



Taxes and Alzheimer's Disease

Updated as of February 2004

Taxes and Alzheimer's Disease is a series of general discussions of tax issues that may affect those who have Alzheimer's disease and their families. The following three issues are discussed:

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Additional issues may arise in caring for a person with Alzheimer's disease:

- Information on powers of attorney, IRS Form 2848, and signing the return for another person is contained in IRS Publication 947, *Practice Before the IRS and Power of Attorney*. (Note that incapacity or incompetency generally will cause a power of attorney to be terminated. The IRS power of attorney can continue in the case of incapacity or incompetency if authorized on the Form 2848, or if the non-IRS durable power of attorney meets all the requirements for acceptance by the IRS.)
- Information on the credit for the elderly and disabled is contained in IRS Publication 524, *Credit For the Elderly or the Disabled*.

These and other IRS publications and forms are available free at www.irs.gov or by calling the IRS at 1-800-829-3676.

The tax law is very complex. Please seek help from a competent tax professional for advice about the proper application of the laws to your situation.

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Deductibility of Some of the Costs of Caring for a Person with Alzheimer's Disease.

The costs of maintenance and personal care services for someone with Alzheimer's disease may be deductible medical expenses. The discussion below summarizes the itemized deduction for medical expenses, including who can deduct medical expenses and what medical expenses are deductible.

Itemized Deductions for Medical Expenses.

A taxpayer is allowed an itemized deduction (on Schedule A of Form 1040) for expenses for medical care for the taxpayer and for the taxpayer's spouse and dependents. The deduction is only allowed for the expenses paid during the year that total more than 7.5% of adjusted gross income. Medical expenses are only deductible if the taxpayer itemizes deductions. Only expenses that have not been reimbursed by insurance can be counted toward the medical expense deduction.¹

While the Internal Revenue Code has long provided a deduction for "medical care" expenses, it had been unclear before 1997 whether and to what extent long-term care expenses were to be treated as medical care expenses. In 1997, the Health Insurance Portability and Accountability Act of 1996 (HIPAA)² amended the Code to clarify the treatment of qualified long-term care expenses for 1997 and future years. (HIPAA did not clarify this issue for prior years.) Under HIPAA, deductible expenses include expenditures for "qualified long-term care services."

Whose Medical Expenses May be Deducted and By Whom?

A taxpayer may include medical expenses paid for himself or herself and for his or her spouse and dependents. Thus, medical expenses for someone with Alzheimer's disease may be deducted on his or her own return, on a joint return filed with his or her spouse, or on the return of another person (such as a son or daughter) if the person with Alzheimer's disease is the other person's dependent.

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A person generally qualifies as a taxpayer's dependent if all of three tests are met: (1) the taxpayer provided over half of that person's total support for the year, and (2) that person is a relative (including parents, grandparents, great grandparents, step-grandparents, parents-in-law, aunts and uncles, brothers and sisters, step brothers and sisters, half brothers and sisters) of the taxpayer or that person's primary home was the taxpayer's home and he or she was a member of the taxpayer's household, and (3) that person is a citizen, national or resident of the United States or a resident of Canada or Mexico.³

If a person would qualify as the taxpayer's dependent except that the taxpayer does not meet the support test in (1) above, the taxpayer may still be able to deduct that person's medical expenses by agreeing to a multiple support agreement, if the taxpayer, together with others, provided more than half of that person's support. The requirements for a multiple support agreement are that (A) no person can have provided more than half of the person's support, (B) more than half of the person's support must have been provided by the taxpayer and others who could, if they met the support test, have each claimed the person as a dependent, (C) the taxpayer must have provided at least 10% of the person's support, and (D) the taxpayer must file, with his or her income tax return, IRS Form 2120, *Multiple Support Declaration*, on which the taxpayer indicates that he or she has in his or her records a signed statement from each other multiple support agreement participant waiving that participant's right to claim the person as a dependent.⁴ Only one person can deduct the medical expenses.

Example: Son and Daughter together provide \$10,000 (\$5,000 each) for the support of Mother, who has income of \$9,500. Son and Daughter agree in a multiple support agreement that Daughter may claim Mother as a dependent. Son signs a waiver of his right to claim Mother as a dependent, and Daughter files an IRS Form 2120 with her return. Daughter (but not Son) would be able to consider Mother a dependent for purposes of the medical expense deduction.⁵

For the taxpayer to deduct medical expenses for a spouse or dependent, the spouse or dependent must have been the taxpayer's spouse or dependent either at the time the spouse or dependent received the medical services or at the time the taxpayer paid the medical expenses.⁶

What Medical Expenses May be Deducted?

Expenses paid for medical care are amounts paid:

- (A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body;
- (B) for transportation primarily for, and essential to, medical care referred to in (A);⁷
- (C) for qualified long-term care services; or
- (D) for medical insurance, including Part B Medicare premiums and some qualified long-term care insurance premiums.⁸

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Special Note on Transportation. Under (B) above, amounts paid for transportation relate only to the types of medical care described in (A) above. Qualified long-term care services are in (C). Thus, it appears that, for example, the cost of transportation to and from an adult day care center would not qualify as a medical expense.⁹

In order for an expense to be a qualified long-term care expense in (C) above, certain requirements, such as certification and a plan of care must be met. If these requirements are not met, a taxpayer will not be allowed to deduct the expenses as qualified long-term care expenses described in (C) above, but, depending on the individual's particular circumstances, may still be able to deduct the expenses as medical expenses under (A) above. Taxpayers who have not met the certification or plan of care requirements should seek help from a competent tax professional for advice about the possibility of deducting expenses under (A) above.

What are Qualified Long-Term Care Services?

Qualified long-term care services are necessary diagnostic, preventative, therapeutic, curing, treating, mitigating and rehabilitative services, and maintenance or personal care services that are required by a chronically ill individual and that are provided under a plan of care prescribed by a licensed health care practitioner (including doctors, nurses, and licensed social workers).¹⁰

Who is a Chronically Ill Individual?

A chronically ill individual is a person who qualifies under one of the three tests described below.¹¹ A person with Alzheimer's disease may qualify under either the Activities of Daily Living Test in (i) or under the Substantial Supervision Test in (iii). It is also possible that a person with Alzheimer's disease could qualify under the Similar Level Test in (ii) when the regulations are issued.

(i) *The Activities of Daily Living (ADL) Test* - Under this test, a person is chronically ill if he or she is certified as being unable to perform without substantial assistance from another person at least two ADLs (eating, toileting, transferring, bathing, dressing and continence) for at least 90 days due to a loss of functional capacity. The IRS has given "safe-harbor"¹² guidance stating that "substantial assistance" means hands-on assistance (the physical assistance of another person without which the chronically ill individual would not be able to perform the ADL) or stand-by assistance (the presence of another person within arm's reach of the chronically ill individual that is necessary to prevent, by physical intervention, injury to the chronically ill individual while that individual is performing the ADL (such as being ready to catch the individual if he or she falls while getting in or out of the bathtub or shower or being ready to remove food from the chronically ill individual's throat if he or she chokes while eating)).¹³

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(ii) *The Similar Level Test* - Under this test, an individual is chronically ill if he or she is certified as having a level of disability level similar (as set forth in regulations) to the level described in (i). The IRS has not yet issued these regulations.

(iii) *The Cognitive Impairment Test* - Under this test, an individual is chronically ill if he or she is certified as requiring substantial supervision to protect himself or herself from threats to health and safety due to severe cognitive impairment. The IRS has given “safe-harbor”¹⁴ guidance stating that “severe cognitive impairment” means a loss or deterioration in intellectual capacity that is (a) comparable to (and includes) Alzheimer’s disease and similar forms of irreversible dementia, and (b) measured by clinical evidence and standardized tests that reliably measure impairment in (I) short- or long-term memory, (II) orientation to people, places or time, and (III) deductive or abstract reasoning. The IRS also has given “safe-harbor”¹⁵ guidance stating that “substantial supervision” means continual supervision (which may include cuing by verbal prompting, gestures or other demonstrations) by another person that is necessary to protect the severely cognitively impaired individual from threats to his or her health or safety (such as may result from wandering).¹⁶

What Certifications, Care Plans, etc. are Required?

For purposes of the deduction, a person must be certified as meeting the requirements of a chronically ill individual. This certification must be done by a licensed health care practitioner “within the preceding 12-month period,” which implies that it should be done annually for a person with Alzheimer’s disease. The IRS has not issued any guidance on what information should be included in the certificate. (See Summary of Requirements for Certifying a Person as Chronically Ill Individual Under Internal Revenue Code §7702B, attached page 11.)

For services to be considered qualified long-term care services, they must be provided under a plan of care prescribed by a licensed health care practitioner. The IRS has not issued any guidance on what the plan of care should include.

For purposes of the certification and the plan of care, a licensed health care practitioner includes a physician, registered professional nurse, or licensed social worker.¹⁷

What are Some Expenses That Might be Incurred for Someone with Alzheimer’s Disease?

Discussed below are some specific expenses that might be incurred for the care of persons who suffer from Alzheimer’s disease or other similar illnesses.

Maintenance or Personal Care Services. “Maintenance or personal care services” means care the primary purpose of which is to provide needed assistance with any of the disabilities that cause the individual to be chronically ill and include protection from

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threats to health and safety due to severe cognitive impairment.¹⁸ Regulations (which have not yet been issued) may provide that maintenance and personal care services may include meal preparation, household cleaning and other similar services that the chronically ill individual is unable to perform.¹⁹ No deduction is allowed for the cost of long-term care provided by a spouse or relative unless the spouse or relative is a licensed professional with respect to those services.²⁰

Nursing Homes, Assisted Living Facilities, Group Homes, Adult Congregate Living Facilities, Adult Day Care Centers, Facility-Based Respite and the Like. As noted above, changes to the Code were enacted as part of HIPAA and became effective beginning in 1997. The Code as amended does not specify that qualified long-term care services must be provided in any particular setting. Thus, as long as a certification of chronic illness is obtained and the services are provided under a plan of care prescribed by a licensed health care practitioner, qualified long-term care services should be considered medical expenses irrespective of the type of facility in which provided. IRS regulations have not yet been updated to include changes to the Code enacted as part of HIPAA.

The IRS has issued regulations on the issue of meals and lodging provided in a facility under pre-HIPAA law. Under these regulations, whether the cost of care in an institution other than a hospital²¹ constitutes medical care is primarily a question of fact that depends upon the condition of the individual and the nature of the services received. The pre-HIPAA regulations state that if a person is in an institution because his condition is such that the availability of medical care is a principal reason for his presence there, and meals and lodging are furnished as a necessary incident to his care, the entire cost of medical care and meals and lodging at the institution, which are furnished while the individual requires continual medical care, constitutes an expense for medical care. The regulations give as an example that medical care includes the entire cost of institutional care for a person who is mentally ill and unsafe when left alone.²² The regulations also state that if a person is in an institution, and his condition is such that the availability of medical care in the institution is not a principal reason for his presence there, the institution's cost for medical care must be separated from the institution's cost for meals, lodging and other non-medical expenses, and only the part of the institution's cost that is for medical care can be considered a medical expense. The regulations give as an example a person who is in a "home for the aged" for personal or family considerations and not because he requires medical or nursing attention, in which case medical care consists only of the part of the institution's cost that is for medical care or nursing attention.²³ The IRS has not indicated the extent to which these regulations have continuing validity after HIPAA. It is possible that the IRS will consider meals and lodging to be maintenance or personal care services or to be a necessary incident to the provision of qualified long-term care services in other facility-based settings such as Assisted Living Facilities, Group Homes, Adult Congregate Living Facilities, Adult Day Care Centers, and Facility-Based Respite Centers.

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In-Home Care, Attendant Care and Home-Based Respite Care. If a certification of chronic illness is obtained and the services are provided under a plan of care prescribed by a licensed health care practitioner, the cost of an attendant to perform qualified long-term care services is a medical expense.

Nursing Services. The costs of nursing services can be included in medical expenses.²⁴ Services need not be performed by a nurse as long as the services are of a kind generally performed by a nurse. This includes services connected with caring for the patient's condition, such as giving medication or changing dressings, as well as bathing and grooming the patient.²⁵ As noted above, maintenance or personal care services are considered medical care provided a certification of chronic illness and a plan of care are obtained.

Note: If household help and adult day care costs are not included as a medical deduction, they may qualify for the Household and Dependent Care Credit. See "Taxes and Alzheimer's Disease: The Household and Dependent Care Credit."

Diapers. Medical expenses include the amount paid for diapers or diaper services if the diapers are needed to relieve the effects of a particular disease.²⁶

Special Food and Beverages. IRS has ruled that generally the costs of special food or beverages do not qualify as a medical expense. In special cases, according to the ruling, the costs of doctor-prescribed food or beverage could qualify if the food or beverage is solely for the alleviation or treatment of an illness and is in no way a part of the nutritional needs of the patient, but the costs do not qualify where the special food or beverage is taken as a substitute for food or beverage normally consumed by a person and satisfies his or her nutritional requirements.²⁷

Home Improvements. A taxpayer may include as a medical expense amounts paid for special equipment installed in the home or for home improvements if the main purpose is medical care and the expense is directly related to medical care.²⁸ Only reasonable costs to make home improvements are considered medical care; additional costs for personal motives, such as for architectural or aesthetic reasons, are not medical expenses. If the home improvement is permanent and increases the value of the taxpayer's home, the cost can only partly be included as a medical expense: in that case, the cost of the improvement must be reduced by the increase in the value of the taxpayer's home, and the difference is a medical expense.²⁹ The IRS has ruled that if the value of the taxpayer's home is not increased, the entire cost of "modifying fire alarms, smoke detectors, and other warning systems" made for the primary purpose of accommodating a home for the handicapped condition of one who resides there is deductible in full.³⁰ The facts in this ruling could be compared to the costs of special locks or an alarm system installed to

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protect an impaired person who wanders, but there is no guarantee that the IRS will accept this comparison as valid.

Comment: An IRS challenge to a medical expense deduction does not necessarily mean that the deduction is invalid. Whether certain expenses are deductible as medical expenses involves questions of fact relating to the taxpayer's specific situation. A taxpayer who receives an inquiry from the IRS about his or her medical expense deductions should seek the advice of a competent tax professional who can assist with a resolution of the inquiry at the earliest possible time.

Documentation.

It is very important to obtain and retain documentation about the care given, including certifications and plans of care. To be a chronically ill individual for purposes of the tax laws, a person must be so certified within the preceding 12-month period by a licensed health care practitioner. For services to be qualified long-term care services, they must be provided under a plan of care prescribed by a licensed health care practitioner. It is important to retain certifications and plans of care, as well as assessments and recommendations from health professionals, notes about care from care providers, sitters, family and friends, and notes regarding any incidents of violent, unsafe or dangerous behavior, wandering, falling, or the like. Because of the progressive deterioration caused by Alzheimer's disease, it is also important to reevaluate the situation every year; the care situation may change over time, and an expense that does not qualify as medical care in an early stage of the disease may qualify in the later stages.

Amended Returns.

If you believe you are entitled to a medical expense deduction for a year for which you have already filed a tax return, you still may be able to claim the deduction by filing an amended return. The deadline for filing an amended return generally is the later of three years from the date the return was filed or two years from the date the tax was paid.³¹

More Information.

For more information on the itemized deduction for medical expenses, see IRS Publication 502, *Medical and Dental Expenses*. This publication and other IRS publications and forms are available free at www.irs.gov or by calling the IRS at 1-800-829-3676. Other sections of *Taxes and Alzheimer's Disease* include discussions of the household and dependent care credit and employment taxes and withholding for household workers. This publication may be updated from time to time. Contact the Alzheimer's Association for the latest updates. Comments on this publication should be directed to Alzheimer's Association, 1319 F Street, N.W., Suite 710, Washington, D.C., 20004.

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¹ IRC §213(a).

² P.L. 104-191.

³ IRC §152.

⁴ IRC §152(c).

⁵ In this case, Daughter would not be able to claim a personal exemption for Mother as a dependent because Mother had gross income that exceeds the exemption amount of \$3,050 for 2003. If Mother's income were below \$3,050, Daughter could also claim a personal exemption for Mother. Son cannot claim Mother as a dependent for any purpose. See IRC §151; Rev. Proc. 2002-70, 2002-46 I.R.B. 845.

⁶ Treas. Regs. §1.213-1(e)(3).

⁷ Note that only amounts paid for transportation primarily for, and essential to, medical care in (A) qualify as medical expenses; transportation relating to qualified long-term care expenses is not in this category.

⁸ IRC §213(d)(1). Qualified long-term care services and qualified long-term care insurance premiums were explicitly added as medical expenses beginning in 1997. For insurance premiums, a taxpayer may only deduct premiums paid for qualified long-term care insurance up to certain dollar amounts, which depends on the age of the insured person.

⁹ It is possible that some expenses may be considered medical expenses under both (A) and (C), so that the transportation could be deducted. You should check with your tax advisor about deducting transportation expenses. For insurance premiums, a taxpayer may only deduct premiums paid for qualified long-term care insurance up to certain dollar amounts, which depends on the age of the insured person.

¹⁰ IRC §7702B(c)(1).

¹¹ IRC §7702B(c)(2).

¹² Notice 97-31, 1997-1 C.B. 417. The safe harbors are designed to provide standards for taxpayers to use in interpreting the long-term care provisions of the Code. If a person does not meet the "safe harbor" guidelines outlined by the IRS in Notice 97-31, it does not necessarily mean that the person is not a chronically ill individual. However, a person must have a certification within the preceding 12 months and a plan of care to be considered a chronically ill individual.

¹³ Notice 97-31, 1997-1 C.B. 417.

¹⁴ Notice 97-31, 1997-1 C.B. 417. See footnote 12, above.

¹⁵ Notice 97-31, 1997-1 C.B. 417.

¹⁶ Notice 97-31, 1997-1 C.B. 417.

¹⁷ The term "licensed health care practitioner" may also include other persons who meet the requirements set forth in guidance to be issued in the future by the IRS.

¹⁸ IRC §7702B(c)(3).

¹⁹ Joint Committee on Taxation, "General Explanation (Blue Book) of Tax Legislation Enacted in the 104th Congress" (Dec. 12, 1996).

²⁰ IRC §213(d)(11).

²¹ Under these regulations, the cost of in-patient hospital care (including the cost of meals and lodging) is considered an expense for medical care. Treas. Regs. §1.213-1(e)(1)(v).

²² Treas. Regs. §1.213-1(e)(1)(v) (pre-HIPAA regulation).

²³ Treas. Regs. §1.213-1(e)(1)(v) (pre-HIPAA regulation).

²⁴ Treas. Regs. §1.213-1(e)(1)(ii) (pre-HIPAA regulation).

²⁵ See IRS Publication 502, *Medical and Dental Expenses*.

²⁶ See Rev. Rul. 55-261, 1955-1 C.B. 307; Pvt. Ltr. Rul. 8137085 (diapers for 4-year old with Aicardi Syndrome).

²⁷ Rev. Rul. 2002-19, 2002-16 I.R.B. 778; Rev. Rul. 55-261, 1955-1 C.B. 307. See also *Clark v. Comm'r*, 29 T.C. 196 (1957); *Estate of Webb v. Comm'r*, 30 T.C. 1202 (1958); *Collins v. Comm'r*, T.C. Memo 1965-233; *Harris v. Comm'r*, 46 T.C. 672 (1966); *Von Kalb v. Comm'r*, T.C. Memo 1978-366; *Ford v. Comm'r*, T.C. Memo 1979-109; *Kellner v. Comm'r*, T.C. Memo 1979-116; *Flemming v. Comm'r*, T.C. Memo 1980-583; *Neil v. Comm'r*, T.C. Memo 1982-562.

²⁸ Treas. Regs. §1.213-1(e)(1)(iii).

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²⁹ Treas. Regs. §1.213-1(e)(1)(iii).

³⁰ See Rev. Rul. 87-106, 1987-2 C.B. 67.

³¹ IRC §6511(a).

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ATTACHMENT—SUMMARY OF REQUIREMENTS FOR CERTIFYING A PERSON AS A CHRONICALLY ILL INDIVIDUAL UNDER INTERNAL REVENUE CODE §7702B

A chronically ill individual is one who is certified as meeting either the Activities of Daily Living Test or the Cognitive Impairment Test described below. The certification must be “within the preceding 12-month period,” which implies that it should be done annually for a person with Alzheimer’s disease.

Activities of Daily Living (ADL) Test. He or she is unable to perform at least two of the ADLs (eating, toileting, transferring, bathing, dressing, and continence) without substantial assistance from another individual and has been or will be unable to perform such ADLs without such assistance for a period of at least 90 days due to a loss of functional capacity. “Substantial assistance” means hands-on assistance and standby assistance. “Hands-on assistance” means the physical assistance of another person without which the individual would be unable to perform the ADL. “Standby assistance” means the presence of another person within arm’s reach of the individual that is necessary to prevent, by physical intervention, injury to the individual while the individual is performing the ADL (such as being ready to catch the individual if the individual falls while getting into or out of the bathtub or shower as part of bathing, or being ready to remove food from the individual’s throat if the individual chokes while eating).

Cognitive Impairment Test. He or she requires substantial supervision to protect himself or herself from threats to health and safety due to severe cognitive impairment. “Severe cognitive impairment” means a loss or deterioration in intellectual capacity that is (a) comparable to (and includes) Alzheimer’s disease and similar forms of irreversible dementia, and (b) measured by clinical evidence and standardized tests that reliably measure impairment in the individual’s (i) short-term memory, (ii) orientation as to people, places, or time, and (iii) deductive or abstract reasoning. “Substantial supervision” means continual supervision (which may include cuing by verbal prompting, gestures, or other demonstrations) by another person that is necessary to protect the severely cognitively impaired individual from threats to his or her health or safety (such as may result from wandering).

Licensed Health Care Practitioner. The certificate must be signed by a physician (as defined in §1861(r) of the Social Security Act), a registered professional nurse, or a licensed social worker. The term “licensed health care practitioner” also may include other persons who meet the requirements set forth in future guidance issued by the IRS.

This information is based on IRC §7702B, Notice 97-31, 1997-1 C.B. 417, the Conference Committee Report on Health Insurance Portability and Accountability Act, P.L. 104-191, and the General Explanation (Blue Book) of Tax Legislation Enacted in the 104th Congress (1996).

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Taxes and Alzheimer's Disease

Updated as of February 2004

The Household and Dependent Care Credit

Taxes and Alzheimer's Disease is a series of general discussions of tax issues that may affect those who have Alzheimer's Disease and their families. The discussion below summarizes the household and dependent care credit. This tax credit, which is commonly associated with childcare costs, is also available to help defray the cost of caring for someone with Alzheimer's disease.

- You may be entitled to this tax credit if a spouse or dependent who is physically or mentally incapable of self-care (such as someone with Alzheimer's disease) lives with you, and you incur expenses for his or her care so that you can work.
- You may subtract the amount of credit directly from the tax shown on your return. The credit is a percentage of your work-related care expenses. The maximum credit (assuming no prior year carryover) is \$1,050 for one person and \$2,100 for more than one person (for example, a child under age 13 and a parent with Alzheimer's disease).
- The expenses can include the cost of adult day care but cannot include the cost of residential care such as a nursing home or assisted living facility.

Requirements for the Credit.

To qualify for the credit, all of the following must apply:

- **Qualifying Person.** The expenses must be for the care of a spouse or dependent who is physically or mentally incapable of self-care (called a "qualifying person").
- **Maintaining a Household.** You and the qualifying person must live together and you (and your spouse if you are married) must pay for at least half the costs of maintaining the household in which you live.

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- **Earned Income.** You (and your spouse if you are married) must have earned income, but if your spouse is the qualifying person (for example, if he or she has Alzheimer’s disease), only you need to have earned income.
- **Work-Related Expenses.** The expenses must be incurred to enable you to work, look for work, or be self-employed, and the expenses must be at least partly for the care of a qualifying person.
- **Filing Status.** If you are married, you must file a joint return unless certain exceptions apply.
- **Information and Records.** You must provide information about the care provider and qualifying person on your tax return.

Qualifying Person.

A qualifying person includes your spouse or dependent who is physically or mentally incapable of self-care.¹ A person is physically or mentally incapable of self-care if, as a result of a physical or mental defect, the person is incapable of caring for his or her hygienic or nutritional needs or requires the full-time attention of another person for his or her own safety or for the safety of others. Merely being unable to work for a living, do normal household functions, or care for children is not enough. A person who is “physically handicapped or mentally defective” and who therefore requires the constant attention of another person is considered to be incapable of self-care.² A person who cannot dress, clean or feed himself or herself, or who requires constant attention to prevent injury to himself or herself, is incapable of self-care.³ The determination of whether a person is a qualifying person is made on a daily basis.⁴ Because of the progressive deterioration caused by Alzheimer’s disease, the taxpayer’s situation may change over time. For example, a person with Alzheimer’s disease might be capable of self-care in the early stages of the disease but may not in the middle or later stages.

A person generally qualifies as your dependent if all of the following three tests are met: (1) you provide over half of that person’s total support for the year, and (2) that person is a relative (including parents, grandparents, great grandparents, step-parents, parents-in-law, aunts and uncles, brothers and sisters, step brothers and sisters, half brothers and sisters) or that person’s primary home is your home and he or she is a member of your household, and (3) that person is a citizen or resident of the U.S. or a resident of Canada or Mexico.⁵

If a person would qualify as your dependent except that you do not meet the support test in (1) above, you may still be able to count that person’s expenses toward the credit by agreeing to a multiple support agreement, if you, together with others, provided more than half that person’s support. The requirements for a multiple support agreement are that (A) no one person has provided more than half of the person’s support, (B) more

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than half of the person's support has been provided by you and others who could, if they met the support test, have each claimed the person as a dependent, (C) you have provided at least 10% of the person's support, and (D) you file, with your income tax return, IRS Form 2120, *Multiple Support Declaration*, on which you indicate that you have in your records a signed statement from each other multiple support agreement participant waiving that participant's right to claim the person as a dependent.⁶

Example 1: Son and Daughter together provide \$10,000 (\$5,000 each) for the support of Mother, who has income of \$9,500. Son and Daughter agree in a multiple support agreement that Daughter can claim Mother as a dependent. Son signs a waiver of his right to claim Mother as a dependent, and Daughter files an IRS Form 2120 with her return. Daughter (but not Son) would be able to consider Mother a dependent for purpose of the credit.⁷

Maintaining a Household.

To qualify for the credit, you must actually live in a home that is the primary home for both you and the qualifying person, and you (together with your spouse if you are married) must pay for at least half of the costs of maintaining that household.⁸ The costs of maintaining a household include property taxes, mortgage interest, rent, utilities, upkeep and repairs, property insurance, and food eaten at home, but not the cost of clothing, education, medical treatment, vacations, life insurance, or transportation or payments on mortgage principal or for the purchase, permanent improvement, betterment, or replacement of property.⁹ For example, you can include the cost of repairing a water heater but not the cost of replacing it.¹⁰

For this test, if the qualifying person has lived with you for only part of the year, costs are prorated on a monthly basis (counting any partial month as a full month). In that case, you would compute the cost of keeping up your home for that part of the year by dividing the cost for the year by 12 and multiplying the result by the number of months the qualifying person lived with you.¹¹

Example 2: Bill's mother, Sara, who is incapable of self-care, moved in with him on June 20. The cost of keeping up their home for the year was \$24,000. The cost prorated for the 7-months is \$14,000 ($\$24,000 \times 7/12$). Bill must provide more than one-half of that cost (that is, more than \$7,000) in order to be treated as maintaining the household from June to December.

Earned Income.

You (and your spouse if you are married) must have earned income to qualify for the credit. (A special rule applies if your spouse is the qualifying person.) Earned income includes wages, salaries, tips, other employee compensation (but not nontaxable employee compensation, such as meals and lodging furnished for the convenience of the

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employer, voluntary salary deferrals, military basic quarters and subsistence allowances, and military pay earned in a combat zone) and net earnings from self employment.¹² It does not include pensions or Social Security benefits, and it does not include workers' compensation, interest, dividends, or unemployment compensation.¹³

The expenses used to compute the credit cannot exceed the lesser of your earned income or your spouse's earned income.

Because a person who is incapable of self-care is unable to earn any income, a special earned income rule applies if your spouse is the qualifying person. In that case, only you would need to have earned income, and your spouse would be treated as having earned income so you can take the credit. This special rule treats your spouse as having earned income of \$250 per month if there is one qualifying person in the household or \$500 per month if there is more than one qualifying person in the household.¹⁴

Work-Related Expenses.

To count toward the credit, your expenses must be work-related, which means they must satisfy two conditions: (1) they must be incurred to enable you (and your spouse if you are married) to work, actively look for work or be self-employed, and (2) they must be for the care of a qualifying person or for household services that are at least partly for the care of a qualifying person.¹⁵

Incurred to Enable You to Work. Expenses can be counted only if they enable you (and your spouse if you are married) to work, actively look for work or be self-employed, and only if your work is gainful (not volunteer work or work for nominal pay). For example, if you hire a respite care provider for your mother who has dementia so that you and your spouse can go out to eat, the cost cannot be counted toward the credit,¹⁶ but if you hire that respite care provider so you can go to work, the cost can be counted.

For Care of Qualifying Person. Expenses can be counted toward the credit if they are for the care of a qualifying person, that is, if their main purpose is that person's well-being and protection. Amounts for food, clothing and entertainment are not expenses for the care of a qualifying person; however, if these amounts are incidental to, and inseparable from, the cost of care (such as the cost of lunch included as part of the costs of an adult day care center), the full cost is considered to be for care.¹⁷

Expenses for care outside the home can be counted toward the credit only if they are for a qualifying person who regularly spends at least eight hours each day in your household. If an adult day care center that receives fees, payments or grants regularly provides full-time or part-time care for more than six people (other than any who may live there), the expenses can be counted toward the credit only if the center complies with applicable state or local laws.¹⁸ Expenses for transportation between your home and day care center cannot be counted toward the credit.¹⁹

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For Household Services At Least Partly Related to Care of Qualifying Person.

Expenses can be counted toward the credit if they are for household services (which means the performance in and about your home of ordinary and usual services necessary to the maintenance of the household), but these costs must also be at least partly for the care of a qualifying person.²⁰

Example 3: Joe is employed and maintains a house for his wife, Molly, who is a qualifying person. He incurred and paid \$5,000 to Jill for cooking and cleaning services for Joe and Molly and \$1,000 to Jeff for gardening services. Only the \$5,000 paid to Jill can be counted toward the credit.²¹

If part of an expense is for either household services or the care of a qualifying person, and part is for other purposes, the part of the expenses paid for the other purposes cannot be counted toward the credit.²²

Additional Rules on Types of Expenses. You cannot count an expense toward the credit if you have counted it as a medical expense in computing your medical expense deduction.²³ If an expense would qualify either as a medical expense or as an expense under the credit, you may choose to treat it as a medical expense or to count it toward the credit. If the expense is greater than the dollar limit discussed below, you can add the excess to your medical expenses; but if you use all of the expense to compute your medical expense deduction, you cannot use any of it to figure your dependent care credit. You should compute your tax both ways and choose the treatment that results in the lower tax.

Rules on Timing of Payments. You can count expenses paid in a tax year if they were for services performed in that year or a prior year. But, for services performed in a prior tax year, you must calculate the credit using your earned income for the prior year.²⁴ IRS Publication 503, *Child and Dependent Care Expenses*, has a worksheet to help you with this calculation. If you pre-pay an expense (that is, you pay for care in one year even though the care services will not be performed until a year later), the expense can only be counted toward the credit for the year the care services are performed.²⁵

Payments to Relatives.

You can count toward the credit amounts you pay to your relatives, but you cannot count payments to a dependent for whom you or your spouse can claim a personal exemption or payments to your child or step child if he or she is under the age of 19 as of the end of the taxable year (even if he or she is not your dependent).²⁶

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Filing Status.

Generally, if you are married at the end of a taxable year, you must file a joint return to claim the credit for that year. If you are legally separated under a decree of divorce or separate maintenance, you are treated as not married. In addition, special rules apply if your spouse died during the year or if your spouse is not a member of your household during the last six months of the year.²⁷

Information and Records.

To claim the credit, you must report on your return (1) the name, address, and (if the organization is not a church or other tax-exempt organization) taxpayer identification number (TIN) of the care provider, and (2) the TIN of each qualifying person.²⁸ The TIN is the social security, individual taxpayer identification, or employer identification number. You may use IRS Form W-10 to obtain the information or you may get the information from the provider's social security card, driver's license or completed Form W-4, from a statement furnished by your employer if the provider is your employer's dependent care plan, or from a letter or invoice from the provider if it shows the necessary information. You should make copies of any of the above documents and keep this information with your tax records, but you should not send any of these documents (including the Form W-10) to the IRS. If the provider information you report is incorrect or incomplete, your credit may not be allowed unless you can show that you used "due diligence" in trying to supply the information.²⁹ You can show due diligence by obtaining and keeping one of the sources of information listed above.³⁰

Care providers can be penalized if they do not provide you with the required correct information. If the provider fails to give you the required information, you should report on your tax return whatever information you have (such as the name and address) and report that you requested the information, but the provider failed to give it to you.³¹

As with any item on your tax return, if challenged by the IRS, it is up to you to show that you are entitled to the household and dependent care credit. Therefore, it is very important to collect and retain documentation showing the nature of, and amounts paid for, care services and the dates of service and payment, documentation showing that your qualifying person is incapable of self-care (including a health professional's description and other details concerning the nature of the physical or mental incapacity) for the time period for which you are claiming the credit, and documentation showing that you have satisfied the other conditions for the credit.

Computing the Credit

The credit is a percentage ranging from 20% to 35% of your work-related expenses.

Earned Income Limit. You cannot count work-related expenses that are more than your earned income for the year or, if you are married, your spouse's earned income,

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whichever is smaller. Note, as described above under Earned Income, that if your spouse is a qualifying person, he or she is treated as having earned income of \$250 per month if there is one qualifying person in the household or \$500 per month if there is more than one qualifying person in the household.

Dollar Limit. You cannot count work-related expenses that are more than \$3,000 if there is one qualifying person in the household or \$6,000 if there is more than one qualifying person in the household.³²

Example 4: Joe incurred and paid \$7,150 in work-related expenses for the care of Molly, his wife, who has Alzheimer's disease. Joe has no dependent care assistance program at work. Joe earned \$35,000. Molly is treated as having earned income of \$3,000 (\$250 x 12 months). Under the earned income limit, only \$3,000 in expenses can be used in computing the credit.

Reduction of Dollar Limit. The dollar limit is further reduced by any amount excluded from your gross income under any dependent care assistance program your employer may have.

Example 5: In the prior example, if Joe's employer provided dependent care assistance in the amount of \$5,000 which was excluded from Joe's income, under the dollar limit (as reduced for dependent care assistance program benefits), only \$2,150 of the expenses could be used in computing the credit.

To determine the amount of your credit, multiply your work-related expenses (after applying the earned income and dollar limits) by a percentage. This percentage depends on your adjusted gross income (AGI) shown on line 35 of Form 1040 or line 22 of Form 1040A. The following table shows the percentage to use based on adjusted gross income.³³

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Adjusted Gross Income (AGI) %

\$0 to \$15,000	35%
15,001 to 17,000	34%
17,001 to 19,000	33%
19,001 to 21,000	32%
21,001 to 23,000	31%
23,001 to 25,000	30%
25,001 to 27,000	29%
27,001 to 29,000	28%
29,001 to 31,000	27%
31,001 to 33,000	26%
33,001 to 35,000	25%
35,001 to 37,000	24%
37,001 to 39,000	23%
39,001 to 41,000	22%
41,001 to 43,000	21%
above 43,000	20%

Example 6: Assuming Joe's AGI is \$43,500 and his expenses are \$2,150, Joe is entitled to a credit of 20% of \$2,150 or \$430.

The credit is claimed by filing IRS Form 2441, *Child and Dependent Care Expenses* with IRS Form 1040, or by filing Schedule 2, *Child and Dependent Care Expenses for Form 1040A Filers*.

More Information.

For more information on the Household and Dependent Care Credit, see IRS Publication 503, *Child and Dependent Care Expenses*, and IRS Publication 17, *Your Federal Income Tax for Individuals*. These and other IRS publication and forms are available free at www.irs.gov or by calling the IRS at 1-800-829-3676. Other sections of *Taxes and Alzheimer's Disease* include discussions of the itemized deduction for medical expenses and employment taxes and withholding for household workers. This publication may be updated from time to time. Contact the Alzheimer's Association for the latest updates. Comments on this publication should be directed to Alzheimer's Association, 1319 F Street, N.W., Suite 710, Washington, D.C., 20004.

¹ IRC §21(b).

² Treas. Reg. §1.44A-1(b)(4)

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³ IRS Publication 17, *Your Federal Income Tax for Individuals*; IRS Publication 503, *Child and Dependent Care Expenses*.

⁴ Treas. Regs. §1.44A-1(b)(3).

⁵ IRC §152.

⁶ IRC §152(c).

⁷ In this case, Daughter would not be able to claim a personal exemption for Mother as a dependent because Mother has gross income that exceeds the exemption amount of \$3,050 in 2003. If Mother's income were below \$3,050, Daughter could claim a personal exemption for Mother. Son cannot claim Mother as a dependent for any purpose. See IRC §151; Rev. Proc. 2002-70, 2002-46 I.R.B. 845.

⁸ Treas. Regs. §1.44A-1(d)(1).

⁹ Treas. Regs. §1.44A-1(d)(3).

¹⁰ IRS Publication 17, *Your Federal Income Tax for Individuals*; IRS Publication 503, *Child and Dependent Care Expenses*.

¹¹ Treas. Regs. §1.44A-1(d)(4).

¹² Treas. Regs. §1.44A-2(b)(2); IRS Publication 503, *Child and Dependent Care Expenses*.

¹³ IRS Publication 503, *Child and Dependent Care Expenses*.

¹⁴ IRC §21(d).

¹⁵ IRC §21(b)(2); Treas. Regs. §1.44A-1(c)(1).

¹⁶ See, e.g., IRS Publication 503, *Child and Dependent Care Expenses*.

¹⁷ See Treas. Regs. §1.44A-1(c)(3).

¹⁸ IRC §21(b)(2)(B) and (C); Treas. Regs. §1.44A-1(c)(4) and (5).

¹⁹ Treas. Regs. §1.44A-1(c)(3).

²⁰ Treas. Regs. §1.44A-1(c)(2).

²¹ If amounts were incurred and paid for Jill's food that she eats in Joe and Molly's home, these expenses could be counted; if Jill lives with Joe and Molly, any added expenses (such as utilities) could also be counted. IRS Publication 503, *Child and Dependent Care Expenses*.

²² You do not have to divide the expense if only a small part is for other purposes. IRS Publication 503, *Child and Dependent Care Expenses*.

²³ Treas. Regs. §1.44A-4(b).

²⁴ Treas. Regs. §1.44A-1(a)(3) and (5); IRS Publication 503, *Child and Dependent Care Expenses*, Worksheet A.

²⁵ Treas. Regs. §1.44A-1(c)(4).

²⁶ IRC §21(e)(6); Treas. Regs. §1.44A-4(a)(1).

²⁷ IRC §21(e)(2), (3), and (4); Treas. Regs. §1.44A-3. The special rules are discussed in IRS Publication 503, *Child and Dependent Care Expenses*.

²⁸ IRC §21(e)(9) and (10).

²⁹ IRC §21(e)(9).

³⁰ IRS Publication 503, *Child and Dependent Care Expenses*.

³¹ IRS Publication 503, *Child and Dependent Care Expenses*.

³² IRC §21(c).

³³ IRC §21(a)(2). The applicable percentage equals 35%, reduced by one percentage point for each \$2,000, or part thereof, by which your adjusted gross income exceeds \$15,000, but not reduced to less than 20%.

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Taxes and Alzheimer's Disease

Updated as of February 2004

Federal Employment Taxes and Income Tax Withholding for Household Workers

Taxes and Alzheimer's Disease is a series of general discussions of tax issues that may affect those who have Alzheimer's disease and their families. The discussion below summarizes the federal employment taxes and income tax withholding for persons who might be hired or retained to assist with the care of a person who has Alzheimer's disease.

- You must withhold and pay Social Security and Medicare taxes on wages you pay to employees for domestic services, which might include the services of a person who assists with the home care of a person with Alzheimer's disease, if the payments to the employee total \$1,400 or more in 2003.
- You must pay federal unemployment taxes on wages you pay to employees for domestic services, which, as noted above, might include the services of a person who assists with the home care of a person with Alzheimer's disease, if your payments for domestic services total \$1,000 or more in cash in any calendar quarter of the current or preceding year. You may also have to pay state unemployment taxes.
- Service that qualifies as domestic service is not subject to withholding.

Federal Insurance Contributions Act (FICA) taxes, commonly called Social Security taxes, and Federal Unemployment Tax Act (FUTA) taxes, commonly called unemployment taxes, are required to be paid for all employees unless an exception applies. Federal income tax also generally is required to be withheld from all employees unless an exception applies (as it does in the case of domestic service). (States also have unemployment taxes and income tax withholding. Request information from your state unemployment tax agency listed in the appendix to IRS Publication 926, *Household Employer's Tax Guide*.)

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Because FICA, FUTA and income tax withholding apply only to employees and employers, the first question in determining FICA, FUTA and withholding obligations is whether the worker is an employee. If the worker is an employee, the next question is who is the employer. The final questions involve what FICA, FUTA and withholding obligations apply and whether any exceptions apply.

Employee or Independent Contractor.

Employment taxes are not required to be paid, and income tax is not required to be withheld, if the worker is an independent contractor (that is, self-employed) and not an employee. The question of whether a worker is an employee or independent contractor depends on the facts and circumstances of each case. An employer-employee relationship generally exists when the person for whom the services are performed has the right to control and direct the person who performs the services, not only as to the results, but as to the details and means to accomplish the result (that is, the worker is an employee if subject to the will and control of the employer not only as to what is to be done but how it is to be done).¹ The IRS has listed 20 factors to help in determining whether an employee-employer relationship exists. Some of the 20 factors suggesting that an employee-employer relationship may exist are (1) that the worker is given instructions about when, where, and how the work is to be done; (2) that there is a continuing relationship between the worker and the person for whom the services are performed; (3) that the work is performed on the premises of the person for whom the services are performed; (4) that payment is made by the hour, week or month rather than by the job; and (5) that there is a right to fire and a right to quit without liability.²

Registered Nurses and Licensed Practical Nurses. The IRS has ruled that, although dependent on the facts and circumstances of each case, generally, registered nurses and licensed practical nurses engaged in private duty nursing are considered self-employed.³ The IRS indicated that the relevant factors for these situations are (a) the type and nature of the services performed; (b) the control exercised and by whom; (c) whether the worker is a licensed nurse; and (d) evidence establishing whether or not the services were performed in the conduct of an independent trade, business, or profession.

Note: The first factor is also relevant in determining whether a medical expense deduction is available. See "Taxes and Alzheimer's Disease: Deductibility of Some of the Costs of Caring for a Person with Alzheimer's Disease."

Others with Less Training Who Perform Nonprofessional Nursing-Type Services. The IRS has ruled that nurses' aides, domestics, and other unlicensed workers, who may call themselves practical nurses, are employees because they are, in general, "insufficiently trained or equipped to render professional or semi-professional services according to the professional concept of 'nursing.'" The IRS stated that these "services are normally those expected of maids and servants, i.e., bathing the individual, combing the individual's

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hair, reading, arranging bedding and clothing, preparing and serving meals, and occasionally giving oral medication . . .” and that because “these and similar tasks are normally performed by domestics, the individuals performing them are, like other domestics, subject to virtually complete direction and control in the performance of the services. . . .” The IRS indicated that the same factors mentioned above under registered nurses and licensed practical nurses are relevant.⁴

Who is Responsible for FICA, FUTA and Income Tax Withholding?

If an employer-employee relationship exists, unless an exception applies, the person for whom the services are performed is the employer and has responsibilities for FICA, FUTA and income tax withholding.⁵ In a situation involving the care of a person with dementia, someone else, such as a family member who is supervising the care, may be considered the employer.⁶ When the person for whom the services are performed does not have legal control of the payment of the wages for the services, such as when a trustee or guardian has been appointed for a person with Alzheimer’s disease, the employer is the person having control over the wage payment.⁷ If a worker is retained through an agency, the particular facts and circumstances will affect the determination of who is the employer, and whether the service is considered domestic service in the private home of the employer (for which some exemptions apply as described below). When an agency is providing domestic services (in contrast to providing worker referral services like an employment agency), the “client” will generally not be considered the employer.⁸ However, if the “client” is the one who has control over the employee, the client may be considered the employer and could be held liable for failure to comply with FICA and FUTA unless the agency is considered to have control over the payment of the wages as described in the previous paragraph.⁹

Obligations and Exceptions.

Domestic Services. Domestic services in the private home of the employer are a special category under the FICA, FUTA and withholding requirements. Domestic services are services of a household nature performed by an employee in and about the private home of the person for whom the services are performed. They include services performed by cooks, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, caretakers, grooms and chauffeurs of cars for family use.¹⁰ (This category should not be confused with a category of worker called home workers. This discussion does not apply to home workers.) Services performed by a companion to a convalescent employer or member of the employer’s family, including providing entertainment, caring for personal needs, living in the home of, accompanying on trips, and performing any other services necessary for the comfort or well being of a convalescent, are domestic service in the employer’s home.¹¹ A variation on the requirement that the services be performed in the private home is that services performed by a private attendant, who is not a registered nurse or licensed practical nurse, in a nursing home, convalescent home or hospital may qualify as domestic services if they are of a domestic nature and the facts

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and circumstances show that the room or suite in the nursing home, convalescent home or hospital is the residence of the patient.¹²

FICA. FICA, which is imposed equally on the employer and on the employee, consists of two parts; Old-Age, Survivor and Disability Insurance (OSADI) and Hospital Insurance (HI). (HI is the Medicare portion.) Generally, each of the employer and employee is required to pay the OASDI tax of 6.2% on wages up to a maximum limit of \$87,000 in 2003 (increasing to \$87,900 in 2004) and to pay the HI tax of 1.45% on all wages (with no maximum).¹³ The employer is required to withhold and pay to the IRS the employee's portion of the OASDI and HI tax.¹⁴ Payments for domestic service in a private home of the employer are exempt from FICA if the payments to the employee total less than \$1,400 for 2003.¹⁵ (This amount is indexed for inflation: for 2002 and 2001, the amount was \$1,300.¹⁶) If the cash compensation paid is \$1,400 or more in 2003, all of the cash compensation (including the first \$1,400) paid to that employee is subject to FICA taxes. Other payments for domestic service in a private home of the employer that are exempt include non-cash payments (for example, non-cash items such as food, lodging, clothing, transportation) for domestic service in a private home of the employer,¹⁷ payments to an employee under 18 years old for whom domestic service is not his or her main occupation¹⁸ (for example, a student who is paid to assist with caring for someone with Alzheimer's disease), and payments of the employee's portion of FICA or state unemployment insurance taxes that are not deducted from the employee's pay.¹⁹

FUTA. FUTA is required to be paid by employers on wages up to a maximum of \$7,000.²⁰ There is no employee portion of FUTA. For 2003, the FUTA rate is 6.2%.²¹ States also assess unemployment insurance taxes. FUTA is in addition to state unemployment insurance tax you may be required to pay, but your FUTA tax may be reduced by credits for the payment of state unemployment taxes. The maximum credit is limited to 90% of the tax at a deemed rate of 6.0%, which results in a credit of 5.4% against the FUTA tax.²² Therefore, the net federal rate after applying the maximum credit would be 0.8%. The credit you can take for any contributions for 2003 that you pay after April 15, 2004, is limited to 90% of the credit that would have been allowable if the contributions were paid by April 15, 2004.²³ Payments that you pay for domestic services are exempt from FUTA if the payments total less than \$1,000 in cash in each calendar quarter of the current and preceding year.²⁴ In addition, payments are exempt if they are for the employee's portion of FICA or state unemployment insurance taxes and are not deducted from the employee's pay.²⁵ Non-cash compensation is not included in determining whether an employer must pay FUTA taxes for a domestic service worker, but if the employer is subject to FUTA for that worker's services, non-cash compensation is included in calculating the FUTA tax.

Income Tax Withholding. In general, employers must deduct and withhold income tax on wages paid to employees; however, domestic service is not subject to withholding.²⁶ The employer and employee may agree that the employer will withhold income tax. In

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that event, the employer should obtain a completed Form W-4, Employee's Withholding Allowance Certificate, from the employee, and the employer will be responsible for withholding the tax, filing appropriate forms and paying the withheld tax to the IRS.²⁷

Filing and Paying Employment Taxes. Employers of domestic workers must file Schedule H with their Form 1040, Individual Income Tax Return, to report any applicable FICA, FUTA and income tax withholding. Employers who file Schedule H are required to pay FICA and FUTA taxes and any withheld income taxes by the due date for their individual income tax returns, not including any extensions, for the applicable year. Employers should make estimated tax payments (or increase their withholding on their own income) to satisfy their tax obligations. If an employer pays wages subject to FICA or withholds income tax, the employer must complete Form W-2, Wage and Tax Statement, and give copies B, C, and 2 to his or her employees by January 31 of the year following the year in which the wages were paid. The employer must file copy A with the Social Security Administration by the last day of February of that year.²⁸

Earned Income Credit. Certain workers can take the earned income credit (EIC), which reduces their tax or allows them to receive a payment from the IRS if they do not owe tax.²⁹ An employer must make advance EIC payments to an employee if the employee gives the employer a completed Form W-5, Earned Income Credit Advance Payment Certificate. Any advance EIC payments reduce the amount of FICA taxes and withheld federal income tax the employer must pay the IRS.³⁰ To find out how much to pay the employee for advance EIC, the employer should use the advance EIC payment tables in IRS Publication 15, *Circular E, Employer's Tax Guide*, but the employer should not pay more than the amount of FICA and withheld federal income tax he or she would otherwise have paid to the IRS. Employers are required to give domestic workers a notice about the EIC if they agree to withhold federal income tax from the employee's wages.³¹

More Information.

For more information on employment taxes and income tax withholding, see IRS Publication 15, *Circular E, Employer's Tax Guide*; IRS Publication 926, *Household Employer's Tax Guide*; and IRS Publication 596, *Earned Income Credit*. These and other IRS publication and forms are available free at www.irs.gov or by calling the IRS at 1-800-829-3676. Other sections of *Taxes and Alzheimer's Disease* include discussions of the itemized deduction for medical expenses and the Household and Dependent Care Credit. This publication may be updated from time to time. Contact the Alzheimer's Association for the latest updates. Comments on this publication should be directed to Alzheimer's Association, 1319 F Street, N.W., Suite 710, Washington, D.C., 20004.

Note: When you hire a domestic worker, he or she must complete the employee part of the Immigration and Naturalization Service (INS Form I-9, *Employment Eligibility Verification*). You must verify that the employee is a U.S. citizen or an alien who is

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legally entitled to work in the United States and then complete the employer portion of the form. Keep the completed form for your records. The *INS Handbook for Employers* contains Form I-9 and can be obtained at www.ins.usdoj.gov or by calling the INS at 800-870-3676. If you have questions about the employment eligibility verification process or other immigration-related employment matters, you may contact the INS Office of Business Liaison at 1-800-357- 2099.

¹ Treas. Regs. §31.3121(d)-1(c)(2).

² Rev. Rul. 87-41, 1987-1 C.B. 296.

³ Rev. Rul. 61-196, 1961-2 C.B. 155. See, e.g., Pvt. Ltr. Ruls. 8612055, 9243016.

⁴ Rev. Rul. 61-196, 1961-2 C.B. 155. See, e.g., Pvt. Ltr. Ruls. 8612055, 8641059, 8648044, 8717031, 8835024, 8845049.

⁵ IRC §3401(d) and §3402(a); Treas. Regs. §31.3401(d)-1(a).

⁶ See, e.g., Pvt. Ltr. Ruls. 8641059, 8809015, 8835024, 8936055.

⁷ IRC §3401(d)(1); Treas. Regs. §31.3401(d)-1(f). See, e.g., Pvt. Ltr. Rul. 8828056.

⁸ Rev. Rul. 75-101, 1975-1 C.B. 318 (licensed practical nurses); Rev. Rul. 56-502, 1956-2 C.B. 688, as modified by Rev. Rul. 80-365, 1980-2 C.B. 300 (sitters). See, e.g., Pvt. Ltr. Ruls. 8513023, 8615066, 9118008, 9206002, 9241012. See also IRC §3506; Treas. Regs. §31.3506-1(d).

⁹ See Pvt. Ltr. Ruls. 9208010, 9309026. See also Treas. Regs. §31.3506-1(d).

¹⁰ Treas. Regs. §31.3121(a)(7)-1(a)(2); §31.3306(c)(2)-1(a)(1); §31.3401(a)(3)-1(a).

¹¹ Rev. Rul. 56-109, 1956-1 C.B. 467.

¹² Rev. Rul. 74-388, 1974-2 C.B. 325.

¹³ IRC §3101(a) and (b); IRC §3111(a) and (b); 68 Fed. Reg. 60437 (10/22/03) and 67 Fed. Reg. 65620 (10/25/02).

¹⁴ IRC §3102(a).

¹⁵ IRC §3121(a)(7)(B); 67 Fed. Reg. 65620 (10/25/02).

¹⁶ 66 Fed. Reg. 54047 (10/25/01); 65 Fed. Reg. 63663 (10/24/00).

¹⁷ IRC §3121(a)(7)(A).

¹⁸ IRC §3121(b)(21).

¹⁹ IRC §3121(a)(6).

²⁰ IRC §3306(b)(1).

²¹ IRC §3301.

²² IRC §3302(c)(1), (d)(1); IRS Publication 926, *Household Employer's Tax Guide*.

²³ IRS Publication 926, *Household Employer's Tax Guide*.

²⁴ IRC §3306(a)(3).

²⁵ IRC §3306(b)(6).

²⁶ IRC §3401(a)(3).

²⁷ IRS Publication 926, *Household Employer's Tax Guide*.

²⁸ IRS Publication 926, *Household Employer's Tax Guide*.

²⁹ IRC §32.

³⁰ IRC §3507.

³¹ IRS Publication 926, *Household Employer's Tax Guide*.

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