STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. INC. 87-189
NORRIS W. GREEN 673 Sandhurst Drive Montgomery, AL 36109,	§	
Taxpayer.	§	

ORDER

This case involves three preliminary assessments of income tax entered by the Revenue Department ("Department") against Norris W. Green ("Taxpayer") for the years 1984, 1985 and 1986. A hearing was conducted by the Administrative Law Division on September 15, 1987. The Taxpayer was present at said hearing and represented himself. Assistant counsel Nancy 1. Cottle appeared on behalf of the Department. Based on the evidence submitted, and in consideration of the arguments and authorities forwarded by both parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The relevant facts are undisputed. For several years prior to, during and subsequent to the years in question, the Taxpayer was employed as a legislative fiscal analyst with the Alabama Legislative Fiscal Office. A general description of the duties of a legislative fiscal analyst, as provided by the Director of the Fiscal Office, is as follows:

> This position performs analytical and research work in the field of governmental policies and the financing of

those policies.

> The legislative analyst under general supervision, independently researches and analyzes information; determines methods for gathering, tabulating and analyzing information; prepares final reports and presents findings to Legislative Committees; aids in the drafting of legislation; supervises lower level employees; performs other duties as required.

The Taxpayer enrolled in Jones Law institute in 1983, and graduated in 1986. For the years, 1984, 1985 and 1986, the Taxpayer claimed on his Alabama individual income tax returns various law school related expenses.

The Department audited the Taxpayer's returns for the above years and disallowed the claimed educational expenses. The Taxpayer subsequently appealed to the Administrative Law Division.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-15(a)(1) provides a deduction for all ordinary and necessary expenses incurred in carrying on a trade or business. The above section is modeled after the federal statute of the subject, 26 U.S.C.A., §162. In such cases where an Alabama statute has been modeled after a federal statute, federal case law should be followed in construing the companion Alabama law. Best v. State, Department of Revenue, 417 So.2d 197; State v. Gulf Oil Corporation, 256 So.2d 172.

In addition to the federal case law and regulations on point, which are discussed below, Alabama Income Tax Reg. 810-3-15-.10 also provides in pertinent part as follows:

> (3) Expenditures made by an employee for education (including research undertaken as part of his educational

> program) which are not deductible under other parts of Sec. 40-18-15 are deductible as ordinary and necessary business expenses (even though the education may lead to a degree) if the education,
>
> (a) maintains or improves skills required by the individual in his employment or other trade or business, or
>
> (b) Meets the express requirements of the individual's employer, or the requirements of applicable law or regulations, imposed as a condition of continued employment of an established employment relationship, status or rate of compensation.

The above subsections (a) and (b) are copied exactly after Treas. Reg. 1.162-5(l) and (2). However, federal case law, as well as Treas. Reg. 1.162-5(b)(3), further provides that even if the above criteria are met, such expenses are not allowable if the educational instruction or program qualifies the employee for a substantially new trade or business. Danielson v. Quinn, 482 F.Supp. 275; Vetrick v. C.I.R., 628 F.2d 885; Melnick v. United States, 521 F.2d 1065. In Vetrick the court stated as follows:

> Section 1.162-5(a) of the Treasury Regulations permits a taxpayer to deduct from his income tax the costs incurred in maintaining or improving the skills required in his trade or business or in satisfying the educational requirements necessary to retain his job. This deduction, however, is not available to a taxpayer who thereby qualifies for a new trade or business, even though this education also improves his occupational skills or meets the express conditions imposed by his employer. 26 C.F.R. §1.162-5(b)(1), (3). To determine whether an educational course qualifies the taxpayer for a new trade or business and therefore whether this expense is nondeductible, courts have consistently resorted to an objective standard: irrespective of the taxpayer's intent in undertaking the course of study, or of what he intends to do with his newly acquired knowledge, a taxpayer is not entitled to this deduction

> for the costs of his education when this instruction enables him to perform substantially different tasks and activities from what he was able to perform before.

As stated, an objective standard test must be applied on a case by case basis to determine qualifies a taxpayer for a new trade or business. In Danielson, cited above, the taxpayer, a taxation and business advisor, sought to deduct various law school related expenses. The court rejected the claimed deductions, finding that while some law school courses certainly assisted or improved the taxpayer's skills as a business and taxation advisor, much of his curriculum was unrelated to that business and clearly qualified the taxpayer for a new trade or profession as an attorney.

In Vetrick, also cited above, the taxpayer was an attorney qualified to practice in federal courts only. The taxpayer returned to law school and took additional courses which qualified him to practice in various states, as well as with the IRS as a tax examiner. The court determined that the law school expenses were not deductible because the additional education sufficiently qualified the taxpayer for a new trade or business. See also Sharon v. Commissioner, 591 F.2d 1273, which held that additional law school courses taken by an IRS attorney qualified him for a new trade or business because with the additional education he was able to enter private practice.

As in Danielson, in the present case the Taxpayer's legal

education was at best an inseparable combination of personal and business expenses, and even if certain courses actually improved his skills as a fiscal analyst, overall his law school degree clearly qualified him for a new trade or profession as an attorney. Consequently, any law school related expenses would not be deductible.

The Taxpayer argues that the "new trade or business" limitation set out in Treas. Reg. 1.162-5(b)(3) is not applicable because Alabama has no counterpart in its regulations. However, while it is true that the Alabama regulation does not have a section similar to subsection (b)(3) of the federal regulation, the more comprehensive federal regulations and case law would still apply as a guide for interpreting the identical Alabama statute.

A deduction is controlled by the language of the statute itself, and any declaratory regulation promulgated by the Department, or the Department's failure to adopt a regulation, can neither expand nor limit its scope or coverage. Boswell v. Bonham, 297 So.2d 379. The Alabama and federal statutes granting a deduction for ordinary and necessary business expenses are exactly alike. Thus, as noted above, the federal case law and the regulations relating thereto construing the federal law should control, notwithstanding that the Alabama regulation may not be as comprehensive as its federal counterpart.

The above considered, the Revenue Department is hereby directed to make final the preliminary assessments in issue, with applicable

interest as required by statute.

Done this 26th day of October, 1987.

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BILL THOMPSON

Chief Administrative Law Judge