

§ 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,

(2) Maintains as his or her home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(3) Furnishes over one-half of the cost of maintaining the household for the year,

and if the individual's spouse is not a member of the household at any time during the last 6 months of the year. Thus for example, an individual who is married during the taxable year, but is treated as not married by reason of this paragraph, may determine the earned income limitation upon the amount of employment-related expenses without taking into account the earned income of his or her spouse under § 1.44A-2(b).

[T.D. 7643, 44 FR 50335, Aug. 28, 1979]

**§ 1.44A-4 Other special rules relating to employment-related expenses.**

(a) *Payments to related individuals*—(1) *Taxable years beginning after December 31, 1978.* For taxable years beginning after December 31, 1978, a credit is not allowed under section 44A with respect to the amount of any employment-related expenses paid by the taxpayer to an individual—

(i) With respect to whom for the taxable year a deduction under section 151(e) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his or her spouse, or

(ii) Who is a child of the taxpayer (within the meaning of section 151(e)(3)) who is under age 19 at the close of the taxable year.

For purposes of this paragraph (a)(1), the term “taxable year” means the taxable year of the taxpayer in which the service is performed. (1943)

(2) *Taxable years beginning before January 1, 1979.* For taxable years beginning before January 1, 1979, except as otherwise provided in paragraph (a)(3) of this section, a credit is not allowed under section 44A with respect to the amount of any employment-related expenses paid by the taxpayer to an individual who bears to the taxpayer any relationship described in section 152(a)(1) through (8). These relationships are those of a son or daughter or descend-

ant thereof; a stepson or stepdaughter; a brother, a sister, stepbrother, or step-sister; a father or mother or an ancestor, of either; a stepfather or step-mother; a nephew or niece; an uncle or aunt; or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law. In addition, no credit is allowed with respect to the amount of any employment-related expenses paid by the taxpayer to an individual who qualifies as a dependent of the taxpayer for the taxable year within the meaning of section 152(a)(9), which relates to an individual (other than the taxpayer's spouse) whose principal place of abode for the taxable year is the home of the taxpayer and who is a member of the taxpayer's household.

(3) *Exception for payments to certain related individuals.* For taxable years beginning before January 1, 1979, a credit is allowed for the amount of any employment-related expenses paid by the taxpayer to an individual provided that neither the taxpayer nor his or her spouse is entitled to a deduction under section 151(e) (relating to deduction for personal exemptions for dependents) with respect to such individual for the taxable year in which the service is performed; and the service with respect to which the amount is paid constitutes employment within the meaning of section 3121(b). The following services performed for a taxpayer by a relative who is an employee of the taxpayer may qualify as employment within the meaning of section 3121(b):

(i) Services performed by the taxpayer's child age 21 or over.

(ii) Domestic services in the taxpayer's home performed by the taxpayer's parent if—

(A) The taxpayer has living in his or her home a child (as defined in section 151(e)(3)) who is under age 18 or who has a physical or mental condition requiring the personal care of an adult during at least 4 continuous weeks in the calendar quarter, and

(B) The taxpayer is a widow or widower or is divorced, or has a spouse living in the home who, because of a physical or mental condition, is incapable of caring for his or her child during at