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713 Brookmont Drive
Gadsden, AL 35901, '

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, '

DOCKET NO. INC. 97-336

v. '

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed 1993 and 1994 income tax against Franco and Jennifer Antonelli (together "Taxpayers"). The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. A hearing was conducted on July 16, 1999 in Birmingham, Alabama. Luther Abel represented the Taxpayers. Assistant Counsel Keith Maddox represented the Department.

The issue in this case is whether the Taxpayers can deduct certain education-related expenses as employee business expenses on their 1993 and 1994 Alabama income tax returns.

Franco Antonelli (individually ATaxpayer@) was employed as a physical therapist assistant in Anniston, Alabama in 1993 and 1994. During those years, the Taxpayer attended a college in Miami, Florida two weekends a month for the purpose of obtaining a Master-s Degree in physical therapy. A Master-s Degree was required for the Taxpayer to become a licensed physical therapist. He received a Master-s Degree in 1996.

The Taxpayer explained that as a physical therapist assistant, he could only perform the physical care for a patient. As a physical therapist, he is also qualified to

initially evaluate a patient and prescribe the patient's routine of care and treatment.

The Taxpayer deducted his travel to Miami and other school-related expenses on his 1993 and 1994 Alabama income tax returns. The Department denied the deductions and entered the final assessment in issue. The Taxpayer appealed.

Alabama law allows taxpayers to deduct all ordinary and necessary business expenses to the same extent allowed by federal law at 26 U.S.C. ' 162. Code of Ala. 1975, ' 40-18-15(a)(1). Employee-related education expenses may be deducted as ordinary and necessary business expenses, but only under limited circumstances. Those circumstances are set out in Dept. Reg. 810-3-15-.10(3).

Pursuant to Reg. 810-3-15-.10(3), education expenses may be deducted if the education (1) maintains or improves the skills required by the taxpayer's job, or (2) is required by the taxpayer's employer or by applicable law as a condition of employment. Even if one of the above criteria is met, the expenses still cannot be deducted if the education (1) is necessary to meet the minimum requirements for the taxpayer's job, or (2) qualifies the taxpayer for a new trade or business.

Reg. 810-3-15-.10(3) is a summary of the relevant federal regulation, Treas. Reg. ' 1.162-5. That federal regulation is adopted by reference for Alabama purposes by Reg. 810-3-15-.10(3)(d).

Treas. Reg. ' 1.162-5 was analyzed at length in Toner v. C.I.R., 623 F.2d 315 (1980). That case involved a parochial school teacher (Ataxpayer@) who obtained a bachelor's degree in education while teaching at the parochial school. The degree was not necessary to qualify the taxpayer for her current teaching position, but was required

before she could teach in a public school. At issue was whether the taxpayer could deduct her education-related expenses.

The court, in applying Treas. Reg. ' 1.162-5, first held that the taxpayer qualified for the deduction because the college courses improved her skill in her current teaching job. Likewise, in this case, the courses leading to the Taxpayer's Master's Degree in physical therapy certainly improved his skills as a physical therapist assistant. Consequently, the Taxpayer qualified for the deduction.

As indicated, however, even though the Taxpayer qualified for the deduction, the expenses still cannot be deducted if (1) the education was required for the Taxpayer to meet the minimum requirements of his current job, or (2) the education qualified the Taxpayer for a new trade or business. Provision (1) above clearly does not apply because the college courses were not required for the Taxpayer to be employed as a physical therapist assistant. This case thus turns on (2) above; that is, did the education qualify the Taxpayer for a new trade or business.

Treas. Reg. ' 1.162(5)(b)(3) provides that **A**a change in duties does not constitute a new trade or business if the new duties involve the same general type of work as involved in the individual's present employment@. Toner, 623 F.2d at 318. For example, the regulation also states that all teaching and related duties shall be considered the same general type of work. Education that qualifies a classroom teacher to be a guidance counselor or a principal does not qualify the teacher for a new trade or business. The court thus held in Toner that the college courses that qualified the

taxpayer to work in the public schools did not qualify her for a new trade or business.

The education expenses were allowed.

My initial thought was that the Master's Degree qualified the Taxpayer for a new trade or business because becoming a physical therapist allowed him to evaluate and prescribe treatment for patients. He was not qualified to perform those duties as a physical therapist assistant. But clearly the Taxpayer's duties as a physical therapist involve the same general type of work that he performed as a physical therapist assistant, at least to the same extent that a guidance counselor or a principal performs the same general type of work as a classroom teacher. Consequently, the Taxpayer's education expenses should be allowed. The final assessments in issue are dismissed.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, ' 40-2A-9(g).

Entered August 23, 1999.

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BILL THOMPSON  
Chief Administrative Law Judge

BT:ks

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