WENDY L. WHITFIELD 108 Montrose Court, Apt. 55 Dothan, AL 36305,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. INC. 03-290
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Wendy L. Whitfield ("Taxpayer") for 1999 and 2000 income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on July 15, 2003. Ed Huite represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer worked as a salesperson for Novartis Pharmaceuticals during the years in issue. She claimed various business-related expenses on her Alabama income tax returns in those years. The Department audited the returns and disallowed her claimed mileage expenses, her cellular telephone expenses, unreimbursed business meals, and education expenses. The Taxpayer appealed.

Concerning the mileage expense, the Taxpayer was provided a car by her employer. Unfortunately, she failed to keep a daily journal or other contemporaneous record showing the amount, time, place, and business purpose for each trip. Instead, during the Department audit, the Taxpayer provided the examiner with a recompiled log of her trips and the estimated miles traveled. The examiner rejected the log as insufficient, and consequently disallowed the mileage claimed in each year.

The business travel expense deduction was addressed in *Amaya v. State of Alabama*, Inc. 99-281 (Admin. Law Div. 9/1/99), as follows:

> Unreimbursed employee travel expenses may be deducted as ordinary and necessary business expenses pursuant to Code of Ala. 1975, §40-18-15(a)(1). That section adopts by reference the federal statute on point, 26 U.S.C. §162. In such cases, federal authority and case law should be followed. State, Department of Revenue v. Dawson, 504 So.2d 312 (Ala.Civ.App.1987).
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> To be allowed business-related travel expenses, an employee must maintain a travel log or other sufficient evidence verifying the amount, time, place, and business purpose for the travel. The criteria for claiming travel expenses was explained in Langer v. C.I.R., 980 F.2d 1198 (1992):
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> > "A taxpayer cannot deduct travel expenses under 26 U.S.C. § 162 unless the taxpayer meets the substantiation requirements of § 274(d). The taxpayer must substantiate the amount, time, place, and business purpose of each travel expenditure 'by adequate records or by sufficient evidence corroborating [the taxpayer's] own statement.' Treas. Reg. § 1.274-5(c) (1983). To substantiate expenditures with 'adequate records,' a taxpayer must keep an account book or similar record along with supporting documentary evidence that together establish each element of the expenditure. *Id.* § 1.274-5(c)(2)(i). To show substantiation by other 'sufficient evidence,' the taxpayer must establish each element by the taxpayer's own detailed statement and by corroborating evidence. *Id*. § 1.274-5(c)(3)."
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> Langer v. C.I.R., 980 F.2d at 1199.

In this case, the Taxpayer maintained a travel log for the years in issue, although he produced only the 1995 log at the August 25 hearing. The 1995 log shows that the Taxpayer traveled on business approximately 15 days each month. The log contains only the date the travel occurred, and the miles traveled on each date. The miles traveled varied from approximately 50 to 80 miles per day. The Taxpayer testified that he recorded the daily entries in the log at the end of each week. He also conceded that the log includes the miles he drove the vehicle on personal business.

> The Taxpayer's log is not sufficient to verify the claimed expenses. First, the Taxpayer commingled business and personal mileage. Importantly, he also failed to record where he traveled and the business purpose for the travel. As indicated, that information is required for the mileage to be allowed.
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> Under certain circumstances, the courts have allowed taxpayers to estimate deductible expenses in the absence of adequate records. Cohan v. Commissioner, 39 F.2d 540 (1930). However, the Cohan rule does not apply to employee business travel expenses. IRC Reg. §1.274-5T(a)(1).

As in *Amaya*, the recreated travel log offered by the Taxpayer in this case is insufficient. While the log includes dates, travel destinations, and estimated miles traveled, it does not show a business purpose for the various trips, as required by §274(d). The Taxpayer also failed to appear and testify at the July 15 hearing concerning her travel. The Taxpayer certainly incurred some travel expenses during the subject years. Unfortunately, as indicated above, the *Cohan* rule that allows a taxpayer to estimate some deductible expenses in lieu of records does not apply to employee business travel expenses. The Taxpayer's claimed mileage expenses were properly disallowed.

The Taxpayer deducted her entire cellular telephone bills during the years in question. She provided the examiner with her monthly bills, but failed to identify what portion of the bills was business-related and what was personal. Consequently, the examiner disallowed the entire amount.

This is a close question. The Taxpayer traveled on business in several Southeastern states and needed a cellular telephone for business purposes to arrange appointments, etc. Applying the *Cohan* rule, a reasonable estimate is that one-half of the Taxpayer's cellular telephone was used for business purposes. Consequently, one-half of those expenses should be allowed.

Concerning the business meal deductions, the Taxpayer's employer allowed her an expense account to be used for business purposes. The Taxpayer deducted what she claims was the excess she spent on business meals over her expense allowance. Unfortunately, she failed to provide evidence verifying that the amounts claimed exceeded her reimbursed allowance. Consequently, that expense was properly disallowed.

Finally, the Taxpayer deducted education expenses incurred in obtaining an MBA degree. The Taxpayer told the Department examiner that she needed an MBA degree to qualify for her employer's marketing team. The marketing team develops and plans how new drugs will be advertised and introduced into the market.

Employee-related education expenses may be deducted as ordinary and necessary business expenses, but only under limited circumstances. Pursuant to Dept. 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 minimum requirements for the taxpayer's job, or (2) qualifies the taxpayer for a new trade or business. The above Alabama regulation is modeled after Treas. Reg. §1.162-5.

The Taxpayer's representative argues that the MBA degree only enhanced the Taxpayer's current job performance, and that she only made a lateral move within her present employment. I disagree.

The Taxpayer was required to have the MBA degree to qualify for her employer's marketing team. While the Taxpayer did not change employers, moving from her position as a salesperson to a new position as a member of the marketing team constituted a new

trade or business within the context of the employee-related education expense deduction.

In *Robinson v. C.I.R.*, 78 Tax Court 500 Tax Ct. Rep. (CCH) 38,911 (1982), the U.S. Tax Court addressed whether a licensed practical nurse could deduct education expenses incurred in qualifying to be a registered nurse. The Tax Court held that while both jobs involved nursing, qualifying as a registered nurse clearly constituted a new trade or business. The Court stated as follows:

> We are aware of the difficulty that courts have encountered in the area of defining the parameters of certain trades or businesses. To clearly articulate the distinction between the maintenance and refinement of skills in one business and the qualification of an individual for another related business presents a formidable task in certain factual settings. Compare *Toner v. Commissioner*, 623 F.2d 315 (3rd Cir. 1980), revg. 71 T.C. 772 (1979), and *Laurano v. Commissioner*, 69 F.C. 723 (1978) (Canadian teacher was entitled to deduct educational costs qualifying her to teach in New Jersey), with *Sharon v. Commissioner*, 66 T.C. 515 (1976), affd. 591 F.2d 1273 (9th Cir. 1978) (costs incurred by New York attorney for a California bar review course were nondeductible), *Davis v. Commissioner*, 65 T.C. 1014 (1976) (social caseworkers and professors of social work are in different businesses), and *Gleen v. Commissioner*, supra. In *Toner v. Commissioner*, supra, the Third Circuit held that a parochial school teacher who took courses leading to a bachelor's degree which enabled her to teach in public school was entitled to deduct the costs of her education. The Court, in seizing upon respondent's regulation at section 1.162-5(b)(3) announced that if the regulation envisions no change of business when a classroom teacher becomes a guidance counselor, then it is equally certain that an erstwhile parochial school teacher has not changed businesses when she joins the faculty of a public school. The Court saw little, if any, qualitative difference in duties between the two teaching posts. While it is abundantly clear that a "teacher is a teacher is a teacher" (*Toner v. Commissioner*, 71 T.C. 772, 790 (1979) (Goffe, J., dissenting)), we believe the instant facts to be distinguishable from *Toner*. The heightened level of professional judgment, the increase in skills one can perform, and the supervisory powers exercised by an RN serve to distinguish the RN from the LPN in job function and responsibility. Accordingly, the sweeping view of teaching, as expressed in *Toner*, is inapplicable to the types of nursing involved herein.

Robinson, (CCH) 38,911 at 558.

The Taxpayer was required to have an MBA to qualify her for Novartis's marketing

team. The Taxpayer's job on the marketing team was discernibly different from her prior job as a salesperson. The MBA thus qualified her for a new trade or business. The education expenses were correctly disallowed.

The Department is directed to recalculate the Taxpayer's liabilities by allowing one-half of her cellular telephone expenses. It should notify the Administrative Law Division of the adjusted amounts due. A Final Order will then be entered.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered July 24, 2003.