]

## **ADDITIONAL TAXPAYER PROTECTIONS**

As a result of the Internal Revenue Service Restructuring and Reform Act of 1998 (P.L. 105-206), taxpayers have additional protections and rights. Examples include: (1) a re-organization of the IRS into units serving groups of taxpayers with similar needs rather than by geographic region; (2) appointment of a “National Taxpayer Advocate” who reports directly to the Commissioner of the IRS, and who directs independent Local Advocates; (3) possible civil damages up to \$100,000 if an IRS employee negligently disregards the Tax Code or regulations; (4) notice and right-to-hearing requirements when the IRS files property liens; and (5) the statute of limitations on refund claims may be tolled during any period in which financially disabled taxpayers with determinable medical or physical impairments are unable to manage their financial affairs due to such impairments.



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and developmental disabilities.