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DEDUCTION OF EDUCATIONAL EXPENSES BY LAWYERS AND LAW STUDENTS AS ORDINARY AND NECESSARY BUSINESS EXPENSES

CLARENCE M. DUNNAVILLE, JR. †

Reputation and learning are akin to capital assets, like the good will of an old partnership. . . . For many, they are the only tools with which to hew a pathway to success. The money spent in acquiring them is well and wisely spent. It is not an ordinary expense of the operation of a business.

—Mr. Justice Cardozo

IN RECENT YEARS, there has developed an increasing tendency among taxpayers to claim a deduction for tuition and other expenses incurred in obtaining an education as ordinary and necessary business expenses. This is largely because the regulations under the Internal Revenue Code of 1954 have liberalized the previous strict requirements and also because the courts have become more liberal in allowing deductions for educational expenses.

The purpose of this article is to focus on the extent to which educational expenses incurred by the lawyer and law student may be allowed as deductions from income taxes under the 1954 Code. This article will analyze the majority

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1 Welch v. Helvering, 290 U.S. 111, 115-16 (1933).
of the cases in the area and point out the lack of uniformity among the decisions.

**The Applicable Statute and Regulations**

Section 162 of the Internal Revenue Code of 1954 provides that, "there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. . . ."

Thus, a taxpayer who is engaged in a business is allowed to deduct all ordinary and necessary business expenses provided, of course, that the expenses are reasonable in amounts, and provided that the expenses proximately result from the conduct of the taxpayer's trade or business. Whether expenses are ordinary and necessary business expenses are usually questions of fact to be determined on the basis of each case.

Prior to the enactment of the 1954 Code, most expenses for education and learning were held to be personal expenses not deductible from income for income tax purposes. However, the regulations under Section 162 of the 1954 Code have adopted a more liberal view with respect to the deductibility of expenses for education. Expenses

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3 Commissioner v. Heininger, 320 U.S. 467 (1943).
4 Welch v. Helvering, supra note 1; I.T. 4044, 1951-1 CUM. BULL. 16.
5 Treas. Reg. 118, §§39.23(a)-15(f) provided:
   "Among expenditures not allowable . . . are . . . expenses of taking special courses and training" [the Treasury Regulations are hereinafter cited as Regs.].
6 Regs. § 1.162-5(b) (1958).
incurred to acquire knowledge for its own sake in order to fulfill one's general educational aspirations, or for possible use in some work which might be started in the future, are clearly not deductible. However, the present regulations provide that if the education is undertaken primarily for the purpose of maintaining and improving skills required by the taxpayer in his employment, or to meet the express requirements of his employer, or the requirements of applicable law or regulations imposed as a condition to the retention of his salary, status or employment, the expenses may be deducted.

In short, pursuant to the regulations under the 1954 Code, the cost of education may be deducted if undertaken to maintain or improve the taxpayer's skills which are required in his employment or by his employer or which satisfy a condition required to retain the taxpayer's status or employment. The difficulty, however, is to determine whether an educational expenditure was actually incurred for the purpose of maintaining and improving skills or merely to fulfill general educational aspirations or to qualify for a new profession.

7 For the convenience of the practitioner the full text of Regs. § 1.162-5 is set forth in Appendix A infra.

8 The regulations were adopted on April 3, 1958, effective for 1954 and later years. In order to give full retroactive effect to these regulations, Congress enacted § 96 of the Technical Amendments Act of 1958 to extend the time for filing claims for refunds under the new regulations. In S. Rep. No. 193, 85th Cong., 2d Sess. § 101 (1958) the following statement is made:

"The Internal Revenue Service long held that relatively few educational expenses were deductible as business expenses, or as expenses incurred in the production of income. Generally, the Service had held that for such expenses to be deductible they must be required as a condition to the retention by the taxpayer of his present employment. On April 4, 1958, however, the Treasury Department in a news release announced that it was issuing final regulations which were more liberal than the regulation previously in force, in that the expenses incurred by a teacher for education could be deducted even though they were incurred voluntarily and even though the courses taken carried academic credit or resulted in an increase in salary or in a promotion. The news release also indicated that this change was made in order to remove the distinction previously drawn between self-employed persons and employees, such as teachers. The final regulations issued on April 5, 1958, provided that expenditures made by a taxpayer for his education are deductible if they are for education (including research activities) undertaken to maintain or improve skills required by the taxpayer in his employment or in his trade or business.

"Your committee is pleased with the more liberal interpretation by the Internal Revenue Service of what constitutes deductible educational expenses."
Although the regulations have been in effect for seven years,\(^9\) considerable confusion still exists as to the circumstances under which educational expenses may be deducted. It would appear from the regulations that the determination of whether or not educational expenses are deductible in a particular case necessarily depends upon such considerations as: a) the nature of the requirements of the taxpayer's business or profession; b) the particular skills required to be utilized; c) the requirements of the taxpayer's employer; d) the custom in the profession or business; e) the nature of the particular expenses sought to be deducted; and f) the taxpayer's actual purpose in undertaking the education. Revenue Ruling 60-97\(^{10}\) contains a number of examples explaining situations in which educational expenses are deductible by taxpayers generally. The full text of the examples contained in the revenue ruling is printed as an appendix to this article, infra p. 274. Needless to say, the examples do not furnish the sole guide. Since each case must turn on its own facts,\(^{11}\) it is difficult to provide a hard and fast rule as to the specific instances under which educational expenses are deductible.

This article is concerned only with educational expenses incurred by lawyers and law students. A perusal of the leading cases in this specific area, however, may be helpful to the practitioner in determining the possibility of a deduction being allowed for educational expenses in any course of study.

The Cases

The cases which have arisen regarding deductions claimed by lawyers or law students for educational expenses may be classified into two primary categories:

(a) Cases in which deductions are claimed by lawyers for educational expenses incurred in taking "re-

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\(^9\) The regulations were proposed on July 10, 1956 and were adopted on April 3, 1958. 1958-1 Cum. Bull. 63.

\(^{10}\) 1960-1 Cum. Bull. 69.

\(^{11}\) Regs. \(\S\)1.162-5(a) (2); Welsh v. United States, 329 F.2d 145 (6th Cir. 1964); Condit v. Commissioner, 329 F.2d 153 (6th Cir. 1964).
fresher" courses, and courses taken to stay abreast of developments in the legal profession or to improve skills required in their present profession.

(b) Cases in which deductions are claimed by law students for courses leading to a degree while enrolled in law school which qualify the taxpayer for a new profession as a lawyer.

Courses for Maintaining and Improving Skills

The legal profession, perhaps more so than any other profession, requires continuous study and learning. Laws change frequently. Therefore, in order to properly advise his clients, the lawyer must stay abreast of these changes. Moreover, many lawyers continue to enlarge their legal education after their fundamental training is complete. Often this entails taking special courses and training at considerable expense to the practitioner. Such expenses should be deductible as ordinary and necessary expenses incurred in the practice of law.

Even prior to the enactment of the 1954 Code, the Court of Appeals for the Second Circuit indicated that when the information acquired is needed for use in the lawyer's established practice, the expenses are properly deductible. In Coughlin v. Commissioner,\textsuperscript{12} a practicing attorney specializing in taxation incurred expenses for tuition, travel, board and lodging while attending the Annual Institute on Federal Taxation conducted in New York City under the sponsorship of New York University. The court allowed deduction of the expenses—relying upon Hill v. Commissioner,\textsuperscript{13} wherein the expenses incurred by a school teacher in attending summer school were held deductible. Consistently, the case of Bistline v. United States\textsuperscript{14} held that an attorney who traveled with his wife to New York City where he enrolled in a two-week course in federal taxation, was

\textsuperscript{12} 203 F.2d 307 (2d Cir. 1953).
\textsuperscript{13} 181 F.2d 906 (4th Cir. 1950). This case presaged the liberal attitude expressed in the present regulations. Prior to Hill, educational expense deductions were generally disallowed. See notes 4 and 5 supra.
\textsuperscript{14} 145 F. Supp. 802 (D. Idaho 1956), aff'd on other grounds, 260 F.2d 80 (9th Cir. 1958).
entitled to deduct his travel expenses to New York, the hotel expenses while attending the institute and the expenses incurred for tuition and books, even though he also attended the Lions Convention while in New York.

On the other hand, however, in the tax court case of Joseph T. Booth, III, the taxpayer had engaged in private practice for a short time and then accepted a state government position as legal advisor to the Governor. Subsequently he determined to form a partnership and return to private practice. During the discussions leading to the formation of the partnership, all the partners agreed that some member of the firm should obtain a more detailed knowledge of the law of federal taxation, with the understanding that the partner who took this training would not devote himself exclusively to tax matters. By mutual agreement the taxpayer was selected to attend New York University to pursue courses in taxation. The taxpayer shared in the profits of the firm while pursuing his tax studies, and after returning to the firm did not practice in the tax field exclusively but used his tax knowledge in a general practice. The court held that the taxpayer's education in the law of taxation was undertaken primarily for the purpose of becoming a partner in the firm, which, for the taxpayer, was a new position, "even though he engaged in the same profession, the practice of law."

Although the tax court stated that the Coughlin case was "clearly" distinguishable since there the taxpayer was not qualifying for a new profession, it seems difficult to reconcile Booth with Coughlin and Bistline. In Booth, the taxpayer was already a practicing attorney and it appears from the opinion that he attended New York University merely for the purpose of improving his skills as a lawyer. He did not become a "tax lawyer" as such. Is the situation

16 Compare John S. Watson, 31 T.C. 1014 (1959), where after a number of years of practicing medicine, the taxpayer, an internist, decided to obtain training in analysis and the techniques of psychiatry. The taxpayer engaged in a course of psychiatry and a total of 225 hours work was taken. The taxpayer did not become a psychiatrist, but used this training in the practice of medicine as an internist. The court allowed the expenses incurred in
where an attorney who is not a specialist, but takes courses in a specialty to improve his skills as a general practitioner distinguishable from a case where a specialist takes such courses? It is submitted that there should be no such distinction. Indeed, the regulations appear to support the allowance of "Booth-type" expenses as deductions. However, the tax court did not reach this point in Booth, since it found that the purpose for undertaking the studies was to qualify for a new position—that of partner of a newly formed law firm.

The cases discussed above involved situations where the lawyer was attempting to maintain or improve skills in a profession already acquired. Under the regulations these expenses are properly deductible. Education expenses, however, are expressly not deductible where the course of study is designed to acquire skills for a new profession. Nevertheless, some lawyers have claimed as deductions the entire expenses incurred in law school for studies leading to a Bachelor of Laws degree.

Courses Leading to an LL.B. Degree

In a number of recent cases, the entire tuition and expenses incurred in becoming a lawyer have been claimed as deductions. In a considerable number of these cases it

undertaking the psychiatric studies as an ordinary and necessary business expense. The tax court distinguished Watson in Booth on the ground that the taxpayer in Booth was seeking a new position—i.e., a partnership in a law firm.

The regulations provide that if education is required to meet the minimum requirements for qualification or establishment in an intended trade or business or specialty therein, the expenses of such education is not deductible. Regs. § 1.162-5(b). Thus, if the taxpayer became a tax specialist under the facts of this case, the educational expenses would not be allowable under the regulations.

17 Regs. § 1.162-5(e), example (2). It is interesting to note that Booth was decided after the promulgation of the regulations.

18 The cases discussed herein involve the acquisition of law degrees. It should be observed that the same general principles are applicable to courses leading to other degrees. See, e.g., Knut F. Larsen, 15 T.C. 956 (1950) (mechanic who sought engineering degree); Robert M. Kamins, 25 T.C. 1238 (1956) (research associate seeking Ph.D.). Compare Deyeraux v. Commissioner, 292 F.2d 637 (3d Cir. 1961), with Marlor v. Commissioner, 251 F.2d 615 (2d Cir. 1958) (college teachers pursuing Ph.D.).
appears that the taxpayers have been unsuccessful. However, a number of lawyers and law students succeeded in obtaining the deductions claimed. Most of these cases have involved persons who attended law school at night while holding other positions during the day. Before considering some of these cases it should be noted that under the present case law a student attending law school at night may be able to deduct his entire law school expenses, including tuition, books and other related expenses, provided that he can show a direct connection between the expenditures and his "daytime" profession or position. If the student travels away from home he may deduct his expenditures for travel and the cost of his meals and lodging under the authority of Regulation § 1.162-5(d). Commuter expenses are not deductible under Regulation § 1.162-5(b). However, it might be inferable from the examples contained in Regulation § 1.162-5(e) that such expenses may be properly deducted.

Students attending law school at night can hardly be considered a different species from their counterparts attending law school during the day. Both, upon receiving their degrees and passing their bar examinations, are entitled to the same privileges and are held to the same standards as all attorneys, irrespective of whether they actually practice. Indeed, many students attend a "daytime" law course, not to prepare for actual practice, but to acquire a legal background which can be utilized in business affairs. In


this regard, one may question the fairness of some of the decisions allowing deductions to the student attending law school at night. All students who are admitted to the bar are lawyers. Whether they are accountants, revenue agents or clerks when they take the bar examination, they all become lawyers and therefore should receive the same tax treatment. The following cases shed light on this inconsistency.

In *James J. Condit*, an Ohio accountant claimed a deduction for expenditures he incurred for tuition, textbooks and supplies while attending law school at night. Condit received a law degree and was admitted to the bar, although he continued to work for the same employer as an accountant. The taxpayer claimed that the expenses which he incurred in attending law school were ordinary and necessary expenses required to maintain and improve skills required in his employment as an accountant. The deduction was disallowed by the tax court and the court of appeals affirmed on the ground that the tax court's conclusion on factual issues was binding.

The tax court found that the primary purpose in pursuing the legal studies was to qualify to meet the minimum standards for a new profession. The court based its conclusion primarily on the fact that the taxpayer's questionnaire, required as part of his application to the Ohio bar, contained the following:

Do you wish to adopt the legal profession as a life work? Yes... State in a general way the plans for your future in the legal profession: to combine my present background in accounting with law and develop along lines of Corporate Taxation and Corporate Law.

The court noted that even though the taxpayer intended to remain with his employer, this would not necessarily be the equivalent of remaining in his same position, since his

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duties might become that of a lawyer for his employer, and that his testimony in explanation of his answers to the questionnaire “indicates that this is his own interpretation of his stated intention.”

A diametrically opposite result was reached in Welsh v. United States,22 where another Ohio taxpayer, who was a revenue agent with the Internal Revenue Service, claimed a deduction for his tuition and expenses for attending law school. Welsh had enrolled as a candidate for an LL.B. degree and, like Condit, also studied law at night while working during the day. However, on July 4, 1960, shortly after he was admitted to the Ohio bar, Welsh resigned from the Revenue Service and entered the private practice of law in Cleveland.

Welsh had also made statements in his application for admission to the bar that he intended to practice law23 but the court found as a fact that the primary intention of Welsh in undertaking his legal education was to maintain and improve the skills required in his employment with the Revenue Service. Apparently, the only evidence offered by the taxpayer was his testimony, which the court adopted as true. The court apparently did not give much weight to the fact that the taxpayer had stated in his law school application and in his application for admission to the bar that he intended to practice law. Nor did it give much weight to the fact that he left the Revenue Service within a month after he was admitted to the bar. Instead, the deduction was allowed in full by the district court. The Court of Appeals for the Sixth Circuit affirmed, stating that the issue was solely one of fact, and there was substantial evidence to support the findings of the district court.

Earlier, the tax court in James J. Engel,24 a case “on all fours” with Welsh, had denied a deduction to still another Ohio taxpayer who was also employed by the Internal Revenue Service as an agent. Like Welsh, Engel enrolled in

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23 The statement made by Welsh is not reproduced in the opinion, but is referred to in the district court’s opinion at 210 F. Supp. 599.
law school in a course at night leading to a Bachelor of Laws degree. He also filed an application with the Supreme Court of Ohio, which contained the question: "Do you wish to adopt the legal profession as a life work"; to which he replied, "Yes." Welsh, it is to be remembered, had answered a similar questionnaire. Engel claimed that his superiors had actually encouraged him to study law and that the primary reason for incurring the expenses was to maintain and improve his skills as a revenue agent. Moreover, Engel's superiors testified that a knowledge of the law would be helpful to him in his work. Engel was duly admitted to the Ohio bar, but, unlike Welsh, he remained with the Revenue Service thereafter.

The tax court held that Engel had failed to establish that his primary purpose in pursuing his law school studies was to maintain and improve his skills as a revenue agent, and the deduction was therefore disallowed. Ironically, Engel, who remained with the Revenue Service in the same job, was disallowed the deduction, whereas Welsh, who left the service one month after he was admitted to the bar and commenced to practice law, was allowed the claimed deduction in full. This is indicative of the great confusion in the area which has been referred to previously. This confusion is further muddled by the result in the case of Schultz v. Commissioner.

There the taxpayer was an Internal Revenue Service Agent, in the Estate and Gift Tax Group, at Houston, Texas. Schultz successfully deducted expenses which he incurred in law school. The only significant factual distinction between Schultz on the one hand and Welsh and Engel on the other is that in Schultz's interview before the Houston Bar Association's Sub-committee on Legal Education, he stated that his intention at that time was not to practice law upon admission to the bar. The court justified the deduction by stating that the evidence supported the taxpayer's contention that his primary reason for undertaking the legal education had been the desire to improve the skills

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25 See note 23 supra.
required in his position as an Internal Revenue Agent assigned to the Estate and Gift Tax Group. Despite the fact that the very same contention was made by Engel and Welsh, the court allowed the deduction in Welsh, but disallowed it in Engel. This points up the statement made earlier that each case is to be decided on its own particular facts. In this light the issue of credibility is crucial.\footnote{27}

In the case of \textit{Walter F. Charlton} \footnote{28} the taxpayer became a full-time employee of an accounting firm in 1952 and three years later became a certified public accountant. His duties consisted of audits, preparation of tax returns, conferences with Internal Revenue Service representatives, and management engineering. In 1955 he entered law school on his father’s advice that it would assist him in the practice of public accounting. In a written statement to the Commissioner of Internal Revenue, the taxpayer attested that the legal education was undertaken for “the purpose of acquiring knowledge in the tax field.” The taxpayer took bar examinations, qualified, and was admitted to practice before various courts. He did not use the legend “Attorney at Law” on his door although he did have some stationery printed up identifying him as an attorney. He used this stationery, however, only once (on a non-legal matter). After being admitted to the bar he carried on substantially the same duties of a certified public accountant as he had before entering law school.

The tax court noted as a common fact that many accounting matters are tied up with the law and that many certified public accountants are members of the bar. It also found as fact that the taxpayer’s intent was to acquire the legal education to improve his skill as an accountant. However, the tax court in \textit{Condit}, an earlier tax court case, apparently refused to judicially note that accounting matters were sufficiently tied up with the law so as to justify a deduction for legal education expenses.\footnote{29} The dichotomous

\footnote{27 See note 23 \textit{supra}.}
\footnote{28 23 CCH Tax Ct. Mem. 420 (1964).}
\footnote{29 As pointed out in Kornhauser v. Commissioner, 276 U.S. 145 (1928), in order to be deductible, the expenses must proximately result from the conduct of the taxpayer’s trade or business.}
result in these two cases should serve to warn a practitioner who represents a client claiming such a deduction that unless he can show a sufficient nexus between the client's previous profession and the study of the law, the expenses will be disallowed as a deduction. Moreover, as stated earlier, the expenses must proximately result from the taxpayer's present profession or business before a deduction will be allowed.

In *Gilmore C. Gulbranson*, the taxpayer was employed by a lawyer who was also engaged in insurance and real estate brokerage, the rendering of tax service, and a general real estate business. Taxpayer was hired (as a college graduate with some experience in the insurance and business administration fields) to work primarily on insurance matters. The taxpayer, however, also worked as a law clerk whenever needed. In his tax return the taxpayer listed his occupation as "Insurance, Real Estate and Legal Clerk." He then entered law school and was dismissed because of unsatisfactory scholarship, although he subsequently made formal application for readmission. The taxpayer conceded that when he first entered law school he intended to get a degree and take the bar examination, but did not intend to practice law. In his formal application for readmission, however, the taxpayer indicated his desire to practice law in the future.

The court found that the taxpayer's employer did not require his enrollment at a law school as a condition of his employment or salary. Instead the court found that the taxpayer was originally hired on the basis of his prior experience in insurance work—not for legal matters. The deduction was therefore disallowed.

The decision in the *Gulbranson* case appears to correctly apply the rules laid down in the regulations. The law student was hired as a college graduate, with some experience in insurance and business administration, to work as an insurance, real estate and legal clerk. He attended law school obviously because he wanted to become a lawyer—a new profession. The deduction claimed for his law school expenses was therefore properly disallowed. However, if law school expenses may be deducted at all, does it not appear

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to be more logical to allow a law clerk, working for a practicing lawyer, to deduct his legal education expenses than for an accountant to deduct such expenses? Although the tax court found in the Charlton case that many accounting matters are tied up with the law, it is submitted that if an accountant who is also a lawyer renders legal opinions, in such cases he is acting as a lawyer and not as an accountant and is using his legal training in the practice of law rather than accounting.

Likewise, if an insurance adjuster who is also a lawyer uses his legal skills in performing his duties as an insurance adjuster, he may also to some extent be engaging in the practice of law. Thus, he may be called upon by his employer to perform duties which a non-lawyer insurance adjuster could not perform. In Richard M. Baum, the tax court allowed a deduction for costs in attending an evening law school when the taxpayer was an insurance claims adjuster whose duties involved him in constant contact with legally-oriented problems such as interpreting contracts and consulting with claimants' attorneys, even though the acquisition of the legal education qualified the taxpayer for a new profession. The court noted that he had no intention of leaving his insurance company employer especially since he had accumulated certain retirement benefits and had acquired some degree of seniority. The court found that his primary purpose in attending law school was to maintain and improve the skill required of him as a claims adjuster. Again, it is submitted that if an adjuster performs essentially legal tasks, he is, in effect, practicing law—a new profession. At the very least, he is in the position of one who has acquired a new status within his present position, i.e., a claims adjuster who is a lawyer. Hence, the legal education expenses should not be deductible.32

32 Regs. § 1.162-5(b) provides that a deduction will be disallowed if the educational expenses are undertaken primarily to acquire a substantial advancement in position. A claims adjuster who is a lawyer and can perform legal tasks can hardly be considered in the same professional category as a claims adjuster without such ability. Certainly, a lawyer-adjuster will be delegated more responsible tasks and will be entitled to a greater salary and more prestige commensurate with this greater responsibility. See also ex-
The decision reached in the case of Donald P. Frazee,\textsuperscript{33} is perhaps one of the most strained interpretations of the regulations regarding the deductibility of education expenses. The taxpayer, as a senior in high school, had been hired by the Government as a mail clerk. While employed by the Government, he had completed his high school education and then gone on to college at night. He spent a total of nine years attending college at night, and in January 1957 received his Bachelor of Science degree in business education. Shortly after completing his college education (in September 1957), Frazee enrolled in law school at night. He completed law school in 1961, receiving a Bachelor of Laws degree. At the time when the trial was reached he had taken one bar examination without success and stated that he planned to take the examination again in the near future.

Over the years, the taxpayer had from time to time obtained positions of greater responsibility with the Government. By the time of trial, he had reached grade 14 and was a Supervisory Industrial Specialist in maintenance engineering. Frazee's duties with the Government at the time he enrolled in law school included the development and drafting of regulations, preparation of policy and procedural documents on aircraft, missiles, and weapons systems, and preparation of replies to congressional inquiries. He had also assisted the Defense Department in opposing certain legislation which was considered unfavorable to said department. None of the other employees with comparable positions were law school graduates nor was attendance at law school required of Frazee or his associates.

The tax court allowed a deduction for the law school expenses on the ground that a legal education was "appropriate and helpful" in the performance of his duties with the United States Air Force, even though Frazee candidly admitted at the trial that "he had educational aspirations." Interestingly, the court stated with respect to the taxpayer's own admission that he had educational aspirations:

\textsuperscript{33} 22 CCH Tax Ct. Mem. 1086 (1963).
We would take an unduly narrow view, and one not required by respondent’s regulations if we held that the mere presence of general educational aspirations was sufficient to defeat the claimed deductions. Of necessity, an individual must have some general educational aspirations in order to complete a legal education at night school while working full time at his regular employment.\textsuperscript{34}

In addition, the court noted that the mere fact that the legal education enhances the taxpayer’s chances for promotion does not, of itself, establish that the primary reason for acquiring the education is for a new position or substantial advancement which would result in a denial of the deduction.

In \textit{Frazee}, the nature of the taxpayer’s employment did not require that he attend law school; the particular skills required of the taxpayer did not necessitate a legal education; the taxpayer’s employer did not require a legal education; it was not customary for the taxpayer’s associates to obtain a legal education, and it appears from the opinion that the taxpayer candidly admitted that a purpose in attending law school was to fulfill general educational aspirations. Although the taxpayer’s educational pursuits were laudable, it would seem clear that under the present regulations, the expenses incurred in connection therewith were not deductible. The taxpayer, in undertaking the legal education, was fulfilling his general educational aspirations, and at the same time qualifying for a new profession — that of a \textit{lawyer}, even though he may have remained employed in the same position. As we have noted previously, many lawyers do not actually practice law; yet, they enjoy the numerous advantages and considerable prestige which the profession offers. Taxpayers such as Frazee are not in a significantly different classification.

In \textit{Louis Aronin},\textsuperscript{35} the taxpayer had voluntarily enrolled as a law student at night and obtained his Bachelor of Laws degree. Shortly after his admission to the Maryland Bar his government rating was increased from GS-12 to GS-13.

\textsuperscript{34} \textit{Id.} at 1088.
The taxpayer stated that he was attending law school “in order to improve my ability to perform my job of Labor Management Relations Examiner which involves the interpretation and administration of a Federal Act and legal interpretations of said law.” The court denied the deduction reasoning that the expenses were personal in nature in that they were not undertaken primarily for the purpose of maintaining or improving skills required by the taxpayer in his employment and they did not represent conditions expressly required by the NLRB in order to maintain the taxpayer’s salary, status or employment. Unlike the court in Frazee, the court here reasoned that the taxpayer had acquired a new skill or specialty.

In Frazee and Aronin, we again have two cases on substantially similar facts reaching diametrically opposite results. In both cases the taxpayers, while employed by the Government sought law degrees and admission to the bar. Both taxpayers had been employed with the Government for a number of years prior to enrolling in law school and remained with the Government after they completed their legal studies. In both cases, as well, a law school course was not required by their employers and it was not customary for their associates to pursue law studies. Both cases were tried in the tax court. Yet, one taxpayer received the full deduction claimed while the other did not. This again points up the lack of uniformity in the decisions regarding the deductibility of educational expenses.

In another interesting group of cases, a number of “patent agents” and “patent chemists” have claimed deductions for the law school expenses incurred in order for them to become patent attorneys.

In Sandt & Hines v. Commissioner, the taxpayers were research chemists. While so employed, they learned of openings for patent chemists in the patents’ division of their employer. They left their positions as research chemists and transferred to the patents and contracts division and assumed the duties of patent chemists. Both enrolled in

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38 303 F.2d 111 (3d Cir. 1962).
the Temple University School of Law at night during the school year following their transfers, and ultimately received LL.B. degrees. On their income tax returns, both Sandt and Hines claimed the entire expenses incurred in connection with attending law school as ordinary and necessary business expense deductions. At the trial, the taxpayers claimed that the primary purpose in attending law school was to retain a position of employment with their employer. The tax court, however, found that the primary purpose was to obtain a new position, and denied the deductions. The Court of Appeals for the Third Circuit affirmed.

A similar result was reached in the case of Robert H. Montgomery. A deduction for law school expenses was denied a patent searcher whose duties were to determine whether a present or prospective product would infringe existing patents that were adversely held, to determine the validity of adversely held patents, and to engage in the preparation of patent applications. His duties did not require a law degree or law school attendance and the only requirement for his employment was that he be a graduate engineer. The tax court found that the educational expenses incurred by the taxpayer were undertaken primarily to fulfill his general educational aspirations, to obtain a new position and to meet requirements for his intended specialty.

Likewise, even where evidence was introduced that legal training was helpful to one working as a "Patent Agent Foreign" the deduction was disallowed. In the case of John Leszdey the taxpayer established also that after he had completed law school he was promoted to "Patent Attorney." The court denied the deduction, holding that the taxpayer was merely completing a course of study undertaken earlier which ultimately led to an LL.B. degree, admission to the bar, and a new position—that of a "Patent Attorney."

Consistently, in David H. Pfeffer, law school education expenses incurred by a "patent agent" employed as a "patent liaison engineer" were held not to be deductible.

Shortly after graduating from law school, Pfeffer left his position as a "patent liaison engineer" and assumed a position with a law firm. In *Pfeffer*, the tax court's opinion contains the following statement which seems applicable to all of the cases herein relating to the deduction of law school expenses, and particularly to those cases such as *Welsh* where the taxpayer actually engaged in a law practice after completing his law course:

It is plain to us that petitioner intended to become a lawyer from the beginning, and it is a matter of no consequence that many tasks of a lawyer can also be performed by one who is not a member of the bar. The point is that petitioner is a lawyer, that he is associated with a law firm and practices law, and that he attended law school in order to become a lawyer. His expenses in that connection are not deductible.\(^4\)

Although in a number of the cases analyzed herein, the taxpayers did not actually engage in a law practice as such, the fact is, they became lawyers and this was the acquisition of a new profession.

In this connection it should be noted that in the recent case of *Williams v. United States*\(^4\) the court refused to follow *Sandt & Hines* and the line of cases which have followed that decision. In *Williams*, the taxpayer was hired as a "trainee" for ultimate assignment as a patent attorney, provided that he (1) attended law school, (2) maintained a degree status at law school, (3) secured an LL.B. degree in a prescribed course of study, (4) obtained admission to the bar, and (5) gained admission to practice before the Patent Office.

Williams enrolled in law school, subsequently received his LL.B. degree and was admitted to the bar. After being admitted his title was changed to "Patent Attorney." Interestingly, after being admitted to the bar, Williams practiced law "independently" and received income from his law practice in addition to his salary as a patent attorney.

\(^4\) Id. at 787.

\(^4\) 65-1 U.S. Tax Cas. 9263 (S.D.N.Y. 1965).
He claimed his entire law school expenses as a deduction from his income taxes.

The court stated that Williams' purpose in obtaining the legal education was two-fold: (1) fulfilling the requirements of his employer imposed as a condition to the retention of his position; and (2) seeking advancement to a new position. The court held that the taxpayer's primary purpose in obtaining the law school education was to retain his position as a "patent trainee." The full deduction claimed was therefore, allowed by the court as an ordinary and necessary business expense.

In Williams, as in the majority of the cases discussed above, the taxpayer, after completing law school, became a lawyer, which was a new profession. He was hired as a "trainee" with the understanding that he would be required to qualify in this new profession, and it appears from the opinion that he would not have been hired had he not agreed to do so. It is submitted that he did not study law to maintain and improve skills in a profession or position which he already had. Williams had not fulfilled the basic qualifications for the position of patent attorney at the time he was hired. His law course was undertaken to qualify for a new position.

Indeed, the court found as a fact that one of the reasons why Williams attended law school was to "seek advancement to a new position." As has previously been stated throughout this article, the regulations expressly provide that expenses incurred to qualify for a new position are not deductible.

Further, it should be noted that in the instant case, the taxpayer actually engaged in the "independent" practice of law in addition to working as a patent attorney. It would seem that the tax court's statement in Pfeffer, quoted above,

42 Regs. § 1.162-5(b) expressly provides that if the education is pursued "in order to meet the minimum requirements for qualification or establishment in his intended trade or business or specialty therein, the expense of such education is personal in nature and therefore is not deductible." Example (1) of Regs. § 1.162-5(e), contained in Appendix A infra, is analogous to the facts in Williams. It seems clear from the regulations and the example that "Williams type" educational expenses are not deductible. See also Rev. Rul. 60-97 which is set forth in Appendix B infra.
is particularly applicable in Williams. Certainly, Williams attended law school in order to become a lawyer, and his expenses in that connection should not be allowed as a deduction under the regulations.

CONCLUSION

Clearly the lawyer should be allowed to deduct any educational expenses which will help him to maintain and improve his skills as a lawyer. However, there is little justification for the decisions which allow as a deduction the expenses incurred in becoming a lawyer in the first instance. Even assuming that the taxpayer entered law school with the intention of remaining with the same employer, it cannot be denied that upon being admitted to the bar, he qualified for a new profession—that of a lawyer. As a lawyer, he is entitled to all of the privileges that any other practitioner enjoys. He may join bar associations, and in all probability, he is regarded by his family, friends, and associates as a lawyer. Moreover, he may actually engage in an “independent” practice such as the facts revealed in the Williams case. Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is a clear provision therefore can any particular deduction be allowed. . . . Obviously therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.43

Those cases which have allowed a deduction for the educational expenses incurred in becoming a lawyer cannot be regarded as falling within the four corners of the statute permitting a deduction for ordinary and necessary business expenses.

In the words of Mr. Justice Cardozo:

Reputation and learning are akin to capital assets, like the good will of an old partnership. . . . For many, they are the only tools with which to hew a pathway to success. The money spent

in acquiring them is well and wisely spent. It is not an ordinary expense of the operation of a business.\footnote{Welch v. Helvering, 290 U.S. 111, 115-16 (1933).}

APPENDIX A

§ 1.162-5. Expenses for education.

(a) Expenditures made by a taxpayer for his education are deductible if they are for education (including research activities) undertaken primarily for the purpose of:

(1) Maintaining or improving skills required by the taxpayer in his employment or other trade or business, or

(2) Meeting the express requirements of a taxpayer's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the taxpayer of his salary, status or employment.

Whether or not education is of the type referred to in subparagraph (1) of this paragraph shall be determined upon the basis of all the facts of each case. If it is customary for other established members of the taxpayer's trade or business to undertake such education, the taxpayer will ordinarily be considered to have undertaken this education for the purpose described in subparagraph (1) of this paragraph. Expenditures for education of the type described in subparagraph (2) of this paragraph are deductible under subparagraph (2) only to the extent that they are for the minimum education required by the taxpayer's employer, or by applicable law or regulations, as a condition to the retention of the taxpayer's salary, status or employment. Expenditures for education other than those so required may be deductible under subparagraph (1) of this paragraph if the education meets the qualifications of subparagraph (1). A taxpayer is considered to have made expenditures for education to meet the express requirements of his employer only if the requirement is imposed primarily for a bona fide business purpose of the taxpayer's employer and not primarily for the taxpayer's benefit, except as provided in the last sentence of paragraph (b) of this section, in the case of teachers, a written statement from an authorized official or school officer to the effect that the educa-
tion was required as a condition to the retention of the taxpayer's salary, status, or employment will be accepted for the purpose of meeting the requirements of this paragraph.

(b) Expenditures made by a taxpayer for all his education are not deductible if they are for education undertaken primarily for the purpose of obtaining a new position or substantial advancement in position, or primarily for the purpose of fulfilling the general aspirations or other personal purposes of the taxpayer. The fact that the education undertaken meets express requirements for the new position or substantial advancement in position will be an important factor indicating that the education is undertaken primarily for the purpose of obtaining such position or advancement, unless such education is required as a condition to the retention by the taxpayer of his present employment. In any event if education is required of the taxpayer in order to meet the minimum requirements for qualification or establishment in his intended trade or business or specialty therein, the expense of such education is personal in nature and therefore is not deductible.

(c) In general, a taxpayer's expenditures for travel (including travel while on a sabbatical leave) as a form of education shall be considered as primarily personal in nature and therefore not deductible.

(d) If a taxpayer travels away from home primarily to obtain education the expenses of which are deductible under this section, his expenditures for travel, meals and lodging while away from home are deductible. However, if as an incident of such trip the taxpayer engages in some personal activity such as sightseeing, social visiting or entertaining, or other recreation, the portion of the expenses attributable to such personal activity constitutes nondeductible personal or living expenses and is not allowable as a deduction. If the taxpayer's travel away from home is primarily personal, the taxpayer's expenditures for travel, meals, and lodging (other than meals and lodging during the time spent in participating in deductible educational pursuits) are not deductible. Whether a particular trip is primarily personal or primarily to obtain education the expenses of which are deductible under this section depends upon all the facts and circumstances of each case. An important factor to be taken into consideration in making the determination is the relative amount of time devoted to personal activity as com-
pared with the time devoted to educational pursuits. Expenses in the nature of commuters’ fares are not deductible.

(e) The provisions of this section may be illustrated by the following examples:

Example (1). A is employed by an accounting firm. In order to become a certified public accountant he takes courses in accounting. Since the education was undertaken prior to the time A became qualified in his chosen profession as a certified public accountant, A's expenditures for such courses and expenses for any transportation, meals, and lodging while away from home are not deductible.

Example (2). B, a general practitioner of medicine, takes a course of study in order to become a specialist in pediatrics. C, a general practitioner of medicine, takes a 2-week course reviewing developments in several specialized fields, including pediatrics, for the purpose of carrying on his general practice. B's expenses are not deductible because the course of study qualified him for a specialty within his trade or business. C's expenses for his education and any transportation, meals, and lodging while away from home are deductible because they were undertaken primarily to improve skills required by him in his trade or business.

Example (3). D is required by his employer (or by State law) either to read a list of books or to take certain courses giving six hours academic credit every two years in order to retain his position as a teacher. D fulfills the requirement by taking the courses and thereby receives an automatic increase in salary in his present position and salary schedule. Also, as the result of taking the prescribed courses, at the end of ten years, D receives a master's degree and becomes automatically eligible for an additional salary increase. Since D's purpose in taking the courses was primarily to fulfill the educational requirement of his employer, his expenses for such education and transportation, meals, and lodging while away from home are deductible.

Example (4). The facts are the same as in example (3) except that, due solely to a shortage of qualified teach-
ers, D's employer does not enforce the prescribed educational requirements in that other teachers who do not fulfill those requirements are retained in their positions. D's expenses are nevertheless deductible.

Example (5). E, a high school teacher of physics in order to improve skills required by him and thus improve his effectiveness as such a teacher, takes summer school courses in nuclear physics and educational methods. E's expenses for such courses are deductible.

Example (6). F takes summer school courses in order to improve skills required by him in his employment as a teacher. As a result of taking such courses F receives an in-grade increase in salary in his present position pursuant to a salary schedule established by the school system for which he works. F's expenditures for such courses are deductible.

Example (7). G, a graduate student at a university, plans to become a university professor. In order to qualify as a regular faculty member, G must obtain a graduate degree. While taking the required graduate courses, G is engaged in teaching at the university. G's expenses therefore are not deductible since he has not completed the education required to become qualified as a regular faculty member at the time he takes such courses.

Example (8). H, a self-employed tax consultant, decides to take a 1-week course in taxation, which is offered in City X, 500 miles away from his home. His primary purpose in going to X is to take the course, but he also takes a side trip to City Y (50 miles from X) for one day, takes a sightseeing trip while in X, and entertains some personal friends. H's transportation expenses to City X and return to his home are deductible but his transportation expenses to City Y are not deductible. H's expenses for meals and lodging while away from home will be allocated between his educational pursuits and his personal activities. Those expenses which are entirely personal, such as sightseeing and entertaining friends, are not deductible to any extent.
Example (9). The facts are the same as in example (8) except that H's primary purpose in going to City X is to take a vacation. This purpose is indicated by several factors, one of which is the fact that he spends only one week attending the tax course and devotes five weeks entirely to personal activities. None of H's transportation expenses are deductible and his expenses for meals and lodging while away from home are not deductible to the extent attributable to personal activities. His expenses for meals and lodging allocable to the week attending the tax course are, however, deductible.

APPENDIX B
Rev. Rul. 60-97

Guides concerning the Federal income tax treatment of expenses incurred by taxpayers for education.

Advice has been requested concerning the Federal income tax treatment of expenses incurred by taxpayers for education.

The provisions of the Internal Revenue Code of 1954 here pertinent are found in section 162(a) which states that in computing taxable income, there shall be allowed as a deduction "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." Among the items representing business expenses are "traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business."

Section 262 of the Code provides, however, with exceptions not here material, that no deduction shall be allowed for personal, living, or family expenses.

Regulations (section 1.162-5) were promulgated under section 162 of the Code in order to differentiate between expenditures for education which constitute ordinary and necessary expenses paid or incurred in carrying on a business activity and those which are personal in nature. The regulations also removed the uncertainties as to the deductibility of educational expenses by employees as distinguished from self-employed persons. They make it clear that both employees and self-employed individuals can deduct educational expenses which qualify as ordinary and necessary business expenses.
The regulations provide that expenditures made by a taxpayer for his education are deductible if they are for education undertaken primarily for the purposes of (1) maintaining or improving skills required by the taxpayer in his employment or other trade or business, or (2) meeting the express requirements of a taxpayer's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the taxpayer of his salary, status or employment. Taxpayers are entitled to deductions only if they are engaged in a trade or business (whether self-employed or engaged in the performance of services as an employee) and have met at least the minimum requirements for qualification or establishment in that trade or business. In determining what the minimum requirements of a taxpayer's trade or business are, consideration must be given to such factors as the requirements of the taxpayer's employer (either present or prospective), the laws and regulations of the particular jurisdiction, and the standards of professional, trade and business groups.

A taxpayer who is not currently employed or is not otherwise actively engaged in a trade or business is not entitled to a deduction for the expenses of any education undertaken during such period of unemployment or inactivity. Therefore, if a taxpayer who has ceased to engage in employment or other business subsequently undertakes education or training preparatory to resuming engagement in such employment or other business, the cost of such education is not deductible. A taxpayer will not be considered to have ceased to engage in his employment or other business during an off-duty season, when he is on vacation, or when he is on temporary leave of absence. Thus, a teacher will not be considered to have ceased to engage in his employment during the period between one school term in which he was employed and the next consecutive school term regardless of whether he was under a contract of employment during such intervening period.

Whether expenditures are for education undertaken primarily for the purpose of "maintaining or improving skills" required by the taxpayer in his employment or other trade or business must be determined upon the basis of all the facts involved. The tests of the regulations are framed to fit a wide variety of situations. In order to satisfy any of these tests, if called upon to do so in connection with the audit of a return or claim for refund, it is not enough to assert or deny the purpose of the taxpayer in general
terms. Rather, it is necessary that the taxpayer show his purpose through specific facts. In this connection it will be necessary for him to establish that the education does maintain or improve skills required in his employment or other business. The skills "required" by the taxpayer in his employment or other trade or business are those which are appropriate, helpful, or needed.

If it is customary for other established members of the taxpayer's trade or business occupying positions similar to that of the taxpayer to undertake education of the type pursued by the taxpayer, the taxpayer will be considered to have undertaken such education for the purpose of maintaining or improving skills. The further and overriding rule which must be applied in every case is that even if the education maintains or improves skills required by the taxpayer in his trade or business, the cost thereof will not be deductible if the education is required of the taxpayer in order to meet the minimum requirements for qualification or establishment in his intended trade or business or specialty therein. The expense of such education is not deductible because it is personal in nature.

Once a taxpayer has met minimum requirements for establishment in his intended trade or business, the cost of education undertaken primarily for meeting the express requirements of a taxpayer's employer (or the requirements of applicable law or regulations) imposed as a condition to retention of the taxpayer's salary, status or employment is deductible. Generally, this is true even though a new position, a substantial advancement, or qualification in a new field may result. (See, however, the subdivision of this Revenue Ruling entitled, "Complete course of study leading to qualification or establishment," beginning on page 73.) However, the deduction of expenses incurred for this purpose is limited to expenses for the minimum education required as a condition to the retention of the taxpayer's salary, status, or employment. Expenses for education in excess of that necessary to retain the taxpayer's salary, status, or employment may be deducted only if such excess education is undertaken primarily for the purpose of maintaining or improving skills required in the taxpayer's employment or other trade or business.

The regulations prohibit the deduction of expenditures made by a taxpayer for his education if they are for education undertaken primarily for the purpose of obtaining a new position or substantial
advancement in position, or primarily for the purpose of fulfilling the general educational aspirations or other personal purposes of the taxpayer. The fact that the education undertaken meets express requirements for the new position or substantial advancement in position is an important factor indicating that the education is undertaken primarily for those purposes. If education is not necessary to retention of position and it meets express requirements for a new position or substantial advancement in position, the taxpayer must show that his primary purpose in acquiring the education is to maintain or improve skills required in his present employment or other business. The taxpayer will be considered to have made such a showing if it is customary for other established members of the taxpayer's trade or business occupying positions similar to that of the taxpayer to undertake such education.

Summarizing, therefore, it may be said that expenses voluntarily undertaken primarily for the purpose of maintaining or improving skills required by a taxpayer in his employment or other trade or business are deductible as well as those incurred primarily because required as a condition to retention of his salary, status or employment; that expenses incurred primarily for either of these two purposes are deductible whether the taxpayer is self-employed or is engaged in the performance of services as an employee; and the fact that academic credit, a degree, a new job, or advancement may result does not preclude a deduction so long as the education is primarily undertaken for one of the two purposes specified in the regulations as causing the expenses to qualify for deduction.

Minimum Requirements for Qualification or Establishment

Section 1.162-5(b) of the regulations specifically provides that "if education is required of the taxpayer in order to meet the minimum requirements for qualification or establishment in his intended trade or business or specialty therein, the expense of such education is personal in nature and therefore is not deductible." It therefore is necessary to determine in every case whether a taxpayer has met these minimum requirements.

The following is a description of the application of this minimum requirement rule to teachers and school administrators. These taxpayers must meet both local and state requirements.

The state's minimum requirements for qualification or establishment in his intended position have been met by a teacher or school
administrator when he has acquired the education necessary to hold a continuing certificate in that position. For the purposes of this Revenue Ruling, a continuing certificate is one which need not be renewed, is renewable or convertible on the basis of experience only, or is renewable indefinitely by acquiring education which is not directed toward required conversion to another type of certificate. In other words, a teacher has met the state's minimum requirements when he is eligible for a certificate and is not required to take additional education showing progress toward the attainment of another type of certificate. The name or term applied to a certificate is not controlling.

If a teacher who has a continuing certificate is required by his employer, whether local board, district or school (public or private), to meet other educational requirements for employment in his position, he must meet these requirements before he will be considered to be qualified or established in his position. A change of employers, therefore, may require teachers as well as other taxpayers to meet different minimum requirements. (See the subdivision of this Revenue Ruling entitled, "Increased Requirements—Changed Duties," infra).

Whether university and college faculty members have met the minimum requirements for qualification or establishment in their intended positions must be determined in the light of the governing regulations of the various institutions. A university or college faculty member has met the minimum requirements for establishment in his position when higher educational attainments are not required of him as a condition of continuing with the institution as a faculty member. (See discussion below, however, relative to increased requirements.) If such a faculty member undertakes additional education which he is not required to take in order to remain on the faculty, he will be entitled to deductions provided the education was undertaken for the purposes of maintaining or improving skills required by the taxpayer in his position.

The regulations of universities and colleges often require faculty members to attain certain levels of education either prior to appointment or within a specified period of time after appointment. If an individual is employed with the understanding that he must obtain certain additional education within a specified period of time in order to remain on the staff, expenses incurred for such education represent expenses incurred in meeting minimum requirements
for establishment in the taxpayer’s intended position and are not deductible. Thus, for example, if an individual is appointed as an instructor in a college having a policy that within five years he must acquire a master’s degree and thus qualify as an assistant professor in order to remain on the faculty of the institution, the expenses incurred in earning the master’s degree represent expenses incurred in acquiring the minimum qualifications for establishment in his intended position and are not deductible.

Substantial Advancement

The regulations provide that expenditures made by a taxpayer for his education are not deductible if they are for education undertaken primarily for the purpose of obtaining a substantial advancement in position. Example (6) contained in section 1.162-5(e) of the regulations makes it clear that in the case of teachers an in-grade increase in salary pursuant to a salary schedule does not constitute a substantial advancement in position. A teacher who incurs expenses for education which are otherwise deductible and, as a result, receives an in-grade increase in salary need not show that the education was not undertaken primarily for the purpose of obtaining the in-grade increase. An “in-grade” increase is an automatic step in a salary schedule for a specified level of education. A shift from one step in a salary schedule for a specified level of education (such as a bachelor’s degree) to the corresponding or next higher step in a salary schedule for the next higher level of education (i.e., a master’s degree) will be treated as an in-grade increase in salary and will not constitute a substantial advancement in position.

Increased Requirements—Changed Duties

Once a taxpayer has met the minimum requirements for establishment in his intended position, expenses incurred in meeting increased requirements thereafter established for that position are deductible, provided the increased requirements are imposed primarily for a bona fide business purpose of the employer. See the next subdivision of this Revenue Ruling for an application of this rule.

Also, in the case of an established taxpayer, expenses of additional education necessitated by a change of duties with the same
employer (whether at the request of the taxpayer or his employer) are deductible provided the new duties do not constitute a new position and the cost of the education otherwise qualifies for deduction under the regulations. For example, if the new duties do not constitute a new position and the taxpayer receives a substantial increase in salary as a result of taking the additional education, the cost of such education will be deductible provided the taxpayer can show his primary purpose was to retain his position or improve required skills. In the case of an established teacher, a change of duties with the same school district or other employer will not constitute a new position if the duties involve the same general type of work (for example, teaching as distinguished from administrative duties) and if the teacher is not required to obtain a different type of certificate (such as a change from an elementary certificate to a secondary certificate).

Complete Course of Study Leading to Qualification or Establishment

The regulations provide that if education is required of the taxpayer in order to meet the minimum requirements for qualification or establishment in his intended trade or business or specialty therein, the expense of such education is personal in nature and therefore is not deductible. If a taxpayer who is established in his position undertakes education which is a part of a complete course of study that the taxpayer intends to pursue, such as that required to obtain a Bachelor of Laws degree, and such complete course of study will lead to qualifying the taxpayer in a new trade or business or specialty therein, it will be considered, for purposes of this Revenue Ruling, that such education was undertaken to qualify the taxpayer in such new trade or business or specialty. Accordingly, the cost of such education will not be deductible. See example 10 below. However, a taxpayer may deduct the cost of courses in a new field or specialty if they meet the tests of deductibility provided in the regulations and provided they are not intended to be combined with other courses so as to lead to qualification in that field or specialty.

Except as provided in the next sentence, if an employee is established in his position and thereafter he is required by his employer, for a bona fide business purpose, to undertake additional education in order to retain his position, the cost of such education will be deductible. However, if the education required by the em-
ployer represents a complete course of study which will lead to qualifying the taxpayer in a new trade or business or specialty therein, it will be considered, for purposes of this Revenue Ruling, that the requirement was imposed primarily for the benefit of the employee and not primarily for a bona fide business reason of the employer and, accordingly, the cost of such education will not be deductible.

**Key Questions**

The following is the suggested order in which questions should be resolved in determining the deductibility of expenses incurred for education:

1. Has the taxpayer met the minimum requirements for qualification or establishment in his intended position?
   - If “no,” no deductions are allowable.
   - If “yes,” is education undertaken primarily to meet employer requirements to retain taxpayer’s position?
     - If “yes,” the taxpayer is entitled to deductions unless:
       1. the education leads to qualifying the taxpayer in his intended trade or business and taxpayer knew of this employer requirement before assuming his position with his employer, or
       2. the employer’s requirement is imposed primarily for the benefit of the taxpayer and not primarily for a bona fide business purpose.
     - If “no,” is it customary for other established members of taxpayer’s trade or business occupying positions similar to that of the taxpayer to undertake education of the type pursued by the taxpayer?
       - If “yes,” the taxpayer is considered to have undertaken education for the purpose of maintaining or improving needed skills and is entitled to deductions.
       - If “no,” the taxpayer must show by other means that his primary purpose was to maintain or improve needed skills. If the education undertaken meets express requirements for a new position or substantial advancement, the taxpayer must show that the education was not undertaken primarily for the purpose of meeting those requirements.
Where Deduction Is Reported on Return

The rules applicable to the deduction of business expenses in general apply to expenses for education which qualify as business expenses.

Under section 62 of the Code, expenses incurred by a self-employed taxpayer for education are deductible on page 1 of Form 1040, U. S. Individual Income Tax Return, in computing his adjusted gross income, if they meet the tests set forth above.

In the case of an employee, however, the nature of such expenses will determine whether they are deductible on page 1 or page 2 of Form 1040. An employee's traveling expenses (including the cost of meals and lodging) while away from home overnight, and transportation expenses (excluding the cost of meals and lodging) not involving overnight travel, incurred in pursuing educational activities, the expenses of which are deductible, may be claimed on page 1 of Form 1040 in computing adjusted gross income. An employee's expenses for tuition, books, laboratory fees, and similar items incurred in pursuing similar education activities are likewise deductible in computing his adjusted gross income to the extent his employer reimburses him for such expenses and provided he reflects the amount of such reimbursement in his gross income. See section 1.162-17 of the Income Tax Regulations relating to the reporting and substantiation of employees' expenses. His unreimbursed expenditures for such tuition, books, laboratory fees, and similar items are deductible on page 2 of the return, provided, of course, the standard deduction is not claimed and the optional tax table is not used.

Travel and Transportation Expenses

The following are the general rules for the deductibility of travel and transportation expenses: (1) Commuting from a taxpayer's place of abode to any business post situated within the area which constitutes his principal or regular business location constitutes a personal expense; (2) expenses of transportation incurred between business posts within the same area or incurred in daily round trips between the general area which constitutes his principal or regular business location and a minor or temporary post of duty situated beyond that general area are deductible; and (3) overnight traveling expenses (including the cost of meals and
lodging) necessarily incurred while carrying on a business activity at a minor or temporary post of duty in a more distant location where it is reasonably or economically impractical to live at "home" constitute deductible traveling expenses. Rev. Rul. 190, C.B. 1953-2, 303; Rev. Rul. 55-109, C.B. 1955-1, 261.

In determining the deductibility of traveling and transportation expenses incurred in connection with acquiring education at an educational institution, the taxpayer may select the institution which best serves his needs and he will not be denied a deduction solely because attendance at the institution of his choice resulted in greater expenditures than he would have made if he had attended another institution. This is true whether foreign or local universities are attended. A factual determination must be made as to whether the travel away from home was primarily to obtain education the expenses of which are deductible or whether the travel was primarily for personal reasons. See section 1.162-5(d) of the Income Tax Regulations. If the relative amount of time devoted to personal activities or some other factor suggests a trip is made primarily for personal purposes, the taxpayer must be able to show that, notwithstanding this fact, the travel was primarily to obtain the education.

A taxpayer undertaking education during an off-duty period or temporary leave of absence may deduct his expenses of travel, meals and lodging in addition to tuition costs, fees, cost of books, etc., if the expenses otherwise qualify for deduction and if there is a firm understanding or obligation that the taxpayer will return to his employment at the end of the off-duty period or the temporary leave of absence.

In this connection, anticipated or actual presence for more than a year at a particular location strongly tends to indicate "indefinite" as distinguished from "temporary" presence there. In the event a taxpayer undertakes education requiring absence from his duties and business post for an indefinite period, he will not be considered as traveling away from "home" so as to be entitled to deduct expenses incurred for travel, meals and lodging. However, tuition, fees, cost of books and other necessary items may be deductible, provided the education is of the type giving rise to deductions.

The following examples demonstrate the application of the rules contained in this Revenue Ruling:
Example (1). A fifth-grade teacher has had four years of college study which for many years has been the minimum state requirement for a continuing certificate for such teachers. The state changes its requirements for such certificate. New fifth-grade teachers are required to have five years of college study when hired and fifth-grade teachers already employed are given five years within which to acquire the fifth year of college study. Fifth-grade teachers already employed who had previously met the requirements for a continuing certificate are entitled to deductions for expenses incurred in meeting the increased requirements.

Example (2). Mr. B. is a teacher in the seventh grade of a school system organized on the 8-4 plan (8 years elementary and 4 years high school). He has a continuing elementary certificate. The system is reorganized to the 6-3-3 plan (6 years elementary, 3 years junior high, and 3 years senior high school). Mr. B is to continue to teach seventh-grade pupils who will now be attending junior high school in the reorganized system, but he must obtain a secondary certificate. He must obtain additional courses to qualify for such certificate. Mr. B's expenses incurred in obtaining this additional education are deductible even though he obtains a different type of certificate, because he is merely meeting increased educational requirements imposed by his employer for the same position.

Example (3). Miss D, a first-grade teacher in School District X wishes to become a sixth-grade teacher in the same school district. This school district requires all elementary school teachers to have a certain number of college credits and an elementary certificate. A sixth-grade teacher must have certain courses not required of a first-grade teacher. Miss D takes the three additional courses specifically required to qualify her as a sixth-grade teacher and is transferred. No new certificate is involved. Since Miss D has the same employer, her duties involve the same general type of work, and no new type of certificate is involved, she is entitled to deduct the cost of the additional courses.
Example (4). A taxpayer engaged in teaching second grade does not possess a degree but has a teacher's certificate which, under state law, is renewable indefinitely by periodic acquisition of a specified number of academic credits without progressing toward the attainment of another type of certificate. Such a certificate is a continuing certificate and indicates for purposes of this Revenue Ruling that the taxpayer has met the state's minimum requirements for qualification in his position. No further local requirements are imposed on the taxpayer. In addition to undertaking study required for renewal of his certificate, the taxpayer, primarily for maintaining or improving needed skills, pursues study which leads to a degree. The taxpayer is entitled to deduct the cost of the voluntary education (which leads to a degree) as well as that required to renew his certificate.

Example (5). A high school teacher of mathematics who has a continuing high school certificate is advised by his employer that he must transfer to fill a vacancy in the science department and that this transfer will necessitate his taking two specified courses in science. The teacher takes these two courses and receives another continuing high school certificate reflecting this fact (or his certificate is endorsed to show this fact). This case represents a change of duties in the same position and does not represent qualifying for a new position. Therefore, the expenses for the two courses are deductible. In the case of such a transfer at the request of the teacher, the expenses are, for the same reasons also deductible.

Example (6). School District A in State Y requires that seventh-grade teachers have at least a bachelor's degree. Miss S, with a bachelor's degree, is employed by this school district. She accepts employment as a seventh-grade teacher in the same State but in School District C which requires its seventh-grade teachers to have at least a master's degree. Miss S is given two years within which to acquire a master's degree. In undertaking the required education, Miss S is meeting minimum requirements for qualification in a new position. The expenses of such education are, accordingly, not deductible.
Example (7). A fourth-grade teacher in School District W undertakes education which maintains and improves his skills as a fourth-grade teacher and also meets the express educational requirements to qualify him as a principal in that school district. The education is not required as a condition to the retention of his salary, status or employment and is not of a type customarily undertaken by other established fourth-grade teachers. Since the education meets the express requirements for a new position, the taxpayer will be entitled to a deduction only if he can show that the education was undertaken primarily for the purpose of maintaining or improving skills required in his position and not primarily to secure the new position.

Example (8). A fifth-grade teacher holding a continuing certificate in State Y accepts employment as a fifth-grade teacher in State Z. State Z requires fifth-grade teachers to have a fifth year of college study in order to be eligible for a continuing certificate whereas State Y required only four years of college study for such a certificate. Since the teacher has only four years of college study, she is given a certificate by State Z which is renewable annually for five years, at the end of which time she must be eligible for the continuing certificate. She undertakes a fifth year of college work. Expenses incurred in acquiring the education necessary for the continuing certificate in State Z are incurred in meeting the minimum requirements for qualification in a new position and are not deductible.

Example (9). Mr. G is employed as an instructor in a college where instructors and assistant professors are appointed annually or for a specified period not to exceed three years. A person is not permitted to be retained by the college at the rank of instructor for more than five years. An individual may continue as a faculty member without progressing beyond the rank of assistant professor. Mr. G undertakes education which will enable him to qualify as an assistant professor. The expenses of such education are incurred in meeting minimum requirements for establishment in his intended position and are, accordingly, not deductible.
Example (10). A trust officer in a bank undertakes to study law. The knowledge of the law will be helpful in discharging his duties. His employer does not require him to engage in such studies. He registers for the entire regular curriculum leading to a bachelor of laws degree. Since the taxpayer is pursuing a complete course of education in law which will lead toward qualifying him in that field, in which he has not previously qualified, his expenses for such education are considered to have been incurred for the purpose of qualifying in that new field and are, therefore, not deductible. Also, if the bank imposes upon the taxpayer, as a condition to the continued retention of his position with it, the requirement that he pursue a complete law course, the cost of such education is not deductible because the requirement is considered to be imposed primarily for the employee’s benefit and not primarily for a bona fide business purpose of the employer.

Example (11). A teacher who lives in City R teaches school in City T. During the summer he undertakes in City R education the expenses of which qualify for deduction. The teacher regularly spends his summers at his residence and would be there regardless of whether he attends school. His expenditures for meals or lodging are not deductible because they constitute personal living expenses. His expenses incurred for transportation between his residence and the school attended are in the nature of commuting expenses and also are not deductible. Expenditures for tuition, books, fees, etc., are deductible as education expenses to the extent provided in the regulations.