

under section 44A is from June 20 to December 31, the taxpayer must furnish more than \$1,925 ($[\$6,600 \times \frac{7}{12}] \times 50$ percent) in maintaining the household from June 1 to December 31.

(e) *Substantiation.* A taxpayer claiming a credit under paragraph (a) of this section for employment-related expenses must substantiate by adequate records or other sufficient evidence any credit taken under this section. For example, if requested, the taxpayer must furnish information as to the nature and period of the physical or mental incapacity of any dependent or spouse in respect of whom a credit is claimed, including necessary information from the attending physician as to the nature of the physical or mental incapacity.

(Secs. 44A(g) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1565, 26 U.S.C. 44A(g); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7643, 44 FR 50332, Aug. 28, 1979, as amended by T.D. 7951, 49 FR 18091, Apr. 27, 1984]

§ 1.44A-2 Limitations on amount creditable.

(a) *Annual dollar limit on amount creditable.* The amount of the employment-related expenses incurred during any taxable year which may be taken into account under § 1.44A-1 (a) cannot exceed—

(1) \$2,400 (\$2,000 in the case of expenses incurred in taxable years beginning before January 1, 1982) if there is one qualifying individual with respect to the taxpayer at any time during the taxable year, or

(2) \$4,800 (\$4,000 in the case of expenses incurred in taxable years beginning before January 1, 1982) if there are two or more qualifying individuals with respect to the taxpayer at any one time during the taxable year.

For example, a calendar year taxpayer whose only qualifying individual reaches age 15 on April 1, 1982, is subject for 1982 to the entire annual dollar limit of \$2,400, without proration of the \$2,400 limit. However, only expenses incurred prior to the child's 15th birthday may be employment-related expenses.

(b) *Earned income limitation—(1) In general.* The amount of employment-related expenses incurred during any taxable year which may be taken into ac-

count under § 1.44A-1(a) cannot exceed—

(i) For an individual not married at the close of the year, the individual's earned income for the year, or

(ii) For an individual married at the close of the year, the lesser of the individual's earned income or the earned income of his or her spouse for the year.

For purposes of this paragraph (b)(1), the earned income of only the spouse to whom the taxpayer is married at the close of the year is taken into account (and not the earned income of another spouse who died or was divorced from the taxpayer during the year). Further, the spouse's earned income for the entire year is taken into account, even though the taxpayer and his or her spouse were married for only a part of the year. For purposes of this paragraph (b), certain married individuals legally separated or living apart are treated as not married (see § 1.44A-3 (b) and (c), respectively).

(2) *Earned income.* For purposes of this section, earned income means—

(i) Wages, salaries, tips, other employee compensation, and

(ii) Net earnings from self-employment (within the meaning of section 1402(a) and the regulations thereunder).

For taxable years beginning before January 1, 1979, earned income includes only amounts described in subdivision (i) or (ii) of this paragraph (b)(2) which are includible in the eligible individual's gross income for the taxable year of the individual in which the credit is claimed. For all taxable years, however, earned income is computed without regard to any community property laws which may otherwise be applicable. Earned income is reduced by any net loss in earnings from self-employment. Earned income does not include amounts received as a pension or an annuity or an amount to which section 871(a) and the regulations thereunder apply (relating to income of non-resident alien individuals not connected with United States business).

(3) *Special rule for spouse who is a student or incapable of self-care.* (i) For purposes of this section, a spouse is deemed, for each month during which the spouse is a full-time student or is a qualifying individual described in

§ 1.44A-3

26 CFR Ch. I (4-1-04 Edition)

§ 1.44A-1(b)(1)(iii), to be gainfully employed and to have earned income of not less than—

(A) \$200 (\$166 for taxable years beginning before January 1, 1982) if there is one qualifying individual with respect to the taxpayer at any one time during the taxable year, or

(B) \$400 (\$333 for taxable years beginning before January 1, 1982), if there are two or more qualifying individuals with respect to the taxpayer at any one time during the taxable year.

However, in the case of any husband and wife, this subparagraph shall apply with respect to only one spouse for any one month.

(ii) A “full-time student” is an individual who is enrolled at and attends and educational institution during each of 5 calendar months of the taxable year of the taxpayer for the number of course hours which is considered to be a full-time course of study. The enrollment for 5 calendar months need not be consecutive. School attendance exclusively at night does not constitute a full-time course of study. However, a full-time course of study may include some attendance at night.

(iii) For the definition of “educational institution”, see § 1.151-3(c).

(4) Illustrations. The application of this paragraph may be illustrated by the following examples:

Example 1. During the 1982 taxable year, A, a married taxpayer, incurs and pays employment-related expenses of \$4,000 for the care of a qualifying individual. A’s earned income for the taxable year is \$20,000 and his wife’s earned income is \$1,500. Under these circumstances, the amount of employment-related expenses for the year which may be taken into account under § 1.44A-1(a) is \$1,500, determined as follows:

Employment-related expenses incurred during taxable year (\$4,000, but limited to \$2,400 by paragraph (a)(1) of this section), \$2,400

Application of paragraph (b)(1)(ii) of this section (employment-related expenses, may not exceed wife’s earned income of \$1,500 \$1,500

Employment-related expenses taken into account \$1,500

Example 2. Assume the same facts as in Example 1 except that A’s wife is a full-time student for nine months of the taxable year and earns no income for the year. Under these circumstances, the amount of employment-related expenses for the year which

may be taken into account under § 1.44A-1(a) is \$1,800, determined as follows:

Employment-related expenses incurred during taxable year (\$4,000, but limited to \$2,400 by paragraph (a)(1) of this section \$2,400

Application of paragraph (b)(3) of this section (employment-related expenses may not exceed wife’s earned income of \$1,800 (200×9) . . \$1,800

Employment-related expenses taken into account \$1,800

(Secs. 44A(g) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1565, 26 U.S.C. 44A(g); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7643, 44 FR 50334, Aug. 28, 1979, as amended by T.D. 7951, 49 FR 18092, Apr. 27, 1984]

§ 1.44A-3 Special rules applicable to married individuals.

(a) Joint return requirement. This section applies only if the taxpayer is married at the close of a taxable year in which employment-related expenses are paid. In such a case the credit provided by section 44A with respect to employment-related expenses is allowed only if for the taxable year the taxpayer and his or her spouse file a joint return. If either spouse dies during the taxable year and a joint return may be made for the year under section 6013(a)(2) for the survivor and the deceased spouse, the credit is allowed for the year only if a joint return is made. If, however, the surviving spouse remarries before the end of the taxable year in which his or her first spouse dies, a credit is allowed on the separate return which is made for the decedent spouse. For purposes of this section, certain married individuals legally separated or living apart are treated as not married, as provided in paragraphs (b) and (c), respectively, of this section.

(b) Marital status. For purposes of section 44A, an individual legally separated from his or her spouse under a decree of divorce or of separate maintenance is not considered as married.

(c) Certain married individuals living apart. For purposes of section 44A, an individual who is married within the meaning of section 143(a) is treated as not married for the entire taxable year, if the individual—

(1) Files a separate return for the year,