receives reimbursement or other expense allowance for such item, no deduction is allowed for such moving expenses unless the amount of the reimbursement or other expense allowance is included in his gross income in the year in which such reimbursement or other expense allowance is received. In those cases where the reimbursement or other expense allowance is received by a taxpayer for an item of moving expense subsequent to his having claimed a deduction for such item, and such reimbursement or other expense allowance is properly excluded from gross income in the year in which received, the taxpayer must file an amended return for the taxable year in which the moving expenses were deducted and decrease such deduction by the amount of the reimbursement or other expense allowance not included in gross income. This does not mean, however, that a taxpayer has an option to include or not include in his gross income an amount received as reimbursement or other expense allowance in connection with his move as an employee. This question remains one which must be resolved under section 61(a) (relating to the definition of gross income).

[T.D. 6796, 30 FR 1038, Feb. 2, 1965, as amended by T.D. 7195, 37 FR 13535, July 11, 1972]

§ 1.217–2 Deduction for moving expenses paid or incurred in taxable years beginning after December 31, 1969.

(a) *Allowance of deduction*—(1) *In general.* Section 217(a) allows a deduction from gross income for moving expenses paid or incurred by the taxpayer during the taxable year in connection with his commencement of work as an employee or as a self-employed individual at a new principal place of work. For purposes of this section, amounts are considered as being paid or incurred by an individual whether goods or services are furnished to the taxpayer directly (by an employer, a client, a customer, or similar person) or indirectly (paid to a third party on behalf of the taxpayer by an employer, a client, a customer, or similar person). A cash basis taxpayer will treat moving expenses as being paid for purposes of section 217 and this section in the year in which the taxpayer is considered to have received such payment under section 82 and §1.82–1. No deduction is allowable under section 162 for any expenses incurred by the taxpayer in connection with moving from one residence to another residence unless such expenses are deductible under section 162 without regard to such change in residence. To qualify for the deduction under section 217 the expenses must meet the definition of the term *moving expenses* provided in section 217(b) and the taxpayer must meet the conditions set forth in section 217(c). The term *employee* as used in this section has the same meaning as in §31.3401(c)–1 of this chapter (Employment Tax Regulations). The term *self-employed individual* as used in this section is defined in paragraph (f)(1) of this section.

(2) *Expenses paid in a taxable year other than the taxable year in which reimbursement representing such expenses is received.* In general, moving expenses are deductible in the year paid or incurred. If a taxpayer who uses the cash receipts and disbursements method of accounting receives reimbursement for a moving expense in a taxable year other than the taxable year the taxpayer pays such expense, he may elect to deduct such expense in the taxable year that he receives such reimbursement, rather than the taxable year when he paid such expense in any case where:

(i) The expense is paid in a taxable year prior to the taxable year in which the reimbursement is received, or

(ii) The expense is paid in the taxable year immediately following the taxable year in which the reimbursement is received, provided that such expense is paid on or before the due date prescribed for filing the return (determined with regard to any extension of time for such filing) for the taxable year in which the reimbursement is received.

An election to deduct moving expenses in the taxable year that the reimbursement is received shall be made by claiming the deduction on the return, amended return, or claim for refund for the taxable year in which the reimbursement is received.

(3) *Commencement of work.* (i) To be deductible the moving expenses must be paid or incurred by the taxpayer in

connection with his commencement of work at a new principal place of work (see paragraph (c)(3) of this section for a discussion of the term *principal place of work*). Except for those expenses described in section 217(b)(1) (C) and (D) it is not necessary for the taxpayer to have made arrangements to work prior to his moving to a new location; however, a deduction is not allowable unless employment or self-employment actually does occur. The term *commencement* includes *(a)* the beginning of work by a taxpayer as an employee or as a self-employed individual for the first time or after a substantial period of unemployment or part-time employment, *(b)* the beginning of work by a taxpayer for a different employer or in the case of a self-employed individual in a new trade or business, or *(c)* the beginning of work by a taxpayer for the same employer or in the case of a self-employed individual in the same trade or business at a new location. To qualify as being in connection with the commencement of work, the move must bear a reasonable proximity both in time and place to such commencement at the new principal place of work. In general, moving expenses incurred within 1 year of the date of the commencement of work are considered to be reasonably proximate in time to such commencement. Moving expenses incurred after the 1-year period may be considered reasonably proximate in time if it can be shown that circumstances existed which prevented the taxpayer from incurring the expenses of moving within the 1-year period allowed. Whether circumstances existed which prevented the taxpayer from incurring the expenses of moving within the period allowed is dependent upon the facts and circumstances of each case. The length of the delay and the fact that the taxpayer may have incurred part of the expenses of the move within the 1-year period allowed shall be taken into account in determining whether expenses incurred after such period are allowable. In general, a move is not considered to be reasonably proximate in place to the commencement of work at the new princpal place of work where the distance between the taxpayer's new residence and his new principal place of work exceeds the distance between his former residence and his new principal place of work. A move to a new residence which does not satisfy this test may, however, be considered reasonably proximate in place to the commencement of work if the taxpayer can demonstrate, for example, that he is required to live at such residence as a condition of employment or that living at such residence will result in an actual decrease in commuting time or expense. For example, assume that in 1977 A is transferred by his employer to a new principal place of work and the distance between his former residence and his new principal place of work is 35 miles greater than was the distance between his former residence and his former principal place of work. However, the distance between his new residence and his new principal place of work is 10 miles greater than was the distance between his former residence and his new principal place of work. Although the minimum distance requirement of section 217(c)(1) is met the expenses of moving to the new residence are not considered as incurred in connection with A's commencement of work at his new principal place of work since the new residence is not proximate in place to the new place of work. If, however, A can demonstrate, for example, that he is required to live at such new residence as a condition of employment or if living at such new residence will result in an actual decrease in commuting time or expense, the expenses of the move may be considered as incurred in connection with A's commencement of work at his new principal place of work.

(ii) The provisions of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example 1. Assume that A is tranferred by his employer from Boston, MA, to Washington, DC. A moves to a new residence in Washington, DC, and commences work on February 1, 1971. A's wife and his two children remain in Boston until June 1972 in order to allow A's children to complete their grade school education in Boston. On June 1, 1972, A sells his home in Boston and his wife and children move to the new residence in Washington, DC. The expenses incurred on June 1, 1972, in selling the old residence and in moving A's family, their household goods, and personal effects to the new residence in

Washington are allowable as a deduction although they were incurred 16 months after the date of the commencement of work by A since A has moved to and established a new residence in Washington, DC, and thus incurred part of the total expenses of the move prior to the expiration of the 1-year period.

Example 2. Assume that A is transferred by his employer from Washington, DC, to Baltimore, MD. A commences work on January 1, 1971, in Baltimore. A commutes from his residence in Washington to his new principal place of work in Baltimore for a period of 18 months. On July 1, 1972, A decides to move to and establish a new residence in Baltimore. None of the moving expenses otherwise allowable under section 217 may be deducted since A neither incurred the expenses within 1 year nor has shown circumstances under which he was prevented from moving within such period.

(b) *Definition of moving expenses*—(1) *In general.* Section 217(b) defines the term *moving expenses* to mean only the reasonable expenses (i) of moving household goods and personal effects from the taxpayer's former residence to his new residence, (ii) of traveling (including meals and lodging) from the taxpayer's former residence to his new place of residence, (iii) of traveling (including meals and lodging), after obtaining employment, from the taxpayer's former residence to the general location of his new principal place of work and return, for the principal purpose of searching for a new residence, (iv) of meals and lodging while occupying temporary quarters in the general location of the new principal place of work during any period of 30 consecutive days after obtaining employment, or (v) of a nature constituting qualified residence sale, purchase, or lease expenses. Thus, the test of deductibility is whether the expenses are reasonable and are incurred for the items set forth in subdivisions (i) through (v) of this subparagraph.

(2) *Reasonable expenses.* (i) The term *moving expenses* includes only those expenses which are reasonable under the circumstances of the particular move. Expenses paid or incurred in excess of a reasonable amount are not deductible. Generally, expenses paid or incurred for movement of household goods and personal effects or for travel (including meals and lodging) are reasonable only to the extent that they are paid or incurred for such movement or travel by the shortest and most direct route available from the former residence to the new residence by the conventional mode or modes of transportation actually used and in the shortest period of time commonly required to travel the distance involved by such mode. Thus, if moving or travel arrangements are made to provide a circuitous route for scenic, stopover, or other similar reasons, additional expenses resulting therefrom are not deductible since they are not reasonable nor related to the commencement of work at the new principal place of work. In addition, expenses paid or incurred for meals and lodging while traveling from the former residence to the new place of residence or to the general location of the new principal place of work and return or occupying temporary quarters in the general location of the new principal place of work are reasonable only if under the facts and circumstances involved such expenses are not lavish or extravagant.

(ii) The application of this subparagraph may be illustrated by the following example:

Example. A, an employee of the M Company works and maintains his residence in Boston, MA. Upon receiving orders from his employer that he is to be transferred to M's Los Angeles, CA, office, A motors to Los Angeles with his family with stopovers at various cities between Boston and Los Angeles to visit friends and relatives. In addition, A detours into Mexico for sightseeing. Because of the stopovers and tour into Mexico, A's travel time and distance are increased over what they would have been had he proceeded directly to Los Angeles. To the extent that A's route of travel between Boston and Los Angeles is in a generally southwesterly direction it may be said that he is traveling by the shortest and most direct route available by motor vehicle. Since A's excursion into Mexico is away from the usual Boston-Los Angeles route, the portion of the expenses paid or incurred attributable to such excursion is not deductible. Likewise, that portion of the expenses attributable to A's delay en route in visiting personal friends and sightseeing are not deductible.

(3) *Expense of moving household goods and personal effects.* Expenses of moving household goods and personal effects include expenses of transporting such goods and effects from the taxpayer's former residence to his new residence, and expenses of packing, crating, and

in-transit storage and insurance for such goods and effects. Such expenses also include any costs of connecting or disconnecting utilities required because of the moving of household goods, appliances, or personal effects. Expenses of storing and insuring household goods and personal effects constitute in-transit expenses if incurred within any consecutive 30-day period after the day such goods and effects are moved from the taxpayer's former residence and prior to delivery at the taxpayer's new residence. Expenses paid or incurred in moving household goods and personal effects to the taxpayer's new residence from a place other than his former residence are allowable, but only to the extent that such expenses do not exceed the amount which would be allowable had such goods and effects been moved from the taxpayer's former residence. Expenses of moving household goods and personal effects do not include, for example, storage charges (other than in-transit), costs incurred in the acquisition of property, costs incurred and losses sustained in the disposition of property, penalties for breaking leases, mortgage penalties, expenses of refitting rugs or draperies, losses sustained on the disposal of memberships in clubs, tuition fees, and similar items. The above expenses may, however, be described in other provisions of section 217(b) and if so a deduction may be allowed for them subject to the allowable dollar limitations.

(4) *Expenses of traveling from the former residence to the new place of residence.* Expenses of traveling from the former residence to the new place of residence include the cost of transportation and of meals and lodging en route (including the date of arrival) from the taxpayer's former residence to his new place of residence. Expenses of meals and lodging incurred in the general location of the former residence within 1 day after the former residence is no longer suitable for occupancy because of the removal of household goods and personal effects shall be considered as expenses of traveling for purposes of this subparagraph. The date of arrival is the day the taxpayer secures lodging at the new place of residence, even if on a temporary basis. Expenses of traveling from the taxpayer's former residence to his new place of residence do not include, for example, living or other expenses following the date of arrival at the new place of residence and while waiting to enter the new residence or waiting for household goods to arrive, expenses in connection with house or apartment hunting, living expenses preceding date of departure for the new place of residence (other than expenses of meals and lodging incurred within 1 day after the former residence is no longer suitable for occupancy), expenses of trips for purposes of selling property, expenses of trips to the former residence by the taxpayer pending the move by his family to the new place of residence, or any allowance for depreciation. The above expenses may, however, be described in other provisions of section 217(b) and if so a deduction may be allowed for them subject to the allowable dollar limitations. The deduction for traveling expenses from the former residence to the new place of residence is allowable for only one trip made by the taxpayer and members of his household; however, it is not necessary that the taxpayer and all members of his household travel together or at the same time.

(5) *Expenses of traveling for the principal purpose of looking for a new residence.* Expenses of traveling, after obtaining employment, from the former residence to the general location of the new principal place of work and return, for the principal purpose of searching for a new residence include the cost of transportation and meals and lodging during such travel and while at the general location of the new place of work for the principal purpose of searching for a new residence. However, such expenses do not include, for example, expenses of meals and lodging of the taxpayer and members of his household before departing for the new principal place of work, expenses for trips for purposes of selling property, expenses of trips to the former residence by the taxpayer pending the move by his family to the place of residence, or any allowance for depreciation. The above expenses may, however, be described in other provisions of section 217(b) and if so a deduction may

be allowed for them. The deduction for expenses of traveling for the principal purpose of looking for a new residence is not limited to any number of trips by the taxpayer and by members of his household. In addition, the taxpayer and all members of his household need not travel together or at the same time. Moreover, a trip need not result in acquisition of a lease of property or purchase of property. An employee is considered to have obtained employment in the general location of the new principal place of work after he has obtained a contract or agreement of employment. A self-employed individual is considered to have obtained employment when he has made substantial arrangements to commence work at the new principal place of work (see paragraph (f)(2) of this section for a discussion of the term *made substantial arrangements to commence to work*).

(6) *Expenses of occupying temporary quarters.* Expenses of occupying temporary quarters include only the cost of meals and lodging while occupying temporary quarters in the general location of the new principal place of work during any period of 30 consecutive days after the taxpayer has obtained employment in such general location. Thus, expenses of occupying temporary quarters do not include, for example, the cost of entertainment, laundry, transportation, or other personal, living family expenses, or expenses of occupying temporary quarters in the general location of the former place of work. The 30 consecutive day period is any one period of 30 consecutive days which can begin, at the option of the taxpayer, on any day after the day the taxpayer obtains employment in the general location of the new principal place of work.

(7) *Qualified residence sale, purchase, or lease expenses.* Qualified residence sale, purchase, or lease expenses (hereinafter ''qualified real estate expenses'') are only reasonable amounts paid or incurred for any of the following purposes:

(i) Expenses incident to the sale or exchange by the taxpayer or his spouse of the taxpayer's former residence which, but for section 217 (b) and (e), would be taken into account in determining the amount realized on the sale or exchange of the residence. These expenses include real estate commissions, attorneys' fees, title fees, escrow fees, so called ''points'' or loan placement charges which the seller is required to pay, State transfer taxes and similar expenses paid or incurred in connection with the sale or exchange. No deduction, however, is permitted under section 217 and this section for the cost of physical improvements intended to enhance salability by improving the condition or appearance of the residence.

(ii) Expenses incident to the purchase by the taxpayer or his spouse of a new residence in the general location of the new principal place of work which, but for section 217 (b) and (e), would be taken into account in determining either the adjusted basis of the new residence or the cost of a loan. These expenses include attorney's fees, escrow fees, appraisal fees, title costs, so-called ''points'' or loan placement charges not representing payments or prepayments of interest, and similar expenses paid or incurred in connection with the purchase of the new residence. No deduction, however, is permitted under section 217 and this section for any portion of real estate taxes or insurance, so-called ''points'' or loan placement charges which are, in essence, prepayments of interest, or the purchase price of the residence.

(iii) Expenses incident to the settlement of an unexpired lease held by the taxpayer or his spouse on property used by the taxpayer as his former residence. These expenses include consideration paid to a lessor to obtain a release from a lease, attorneys' fees, real estate commissions, or similar expenses incident to obtaining a release from a lease or to obtaining an assignee or a sublessee such as the difference between rent paid under a primary lease and rent received under a sublease. No deduction, however, is permitted under section 217 and this section for the cost of physical improvement intended to enhance marketability of the leasehold by improving the condition or appearance of the residence.

(iv) Expenses incident to the acquisition of a lease by the taxpayer or his spouse. These expenses include the cost

of fees or commissions for obtaining a lease, a sublease, or an assignment of an interest in property used by the taxpayer as his new residence in the general location of the new principal place of work. No deduction, however, is permitted under section 217 and this section for payments or prepayments of rent or payments representing the cost of a security or other similar deposit.

Qualified real estate expenses do not include losses sustained on the disposition of property or mortgage penalties, to the extent that such penalties are otherwise deductible as interest.

(8) *Residence.* The term *former residence* refers to the taxpayer's principal residence before his departure for his new principal place of work. The term *new residence* refers to the taxpayer's principal residence within the general location of his new principal place of work. Thus, neither term includes other residences owned or maintained by the taxpayer or members of his family or seasonal residences such as a summer beach cottage. Whether or not property is used by the taxpayer as his principal residence depends upon all the facts and circumstances in each case. Property used by the taxpayer as his principal residence may include a houseboat, a housetrailer, or similar dwelling. The term *new place of residence* generally includes the area within which the taxpayer might reasonably be expected to commute to his new principal place of work.

(9) *Dollar limitations.* (i) Expenses described in subparagraphs (A) and (B) of section 217(b)(1) are not subject to an overall dollar limitation. Thus, assuming all other requirements of section 217 are satisfied, a taxpayer who, in connection with his commencement of work at a new principal place of work, pays or incurs reasonable expenses of moving household goods and personal effects from his former residence to his new place of residence and reasonable expenses of traveling, including meals and lodging, from his former residence to his new place of residence is permitted to deduct the entire amount of these expenses.

(ii) Expenses described in subparagraphs (C), (D), and (E) of section 217(b)(1) are subject to an overall dollar limitation for each commencement of work of 3,000 ($2,500 in the case of a commencement of work in a taxable year beginning before January 1, 1977), of which the expenses described in subparagraphs (C) and (D) of section 217(b)(1) cannot exceed $1,500 ($1,000 in the case of a commencement of work in a taxable year beginning before January 1, 1977). The dollar limitation applies to the amount of expenses paid or incurred in connection with each commencement of work and not to the amount of expenses paid or incurred in each taxable year. Thus, for example, a taxpayer who paid or incurred $2,000 of expenses described in subparagraphs (C), (D), and (E) of section 217(b)(1) in taxable year 1977 in connection with his commencement of work at a principal place of work and paid or incurred an additional $2,000 of such expenses in taxable year 1978 in connection with the same commencement of work is permitted to deduct the $2,000 of such expenses paid or incurred in taxable year 1977 and only $1,000 of such expenses paid or incurred in taxable year 1978.

(iii) A taxpayer who pays or incurs expenses described in subparagraphs (C), (D), and (E) of section 217(b)(1) in connection with the same commencement of work may choose to deduct any combination of such expenses within the dollar amounts specified in subdivision (ii) of this subparagraph. For example, a taxpayer who pays or incurs such expenses in connection with the same commencement of work may either choose to deduct: *(a)* Expenses described in subparagraphs (C) and (D) of section 217(b)(1) to the extent of $1,500 ($1,000 in the case of a commencement of work in a taxable year beginning before January 1, 1977) before deducting any of the expenses described in subparagraph (E) of such section, or *(b)* expenses described in subparagraph (E) of section 217(b)(1) to the extent of $3,000 ($2,500 in the case of a commencement of work in a taxable year beginning before January 1, 1977) before deducting any of the expenses described in subparagraphs (C) and (D) of such section.

(iv) For the purpose of computing the dollar limitation contained in subparagraph (A) of section 217(b)(3) a commencement of work by a taxpayer at a

new principal place of work and a commencement of work by his spouse at a new principal place of work which are in the same general location constitute a single commencement of work. Two principal places of work are treated as being in the same general location where the taxpayer and his spouse reside together and commute to their principal places of work. Two principal places of work are not treated as being in the same general location where, as of the close of the taxable year, the taxpayer and his spouse have not shared the same new residence nor made specific plans to share the same new residence within a determinable time. Under such circumstances, the separate commencements of work by a taxpayer and his spouse will be considered separately in assigning the dollar limitations and expenses to the appropriate return in the manner described in subdivisions (v) and (vi) of this subparagraph.

(v) Moving expenses (described in subparagraphs (C), (D), and (E) of section 217(b)(1)), paid or incurred with respect to the commencement of work by both a husband and wife which is considered a single commencement of work under subdivision (iv) of this subparagraph are subject to an overall dollar limitation of $3,000 ($2,500 in the case of a commencement of work in a taxable year beginning before January 1, 1977), per move of which the expenses described in subparagraphs (C) and (D) of section 217(b)(1) cannot exceed $1,500 ($1,000 in the case of a commencement of work in a taxable year beginning before January 1, 1977). If separate returns are filed with respect to the commencement of work by both a husband and wife which is considered a single commencement of work under subdivision (iv) of this subparagraph, moving expenses (described in subparagraphs (C), (D), and (E) of section 217(b)(1)) are subject to an overall dollar limitation of $1,500 ($1,250 in the case of a commencement of work in a taxable year beginning before January 1, 1977), per move of which the expenses described in subparagraphs (C) and (D) of section 217(b)(1) cannot exceed $750 ($500 in the case of a commencement of work in a taxable year beginning before January 1, 1977) with respect to each return. Where moving expenses are paid or incurred in more than 1 taxable year with respect to a single commencement of work by a husband and wife they shall, for purposes of applying the dollar limitations to such move, be subject to a $3,000 and $1,500 limitation ($2,500 and $1,000, respectively, in the case of a commencement of work in a taxable year beginning before January 1, 1977) for all such years that they file a joint return and shall be subject to a separate $1,500 and $750 limitation ($1,250 and $500, respectively, in the case of a commencement of work in a taxable year beginning before January 1, 1977) for all such years that they file separate returns. If a joint return is filed for the first taxable year moving expenses are paid or incurred with respect to a move but separate returns are filed in a subsequent year, the unused portion of the amount which may be deducted shall be allocated equally between the husband and wife in the later year. If separate returns are filed for the first taxable year such moving expenses are paid or incurred but a joint return is filed in a subsequent year, the deductions claimed on their separate returns shall be aggregated for purposes of determining the unused portion of the amount which may be deducted in the later year.

(vi) The application of subdivisions (iv) and (v) of this subparagraph may be illustrated by the following examples:

Example 1. A, who was transferred by his employer, effective January 15, 1977, moved from Boston, MA, to Washington, DC. A's wife was transferred by her employer, effective January 15, 1977, from Boston, MA, to Baltimore, MD. A and his wife reside together at the same new residence. A and his wife are cash basis taxpayers and file a joint return for taxable year 1977. Because A and his wife reside together at the new residence, the commencement of work by both is considered a single commencement of work under subdivision (iv) of this subparagraph. They are permitted to deduct with respect to their commencement of work in Washington and Baltimore up to $3,000 of the expenses described in subparagraphs (C), (D), and (E) of section 217(b)(1) of which the expenses described in subparagraphs (C) and (D) of such section cannot exceed $1,500.

Example 2. Assume the same facts as in *Example (1)* except that for taxable year 1977, A and his wife file separate returns. Because A

and his wife reside together, the commencement of work by both is considered a single commencement of work under subdivision (iv) of this subparagraph. A is permitted to deduct with respect to his commencement of work in Washington up to $1,500 of the expenses described in subparagraphs (C), (D), and (E) of section 217(b)(1) of which the expenses described in subparagraphs (C) and (D) cannot exceed $750. A is not permitted to deduct any of the expenses described in subparagraphs (C), (D), and (E) of section 217(b)(1) paid by his wife in connection with her commencement of work at a new principal place of work. A's wife is permitted to deduct with respect to her commencement of work in Baltimore up to $1,500 of the expenses described in subparagraphs (C), (D), and (E) of section 217(b)(1) that are paid by her of which the expenses described in subparagraphs (C) and (D) cannot exceed $750. A's wife is not permitted to deduct any of the expenses described in subparagraphs (C), (D), and (E) of section 217(b)(1) paid by A in connection with his commencement of work in Washington, DC.

Example 3. Assume the same facts as in *Example (1)* except that A and his wife take up separate residences in Washington and Baltimore, do not reside together during the entire taxable year, and have no specific plans to reside together. The commencement of work by A in Washington, DC, and by his wife in Baltimore are considered separate commencements of work since their principal places of work are not treated as being in the same general location. If A and his wife file a joint return for taxable year 1977, the moving expenses described in subparagraphs (C), (D), and (E) of section 217(b)(1) paid in connection with the commencement of work by A in Washington, DC, and his wife in Baltimore, MD, are subject to an overall limitation of $6,000 of which the expenses described in subparagrahs (C) and (D) cannot exceed $3,000. If A and his wife file separate returns for taxable year 1977, A may deduct up to $3,000 of the expenses described in subparagraphs (C), (D), and (E) of which the expenses described in subparagraphs (C) and (D) cannot exceed $1,500. A's wife may deduct up to $3,000 of the expenses described in subparagraphs (C), (D), and (E) of which the expenses described in subparagraphs (C) and (D) cannot exceed $1,500.

(10) *Individuals other than taxpayer.* (i) In addition to the expenses set forth in subparagraphs (A) through (D) of section 217(b)(1) attributable to the taxpayer alone, the same type of expenses attributable to certain individuals other than the taxpayer, if paid or incurred by the taxpayer, are deductible. These other individuals must be members of the taxpayer's household, and have both the taxpayer's former residence and his new residence as their principal place of abode. A member of the taxpayer's household includes any individual residing at the taxpayer's residence who is neither a tenant nor an employee of the taxpayer. Thus, for example, a member of the taxpayer's household may not be an individual such as a servant, governess, chauffeur, nurse, valet, or personal attendant. However, for purposes of this paragraph, a tenant or employee will be considered a member of the taxpayer's household where the tenant or employee is a dependent of the taxpayer as defined in section 152.

(ii) In addition to the expenses set forth in section 217(b)(2) paid or incurred by the taxpayer attributable to property sold, purchased, or leased by the taxpayer alone, the same type of expenses paid or incurred by the taxpayer attributable to property sold, purchased, or leased by the taxpayer's spouse or by the taxpayer and his spouse are deductible providing such property is used by the taxpayer as his principal place of residence.

(c) *Conditions for allowance*—(1) *In general.* Section 217(c) provides two conditions which must be satisfied in order for a deduction of moving expenses to be allowed under section 217(a). The first is a minimum distance condition prescribed by section 217(c)(1), and the second is a minimum period of employment condition prescribed by section 217(c)(2).

(2) *Minimum distance.* For purposes of applying the minimum distance condition of section 217(c)(1) all taxpayers are divided into one or the other of the following categories: Taxpayers having a former principal place of work, and taxpayers not having a former principal place of work. Included in this latter category are individuals who are seeking fulltime employment for the first time either as an employee or on a self- employed basis (for example, recent high school or college graduates), or individuals who are reentering the labor force after a substantial period of unemployment or part-time employment.

(i) In the case of a taxpayer having a former principal place of work, section 217(c)(1)(A) provides that no deduction

is allowable unless the distance between the former residence and the new principal place of work exceeds by at least 35 miles (50 miles in the case of expenses paid or incurred in taxable years beginning before January 1, 1977) the distance between the former residence and the former principal place of work.

(ii) In the case of a taxpayer not having a former principal place of work, section 217(c)(1)(B) provides that no deduction is allowable unless the distance between the former residence and the new principal place of work is at least 35 miles (50 miles in the case of expenses paid or incurred in taxable years beginning before January 1, 1977).

(iii) For purposes of measuring distances under section 217(c)(1) the distance between two geographic points is measured by the shortest of the more commonly traveled routes between such points. The shortest of the more commonly traveled routes refers to the line of travel and the mode or modes of transportation commonly used to go between two geographic points comprising the shortest distance between such points irrespective of the route used by the taxpayer.

(3) *Principal place of work.* (i) A taxpayer's *principal place of work* usually is the place where he spends most of his working time. The principal place of work of a taxpayer who performs services as an employee is his employer's plant, office, shop, store, or other property. The principal place of work of a taxpayer who is self-employed is the plant, office, shop, store, or other property which serves as the center of his business activities. However, a taxpayer may have a principal place of work even if there is no one place where he spends a substantial portion of his working time. In such case, the taxpayer's principal place of work is the place where his business activities are centered—for example, because he reports there for work, or is required either by his employer or the nature of his employment to ''base'' his employment there. Thus, while a member of a railroad crew may spend most of his working time aboard a train, his principal place of work is his home terminal, station, or other such central point where he reports in, checks out, or receives instructions. The principal place of work of a taxpayer who is employed by a number of employers on a relatively short-term basis, and secures employment by means of a union hall system (such as a construction or building trades worker) would be the union hall.

(ii) Where a taxpayer has more than one employment (i.e., the taxpayer is employed by more than one employer, or is self-employed in more than one trade or business, or is an employee and is self-employed at any particular time) his principal place of work is determined with reference to his principal employment. The location of a taxpayer's principal place of work is a question of fact determined on the basis of the particular circumstances in each case. The more important factors to be considered in making this determination are *(a)* the total time ordinarily spent by the taxpayer at each place, *(b)* the degree of the taxpayer's business activity at each place, and *(c)* the relative significance of the financial return to the taxpayer from each place.

(iii) Where a taxpayer maintains inconsistent positions by claiming a deduction for expenses of meals and lodging while away from home (incurred in the general location of the new principal place of work) under section 162 (relating to trade or business expenses) and by claiming a deduction under this section for moving expenses incurred in connection with the commencement of work at such place of work, it will be a question of facts and circumstances as to whether such new place of work will be considered a principal place of work, and accordingly, which category of deductions he will be allowed.

(4) *Minimum period of employment.* (i) Under section 217(c)(2) no deduction is allowed unless:

(a) Where a taxpayer is an employee, during the 12-month period immediately following his arrival in the general location of the new principal place of work, he is a full-time employee, in such general location, during at least 39 weeks, or

(b) Where a taxpayer is a self-employed individual (including a taxpayer who is also an employee, but is unable to satisfy the requirements of the 39-

week test of (a) of this subdivision (i)), during the 24-month period immediately following his arrival in the general location of the new principal place of work, he is a full-time employee or performs services as a self-employed individual on a full-time basis, in such general location, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period referred to above.

Where a taxpayer works as an employee and at the same time performs services as a self-employed individual his principal employment (determined according to subdivision (i) of subparagraph (3) of this paragraph) governs whether the 39-week or 78-week test is applicable.

(ii) The 12-month period and the 39-week period set forth in subparagraph (A) of section 217(c)(2) and the 12- and 24-month periods as well as 39- and 78-week periods set forth in subparagraph (B) of such section are measured from the date of the taxpayer's arrival in the general location of the new principal place of work. Generally, date of arrival is the date of the termination of the last trip preceding the taxpayer's commencement of work on a regular basis and is not the date the taxpayer's family or household goods and effects arrive.

(iii) The taxpayer need not remain in the employ of the same employer or remain self-employed in the same trade or business for the required number of weeks. However, he must be employed in the same general location of the new principal place of work during such period. The *general location* of the new principal place of work refers to a general commutation area and is usually the same area as the ''new place of residence''; see paragraph (b)(8) of this section.

(iv) Only those weeks during which the taxpayer is a full-time employee or during which he performs services as a self-employed individual on a full-time basis qualify as a week of work for purposes of the minimum period of employment condition of section 217(c)(2).

(a) Whether an employee is a full-time employee during any particular week depends upon the customary practices of the occupation in the geographic area in which the taxpayer works. Where employment is on a seasonal basis, weeks occurring in the off-season when no work is required or available may be counted as weeks of full-time employment only if the employee's contract or agreement of employment covers the off-season period and such period is less than 6 months. Thus, for example, a schoolteacher whose employment contract covers a 12-month period and who teaches on a full-time basis for more than 6 months is considered a full-time employee during the entire 12-month period. A taxpayer will be treated as a full-time employee during any week of involuntary temporary absence from work because of illness, strikes, shutouts, layoffs, natural disasters, etc. A taxpayer will, also, be treated as a full-time employee during any week in which he voluntarily absents himself from work for leave or vacation provided for in his contract or agreement of employment.

(b) Whether a taxpayer performs services as a self-employed individual on a full-time basis during any particular week depends on the practices of the trade or business in the geographic area in which the taxpayer works. For example, a self-employed dentist maintaining office hours 4 days a week is considered to perform services as a self-employed individual on a full-time basis providing it is not unusual for other self-employed dentists in the geographic area in which the taxpayer works to maintain office hours only 4 days a week. Where a trade or business is seasonal, weeks occurring during the off-season when no work is required or available may be counted as weeks of performance of services on a full-time basis only if the off-season is less than 6 months and the taxpayer performs services on a full-time basis both before and after the off-season. For example, a taxpayer who owns and operates a motel at a beach resort is considered to perform services as a self-employed individual on a full-time basis if the motel is closed for a period not exceeding 6 months during the off-season and if he performs services on a full-time basis as the operator of a motel both before and after the off-season. A taxpayer will be treated as performing services as a self-employed individual on a full-

time basis during any week of involuntary temporary absence from work because of illness, strikes, natural disasters, etc.

(v) Where taxpayers file a joint return, either spouse may satisfy the minimum period of employment condition. However, weeks worked by one spouse may not be added to weeks worked by the other spouse in order to satisfy such condition. The taxpayer seeking to satisfy the minimum period of employment condition must satisfy the condition applicable to him. Thus, if a taxpayer is subject to the 39-week condition and his spouse is subject to the 78-week condition and the taxpayer satisfies the 39-week condition, his spouse need not satisfy the 78-week condition. On the other hand, if the taxpayer does not satisfy the 39-week condition, his spouse in such case must satisfy the 78-week condition.

(vi) The application of this subparagraph may be illustrated by the following examples:

Example 1. A is an electrician residing in New York City. He moves himself, his family, and his household goods and personal effects, at his own expense, to Denver where he commences employment with the M Aircraft Corporation. After working full-time for 30 weeks he voluntarily leaves his job, and he subsequently moves to and commences employment in Los Angeles, CA, which employment lasts for more than 39 weeks. Since A was not employed in the general location of his new principal place of employment in Denver for at least 39 weeks, no deduction is allowable for moving expenses paid or incurred between New York City and Denver. A will be allowed to deduct only those moving expenses attributable to his move from Denver to Los Angeles, assuming all other conditions of section 217 are met.

Example 2. Assume the same facts as in *Example (1)*, except that A's wife commences employment in Denver at the same time as A, and that she continues to work in Denver for at least 9 weeks after A's departure for Los Angeles. Since she has met the 39-week requirement in Denver, and assuming all other requirements of section 217 are met, the moving expenses paid by A attributable to the move from New York City to Denver will be allowed as a deduction, provided A and his wife file a joint return. If A and his wife file separate returns moving expenses paid by A's wife attributable to the move from New York City to Denver will be allowed as a deduction on A's wife's return.

Example 3. Assume the same facts as in *Example (1)*, except that A's wife commences employment in Denver on the same day that A departs for Los Angeles, and continues to work in Denver for 9 weeks thereafter. Since neither A (who has worked 30 weeks) nor his wife (who has worked 9 weeks) has independently satisfied the 39-week requirement, no deduction for moving expenses attributable to the move from New York City to Denver is allowable.

(d) *Rules for application of section 217(c)(2)*—(1) *Inapplicability of minimum period of employment condition in certain cases.* Section 217(d)(1) provides that the minimum period of employment condition of section 217(c)(2) does not apply in the case of a taxpayer who is unable to meet such condition by reason of:

(i) Death or disability, or

(ii) Involuntary separation (other than for willfull misconduct) from the service of an employer or separation by reason of transfer for the benefit of an employer after obtaining full-time employment in which the taxpayer could reasonably have been expected to satisfy such condition.

For purposes of subdivision (i) of this paragraph disability shall be determined according to the rules in section 72(m)(7) and §1.72–17(f). Subdivision (ii) of this subparagraph applies only where the taxpayer has obtained full-time employment in which he could reasonably have been expected to satisfy the minimum period of employment condition. A taxpayer could reasonably have been expected to satisfy the minimum period of employment condition if at the time he commences work at the new principal place of work he could have been expected, based upon the facts known to him at such time, to satisfy such condition. Thus, for example, if the taxpayer at the time of transfer was not advised by his employer that he planned to transfer him within 6 months to another principal place of work, the taxpayer could, in the absence of other factors, reasonably have been expected to satisfy the minimum employment period condition at the time of the first transfer. On the other hand, a taxpayer could not reasonably have been expected to satisfy the minimum employment condition if at the time of the commencement of the move he knew that his employer's retirement age policy would prevent his satisfying the

minimum employment period condition.

(2) *Election of deduction before minimum period of employment condition is satisfied.* (i) Paragraph (2) of section 217(d) provides a rule which applies where a taxpayer paid or incurred, in a taxable year, moving expenses which would be deductible in that taxable year except that the minimum period of employment condition of section 217(c)(2) has not been satisfied before the time prescribed by law for filing the return for such taxable year. The rule provides that where a taxpayer has paid or incurred moving expenses and as of the date prescribed by section 6072 for filing his return for such taxable year (determined with regard to extensions of time for filing) there remains unexpired a sufficient portion of the 12-month or the 24-month period so that it is still possible for the taxpayer to satisfy the applicable period of employment condition, the taxpayer may elect to claim a deduction for such moving expenses on the return for such taxable year. The election is exercised by taking the deduction on the return.

(ii) Where a taxpayer does not elect to claim a deduction for moving expenses on the return for the taxable year in which such expenses were paid or incurred in accordance with subdivision (i) of this subparagraph and the applicable minimum period of employment condition of section 217(c)(2) (as well as all other requirements of section 217) is subsequently satisfied, the taxpayer may file an amended return or a claim for refund for the taxable year such moving expenses were paid or incurred on which he may claim a deduction under section 217.

(iii) The application of this subparagraph may be illustrated by the following examples:

Example 1. A is transferred by his employer from Boston, MA, to Cleveland, OH. He begins working there on November 1, 1970. Moving expenses are paid by A in 1970 in connection with this move. On April 15, 1971, when he files his income tax return for the year 1970, A has been a full-time employee in Cleveland for approximately 24 weeks. Although he has not satisfied the 39-week employment condition at this time, A may elect to claim his 1970 moving expenses on his 1970 income tax return as there is still sufficient time remaining before November 1, 1971, to satisfy such condition.

Example 2. Assume the same facts as in *Example (1)*, except that on April 15, 1971, A has voluntarily left his employer and is looking for other employment in Cleveland. A may not be sure he will be able to meet the 39-week employment condition by November 1, 1971. Thus, he may if he wishes wait until such condition is met and file an amended return claiming as a deduction the expenses paid in 1970. Instead of filing an amended return A may file a claim for refund based on a deduction for such expenses. If A fails to meet the 39-week employment condition on or before November 1, 1971, no deduction is allowable for such expenses.

Example 3. B is a self-employed accountant. He moves from Rochester, NY, to New York, NY, and begins to work there on December 1, 1970. Moving expenses are paid by B in 1970 and 1971 in connection with this move. On April 15, 1971, when he files his income tax return for the year 1970, B has been performing services as a self-employed individual on a full-time basis in New York City for approximately 20 weeks. Although he has not satisfied the 78-week employment condition at this time, A may elect to claim his 1970 moving expenses on his 1970 income tax return as there is still sufficient time remaining before December 1, 1972, to satisfy such condition. On April 15, 1972, when he files his income tax return for the year 1971, B has been performing services as a self-employed individual on a full-time basis in New York City for approximately 72 weeks. Although he has not met the 78-week employment condition at this time, B may elect to claim his 1971 moving expenses on his 1971 income tax return as there is still sufficient time remaining before December 1, 1972, to satisfy such requirement.

(3) *Recapture of deduction.* Paragraph (3) of section 217(d) provides a rule which applies where a taxpayer has deducted moving expenses under the election provided in section 217(d)(2) prior to satisfying the applicable minimum period of employment condition and such condition cannot be satisfied at the close of a subsequent taxable year. In such cases an amount equal to the expenses deducted must be included in the taxpayer's gross income for the taxable year in which the taxpayer is no longer able to satisfy such minimum period of employment condition. Where the taxpayer has deducted moving expenses under the election provided in section 217(d)(2) for the taxable year and subsequently files an amended return for such year on which he does not claim the deduction, such

expenses are not treated as having been deducted for purposes of the recapture rule of the preceding sentence.

(e) *Denial of double benefit*—(1) *In general.* Section 217(e) provides a rule for computing the amount realized and the basis where qualified real estate expenses are allowed as a deduction under section 217(a).

(2) *Sale or exchange of residence.* Section 217(e) provides that the amount realized on the sale or exchange of a residence owned by the taxpayer, by the taxpayer's spouse, or by the taxpayer and his spouse and used by the taxpayer as his principal place of residence is not decreased by the amount of any expenses described in subparagraph (A) of section 217(b)(2) and deducted under section 217(a). For the purposes of section 217(e) and of this paragraph the term amount realized'' has the same meaning as under section 1001(b) and the regulations thereunder. Thus, for example, if the taxpayer sells a residence used as his principal place of residence and real estate commissions or similar expenses described in subparagraph (A) of section 217(b)(2) are deducted by him pursuant to section 217(a), the amount realized on the sale of the residence is not reduced by the amount of such real estate commissions or such similar expenses described in subparagraph (A) of section 217(b)(2).

(3) *Purchase of a residence.* Section 217(e) provides that the basis of a residence purchased or received in exchange for other property by the taxpayer, by the taxpayer's spouse, or by the taxpayer and his spouse and used by the taxpayer as his principal place of residence is not increased by the amount of any expenses described in subparagraph (B) of section 217(b)(2) and deducted under section 217(a). For the purposes of section 217(e) and of this paragraph the term *basis* has the same meaning as under section 1011 and the regulations thereunder. Thus, for example, if a taxpayer purchases a residence to be used as his principal place of residence and attorneys' fees or similar expenses described in subparagraph (B) of section 217(b)(2) are deducted pursuant to section 217(a), the basis of such residence is not increased by the amount of such attorneys' fees or such similar expenses described in subparagraph (B) of section 217(b)(2).

(4) *Inapplicability of section 217(e).* (i) Section 217(e) and subparagraphs (1) through (3) of this paragraph do not apply to any expenses with respect to which an amount is included in gross income under section 217(d)(3). Thus, the amount of any expenses described in subparagraph (A) of section 217(b)(2) deducted in the year paid or incurred pursuant to the election under section 217(d)(2) and subsequently recaptured pursuant to section 217(d)(3) may be taken into account in computing the amount realized on the sale or exchange of the residence described in such subparagraph. Also, the amount of expenses described in subparagraph (B) of section 217(b)(2) deducted in the year paid or incurred pursuant to such election under section 217(d)(2) and subsequently recaptured pursuant to section 217(d)(3) may be taken into account as an adjustment to the basis of the residence described in such subparagraph.

(ii) The application of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example 1. A was notified of his transfer effective December 15, 1972, from Seattle, WA, to Philadelphia, PA. In connection with the transfer A sold his house in Seattle on November 10, 1972. Expenses incident to the sale of the house of $2,500 were paid by A prior to or at the time of the closing of the contract of sale on December 10, 1972. The amount realized on the sale of the house was $47,500 and the adjusted basis of the house was $30,000. Pursuant to the election provided in section 217(d)(2), A deducted the expenses of moving from Seattle to Philadelphia including the expenses incident to the sale of his former residence in taxable year 1972. Dissatisfied with his position with his employer in Philadelphia, A took a position with an employer in Chicago, IL, on July 15, 1973. Since A was no longer able to satisfy the minimum period employment condition at the close of taxable year 1973 he included an amount equal to the amount deducted as moving expenses including the expenses incident to the sale of his former residence in gross income for taxable year 1973. A is permitted to decrease the amount realized on the sale of the house by the amount of the expenses incident to the sale of the house deducted from gross income and subsequently included in gross income. Thus, the amount realized on the sale of the house is decreased from $47,500 to $45,000 and thus, the gain on the sale of the house is reduced from $17,500 to

$15,000. A is allowed to file an amended return or a claim for refund in order to reflect the recomputation of the amount realized.

Example 2. B, who is self-employed decided to move from Washington, DC, to Los Angeles, CA. In connection with the commencement of work in Los Angeles on March 1, 1973, B purchased a house in a suburb of Los Angeles for $65,000. Expenses incident to the purchase of the house in the amount of $1,500 were paid by B prior to or at the time of the closing of the contract of sale on September 15, 1973. Pursuant to the election provided in section 217(d)(2), B deducted the expenses of moving from Washington to Los Angeles including the expenses incident to the purchase of his new residence in taxable year 1973. Dissatisfied with his prospects in Los Angeles, B moved back to Washington on July 1, 1974. Since B was no longer able to satisfy the minimum period of employment condition at the close of taxable year 1974 he included an amount equal to the amount deducted as moving expenses incident to the purchase of the former residence in gross income for taxable year 1974. B is permitted to increase the basis of the house by the amount of the expenses incident to the purchase of the house deducted from gross income and subsequently included in gross income. Thus, the basis of the house is increased to $66,500.

(f) *Rules for self-employed individuals*—(1) *Definition.* Section 217(f)(1) defines the term *self-employed individual* for purposes of section 217 to mean an individual who performs personal services either as the owner of the entire interest in an unincorporated trade or business or as a partner in a partnership carrying on a trade or business. The term *self-employed individual* does not include the semiretired, part-time students, or other similarly situated taxpayers who work only a few hours each week. The application of this subparagraph may be illustrated by the following example:

Example. A is the owner of the entire interest in an unincorporated construction business. A hires a manager who performs all of the daily functions of the business including the negotiation of contracts with customers, the hiring and firing of employees, the purchasing of materials used on the projects, and other similar services. A and his manager discuss the operations of the business about once a week over the telephone. Otherwise A does not perform any managerial services for the business. For the purposes of section 217, A is not considered to be a self-employed individual.

(2) *Rule for application of subsection (b)(1) (C)* and *(D).* Section 217(f)(2) provides that for purposes of subparagraphs (C) *and* (D) of section 217(b)(1) an individual who commences work at a new principal place of work as a self-employed individual is treated as having obtained employment when he has made substantial arrangements to commence such work. Whether the taxpayer has made substantial arrangements to commence work at a new principal place of work is determined on the basis of all the facts and circumstances in each case. The factors to be considered in this determination depend upon the nature of the taxpayer's trade or business and include such considerations as whether the taxpayer has: (i) Leased or purchased a plant, office, shop, store, equipment, or other property to be used in the trade or business, (ii) made arrangements to purchase inventory or supplies to be used in connection with the operation of the trade or business, (iii) entered into commitments with individuals to be employed in the trade or business, and (iv) made arrangements to contact customers or clients in order to advertise the business in the general location of the new principal place of work. The application of this subparagraph may be illustrated by the following examples:

Example 1. A, a partner in a growing chain of drug stores decided to move from Houston, TX, to Dallas, TX, in order to open a drug store in Dallas. A made several trips to Dallas for the purpose of looking for a site for the drug store. After the signing of a lease on a building in a shopping plaza, suppliers were contacted, equipment was purchased, and employees were hired. Shortly before the opening of the store A and his wife moved from Houston to Dallas and took up temporary quarters in a motel until the time their apartment was available. By the time he and his wife took up temporary quarters in the motel A was considered to have made substantial arrangements to commence work at the new principal place of work.

Example 2. B, who is a partner in a securities brokerage firm in New York, NY, decided to move to Rochester, NY, to become the resident partner in the firm's new Rochester office. After a lease was signed on an office in downtown Rochester B moved to Rochester and took up temporary quarters in a motel until his apartment became available. Before the opening of the office B supervised the decoration of the office, the purchase of equipment and supplies necessary for the operation of the office, the hiring of

personnel for the office, as well as other similar activities. By the time B took up temporary quarters in the motel he was considered to have made substantial arrangements to commence to work at the new principal place of work.

Example 3. C, who is about to complete his residency in ophthalmology at a hospital in Pittsburgh, PA, decided to fly to Philadelphia, PA, for the purpose of looking into opportunities for practicing in that city. Following his arrival in Philadelphia C decided to establish his practice in that city. He leased an office and an apartment. At the time he departed Pittsburgh for Philadelphia C was not considered to have made substantial arrangements to commence work at the new principal place of work, and, therefore, is not allowed to deduct expenses described in subparagraph (C) of section 217(b)(1) (relating to expenses of traveling (including meals and lodging), after obtaining employment, from the former residence to the general location of the new principal place of work and return, for the principal purpose of searching for a new residence).

(g) *Rules for members of the Armed Forces of the United States*—(1) *In general.* The rules in paragraphs (a)(1) and (2), (b), and (e) of this section apply to moving expenses paid or incurred by members of the Armed Forces of the United States on active duty who move pursuant to a military order and incident to a permament change of station, except as provided in this paragraph (g). However, if the moving expenses are not paid or incurred incident to a permanent change of station, this paragraph (g) does not apply, but all other paragraphs of this section do apply. The provisions of this paragraph apply to taxable years beginning December 31, 1975.

(2) *Treatment of services or reimbursement provided by Government*—(i) *Services in kind.* The value of any moving or storage services furnished by the United States Government to members of the Armed Forces, their spouses, or their dependents in connection with a permanent change of station is not includible in gross income. The Secretary of Defense and (in cases involving members of the peacetime Coast Guard) the Secretary of Transportation are not required to report or withhold taxes with respect to those services. Services furnished by the Government include services rendered directly by the Government or rendered by a third party who is compensated directly by the Government for the services.

(ii) *Reimbursements.* The following rules apply to reimbursements or allowances by the Government to members of the Armed Forces, their spouses, or their dependents for moving or storage expenses paid or incurred by them in connection with a permanent change of station. If the reimbursement or allowance exceeds the actual expenses paid or incurred, the excess is includible in the gross income of the member, and the Secretary of Defense or Secretary of Transportation must report the excess as payment of wages and withhold income taxes under section 3402 and the employee taxes under section 3102 with respect to that excess. If the reimbursemet or allowance does not exceed the actual expenses, the reimbursement or allowance in not includible in gross income, and no reporting or withholding by the Secretary of Defense or Secretary of Transportation is required. If the actual expenses, as limited by paragraph (b)(9) of this section, exceed the reimbursement of allowance, the member may deduct the excess if the other requirements of this section, as modified by this paragraph, are met. The determination of the limitation on actual expenses under paragraph (b)(9) of this section is made without regard to any services in kind furnished by the Government.

(3) *Permanent change of station.* For purposes of this section, the term *permanent change of station* includes the following situations.

(i) A move from home to the first post of duty when appointed, reappointed, reinstated, or inducted.

(ii) A move from the last post of duty to home or a nearer point in the United States in connection with retirement, discharge, resignation, separation under honorable conditions, transfer, relief from active duty, temporary disability retirement, or transfer to a Fleet Reserve, if such move occurs within 1 year of such termination of active duty or within the period prescribed by the Joint Travel Regulations promulgated under the authority contained in sections 404 through 411 of Title 37 of the United States Code.

(iii) A move from one permanent post of duty to another permanent post of duty at a different duty station, even if the member separates from the Armed Forces immediately or shortly after the move.

The term *permanent*, *post of duty*, *duty station*, and *honorable* have the meanings given them in appropriate Department of Defense or Department of Transportation rules and regulations.

(4) *Storage expenses.* This paragraph applies to storage expenses as well as to moving expenses described in paragraph (b)(1) of this section. the term *storage expenses* means the cost of storing personal effects of members of the Armed Forces, their spouses, and their dependents.

(5) *Moves of spouses and dependents.* (i) The following special rule applies for purposes of paragraphs (b)(9) and (10) of this section, if the spouse or dependents of a member of the Armed Forces move to or from a different location than does the member. In this case, the spouse is considered to have commenced work as an employee at a new principal place of work that is within the same general location as the location to which the member moves.

(ii) The following special rule applies for purposes of this paragraph to moves by spouses or dependents of members of the Armed Forces who die, are imprisoned, or desert while on active duty. In these cases, a move to a member's place of enlistment or induction or the member's, spouse's, or dependent's home of record or nearer point in the United States is considered incident to a permanent change of station.

(6) *Disallowance of deduction.* No deduction is allowed under this section for any moving or storage expense reimbursed by an allowance that is excluded from gross income.

(h) *Special rules for foreign moves*—(1) *Increase in limitations.* In the case of a foreign move (as defined in paragraph (h)(3) of this section), paragraph (b)(6) of this section shall be applied by substituting ''90 consecutive'' for ''30 consecutive'' each time it appears. Paragraph (b)(9) (ii), (iii) and (v) of this section shall be applied by substituting ''$6,000'' for ''$3,000'' each time it appears and by substituting ''$4,500'' for ''$1,500'' each time it appears. Paragraph (b)(9)(ii) of this section shall be applied by substituting ''$5,000'' for ''$2,000'' each time it appears and by substituting ''1979'' for ''1977'' and ''1980'' for ''1978'' each time they appear in the last sentence. Paragraph (b)(9)(v) of this section shall be applied by substituting ''$2,250'' for ''$750'' each time it appears. Paragraph (b)(9)(vi) of this section does not apply.

(2) *Allowance of certain storage fees.* In the case of a foreign move, for purposes of this section, the moving expenses described in paragraph (b)(3) of this section shall include the reasonable expenses of moving household goods and personal effects to and from storage, and of storing such goods and effects for part or all of the period during which the new place of work continues to be the taxpayer's principal place of work.

(3) *Foreign move.* For purposes of this paragraph, the term *foreign move* means a move in connection with the commencement of work by the taxpayer at a new principal place of work located outside the United States. Thus, a move from the United States to a foreign country or from one foreign country to another foreign country qualifies as a foreign move. A move within a foreign country also qualifies as a foreign move. A move from a foreign country to the United States does not qualify as a foreign move.

(4) *United States.* For purposes of this paragraph, the term *United States* includes the possessions of the United States.

(5) *Effective date.* The provisions of this paragraph apply to expenses paid or incurred in taxable years beginning after December 31, 1978. The paragraph also applies to the expenses paid or incurred in the taxable year beginning during 1978 of taxpayers who do not make an election pursuant to section 209(c) of the Foreign Earned Income Act of 1978 (Pub. L. 95–615, 92 Stat. 3109) to have section 911 under prior law apply to that taxable year.

(i) *Allowance of deductions in case of retirees or decedents who were working abroad*—(1) *In general.* In the case of any qualified retiree moving expenses or qualified survivor moving expenses, this section (other than paragraph (h)) shall be applied to such expenses as if

they were incurred in connection with the commencement of work by the taxpayer as an employee at a new principal place of work located within the United States and the limitations of paragraph (c)(4) of this section (relating to the minimum period of employment) shall not apply.

(2) *Qualified retiree moving expenses.* For purposes of this paragraph, the term *qualified retiree moving expenses* means any moving expenses which are incurred by an individual whose former principal place of work and former residence were outside the United States and which are incurred for a move to a new residence in the United States in connection with the bona fide retirement of the individual. *Bona fide retirement* means the permanent withdrawal from gainful full-time employment and self-employment. An individual who at the time of withdrawal from gainful full-time employment or self-employment, intends the withdrawal to be permanent shall be considered to be a *bona fide retiree* even though the individual ultimately resumes gainful full-time employment or self-employment. An individual's intention may be evidenced by relevant facts and circumstances which include the age and health of the individual, the customary retirement age of employees engaged in similar work, whether the individual is receiving a retirement allowance under a pension annuity, retirement or similar fund or system, and the length of time before resuming full-time employment or self-employment.

(3) *Qualified survivor moving expenses.* (i) For purposes of this paragraph, the term *qualified survivor moving expenses* means any moving expenses:

(A) Which are paid or incurred by the spouse or any dependent (as defined in section 152) of any decedent who (as of the time of his death) had a principal place of work outside the United States, and

(B) Which are incurred for a move which begins within 6 months after the death of the decedent and which is to a residence in the United States from a former residence outside the United States which (as of the time of the decedent's death) was the residence of such decedent and the individual paying or incurring the expense.

(ii) For purposes of paragraph (i)(3)(i)(B) of this section, a move begins when:

(A) The taxpayer contracts for the moving of his or her household goods and personal effects to a residence in the United States but only if the move is completed within a reasonable time thereafter;

(B) The taxpayer's household goods and personal effects are packed and in transit to a residence in the United States; or

(C) The taxpayer leaves the former residence to travel to a new place of residence in the United States.

(4) *United States.* For purposes of this paragraph, the term *United States* includes the possessions of the United States.

(5) *Effective date.* The provisions of this paragraph apply to expenses paid or incurred in taxable years beginning after December 31, 1978. The paragraph also applies to the expenses paid or incurred in the taxable year beginning during 1978 of taxpayers who do not make an election pursuant to section 209(c) of the Foreign Earned Income Act of 1978 (Pub. L. 95–615, 92 Stat. 3109) to have section 911 under prior law apply to that taxable year.

(j) *Effective date*—(1) *In general.* This section, except as provided in subparagraphs (2) and (3) of this paragraph, is applicable to items paid or incurred in taxable years beginning after December 31, 1969.

(2) *Reimbursement not included in gross income.* This section does not apply to items to the extent that the taxpayer received or accrued in a taxable year beginning before January 1, 1970, a reimbursement or other expense allowance for such items which was not included in his gross income.

(3) *Election in cases of expenses paid or incurred before January 1, 1971, in connection with certain moves*—(i) *In general.* A taxpayer who was notified by his employer on or before December 19, 1969, of a transfer to a new principal place of work and who pays or incurs moving expenses after December 31, 1969, but before January 1, 1971, in connection with such transfer may elect to have the rules governing moving expenses in effect prior to the effective date of section 231 of the Tax Reform

Act of 1969 (83 Stat. 577) govern such expenses. If such election is made, this section and section 82 and the regulations thereunder do not apply to such expenses. A taxpayer is considered to have been notified on or before December 19, 1969, by his employer of a transfer, for example, if before such date the employer has sent a notice to all employees or a reasonably defined group of employees, which includes such taxpayer, of a relocation of the operations of such employer from one plant or facility to another plant or facility. An employee who is transferred to a new principal place of work for the benefit of his employer and who makes an election under this paragraph is permitted to exclude amounts received or accrued, directly or indirectly, as payment for or reimbursement of expenses of moving household goods and personal effects from the former residence to the new residence and of traveling (including meals and lodging) from the former residence to the new place of residence. Such exclusion is limited to amounts received or accrued, directly or indirectly, as a payment for or reimbursement of the expenses described above. Amounts in excess of actual expenses paid or incurred must be included in gross income. No deduction is allowable under section 217 for expenses representing amounts excluded from gross income. Also, an employee who is transferred to a new principal place of work which is less than 50 miles but at least 20 miles farther from his former residence than was his former principal place of work and who is not reimbursed, either directly or indirectly, for the expenses described above is permitted to deduct such expenses providing all of the requirements of section 217 and the regulations thereunder prior to the effective date of section 231 of the Tax Reform Act of 1969 (83 Stat. 577) are satisfied.

(ii) *Election made before the date of publication of this notice as a Treasury decision.* An election under this subparagraph made before the date of publication of this notice as a Treasury decision shall be made pursuant to the procedure prescribed in temporary income tax regulations relating to treatment of payments of expenses of moving from one residence to another residence (Part 13 of this chapter) T.D. 7032 (35 FR 4330), approved Mar. 11, 1970.

(iii) *Election made on or after the date of publication of this notice as a Treasury decision.* An election made under this subparagraph on or after the date of publication of this notice as a Treasury decision shall be made not later than the time, including extensions thereof, prescribed by law for filing the income tax return for the year in which the expenses were paid or 30 days after the date of publication of this notice as a Treasury decision, whichever occurs last. The election shall be made by a statement attached to the return (or the amended return) for the taxable year, setting forth the following information:

(a) The items to which the election relates;

(b) The amount of each item;

(c) The date each item was paid or incurred; and

(d) The date the taxpayer was informed by his employer of his transfer to the new principal place of work.

(iv) *Revocation of election.* An election made in accordance with this subparagraph is revocable upon the filing by the taxpayer of an amended return or a claim for refund with the district director, or the director of the Internal Revenue service center with whom the election was filed not later than the time prescribed by law, including extensions thereof, for the filing of a claim for refund with respect to the items to which the election relates.

[T.D. 7195, 37 FR 13535, July 11, 1972, 37 FR 14230, July 18, 1972 as amended by T.D. 7578 43 FR 59355, Dec. 20, 1978; T.D. 7605, 44 FR 18970, Mar. 30, 1979; T.D. 7689, 45 FR 20796, Mar. 31, 1980; T.D. 7810, 47 FR 6003, Feb. 10, 1982; T.D. 8607, 60 FR 40077, Aug. 7, 1995]

§ 1.219–1 Deduction for retirement savings.

(a) *In general.* Subject to the limitations and restrictions of paragraph (b) and the special rules of paragraph (c)(3) of this section, there shall be allowed a deduction under section 62 from gross income of amounts paid for the taxable year of an individual on behalf of such individual to an individual retirement account described in section 408(a), for