

§ 1.214A-3

Excess divided by twice the number of calendar months in taxable year (\$6,000+[2×12])	250
Employment-related expenses to be taken into account	150

Example 2. Assume the same facts as in example (1) except that A incurs employment-related expenses of only \$200 during May 1975. Under these circumstances no amount of employment-related expenses may be taken into account for the month of May under paragraph (a) of § 1.214A-1 because the expenses of \$200 for the month are fully offset by the reduction of \$250 required under this subparagraph.

Example 3. B, a single individual who uses the calendar year as the taxable year, incurs and pays during June, 1975, employment-related expenses of \$500. On August 31, 1975, B dies. His adjusted gross income for the taxable year ending August 31 is \$22,800. Under such circumstances the amount of employment-related expenses for the month of June which may be taken into account under paragraph (a) of § 1.214A-1 is \$100, determined as follows:

Employment-related expenses incurred during June (\$500, but not to exceed \$400 under par. (a) of this sec.)	\$400
Less: Reduction under this subparagraph:	
Adjusted gross income for taxable year	22,800
Less: Taxpayer's income limitation applicable to taxable year beginning before March 30, 1975	18,000
Excess adjusted gross income over income limitation	4,800
Excess divided by twice the number of calendar months in taxable year (\$4,800+[2×8])	300
Employment-related expenses to be taken into account	100

(2) *Marital status.* For purposes of paragraph (c)(1) of this section, the adjusted gross income of the taxpayer for his taxable year shall include the adjusted gross income of his spouse for such year if he is married for the entire taxable year. If the taxpayer is married during only a part of his taxable year, his adjusted gross income for the taxable year shall include the adjusted gross income of his spouse for only such period within the taxable year during which he is married. Thus, if the taxpayer and his wife use the calendar year as the taxable year and the taxpayer's wife dies on May 15 and he does not remarry before the close of his taxable year, the adjusted gross income of the wife for the period from January 1 to May 15 must be included in applying the income limitation for the taxable year under section 214(d) and para-

graph (c)(1) of this section. If, however, in such case the taxpayer were to remarry on October 15 of his taxable year and file a single return jointly with the second wife, the adjusted gross income of the first wife for the period from January 1 to May 15 and the adjusted gross income of the second wife for the period from October 15 to December 31 must be included in applying the income limitation for the taxable year under paragraph (c)(1) of this section.

[T.D. 7411, 41 FR 15407, Apr. 13, 1976, as amended by T.D. 7643, 44 FR 50337, Aug. 28, 1979]

§ 1.214A-3 Reduction of expenses for certain disability payments and adjusted gross income.

(a) *Amount of reduction.* This section applies only if the taxpayer incurs employment-related expenses during a taxable year solely attributable to a qualifying individual who is either a dependent (other than a dependent described in § 1.214A-1(b)(1)(i)) of the taxpayer or a spouse of the taxpayer and who is physically or mentally incapable of caring for himself. The amount of such expenses, which may be taken into account under section 214 shall be reduced:

(1) In the case of such expenses attributable to a dependent who is physically or mentally incapable of caring for himself, by the excess, if any, over \$750 of the sum of (i) such dependent's adjusted gross income for such taxable year and (ii) the disability payments (as defined in paragraph (b) of this section) he receives during such year, and

(2) In the case of such expenses attributable to a spouse who is physically or mentally incapable of caring for himself, by the disability payments (as defined in paragraph (b) of this section) such spouse receives during such taxable year.

The reduction so required must be made on the basis of a calendar month. Thus, the employment-related expenses attributable to a spouse which are incurred during any calendar month of the taxable year must be reduced by an amount equal to the disability payments received by the spouse during such taxable year divided by the number of calendar

months therein during which such employment-related expenses are incurred. Further, the employment-related expenses attributable to a dependent which are incurred during any calendar month of the taxable year must be reduced by an amount equal to the excess described in paragraph (a)(1) of this section divided by the number of calendar months therein during which such employment-related expenses are incurred. For purposes of this reduction, a period of less than a calendar month will be treated as a calendar month. The reduction is not required to be made in respect of any employment-related expenses solely attributable to a dependent under the age of 15 for whom the taxpayer is entitled to a deduction for a personal exemption under section 151(e). The reduction required by this paragraph must be made before applying the limitations under section 214 (c) and (d) and § 1.214A-2 for the taxable year. The application of this paragraph may be illustrated by the following examples:

Example 1. A, a taxpayer who uses the calendar year as the taxable year, incurs \$250 of employment-related expenses during each month of 1972 for services within his household. B, his wife, is physically incapable of caring for herself. During 1972, B receives total disability payments of \$1,200, consisting of a lump-sum disability payment of \$300 received in June and disability payments of \$75 received each month. Under such circumstances, A may take into account \$150 of his employment-related expenses for each month of 1972, determined as follows:

Employment-related expenses attributable to B incurred during each month	\$250
Less: Disability payments received by B in 1972 divided by number of calendar months in 1972 during which employment-related expenses attributable to B are incurred (\$1,200÷12)	100
Employment-related expenses to be taken into account	150

Example 2. B, a single individual who uses the calendar year as the taxable year, incurs \$200 of employment-related expenses during each month of 1972 for services within his household. C, his son aged 15, is physically incapable of caring for himself. During 1972, C receives total disability payments of \$1,200, consisting of a lump-sum disability payment of \$300 received in June and disability payments of \$75 received each month. For 1972, C has adjusted gross income of \$1,050. Under such circumstances, B may take into account \$75 of his employment-related ex-

penses for each month of 1972, determined as follows:

Employment-related expenses attributable to C incurred during each month	\$200
Less: Reduction under this paragraph:	
C's adjusted gross income for 1972	1,050
Disability payments received by C in 1972	1,200
Total	2,250
Less: Income limitation	750
Excess under subparagraph (1) of this paragraph	1,500
Excess divided by number of calendar months in 1972 during which employment-related expenses attributable to C are incurred (\$1,500÷12)	125
Employment-related expenses to be taken into account	75

Example 3. H, a taxpayer who uses the calendar year as the taxable year, incurs employment-related expenses attributable to W, his wife, during five months of 1972, including \$350 for the month of July, for services within his household. W, who is physically incapable of caring for herself, receives during 1972 total disability payments of \$625. Under such circumstances, H may take into account \$225 of his employment-related expenses for July, determined as follows:

Employment-related expenses attributable to W incurred during July	\$350
Less: Disability payments received by W in 1972 divided by number of calendar months in 1972 during which employment-related expenses attributable to W are incurred (\$625÷5)	125
Employment-related expenses to be taken into account	225

Example 4. S, a single individual who uses the calendar year as the taxable year, incurs and pays during 1972 \$450 of employment-related expenses attributable to P, his father, for each of the six months during which his father is incapacitated. During 1972, P receives adjusted gross income of \$1,266, a gift of \$300, and a disability payment of \$55 for each month of disability. During 1972 S receives adjusted gross income of less than \$18,000. Under such circumstances, S may deduct \$1,854 for 1972 under section 214, determined as follows:

Employment-related expenses attributable to P incurred during each month of his incapacity	\$450
Less: Reduction under this paragraph:	
P's adjusted gross income for 1972	1,266
Disability payments received by P in 1972	330
Total	1,596
Less: Income limitation	750

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Excess under subparagraph (1) of this paragraph	846
Excess divided by number of calendar months in 1972 during which employment-related expenses attributable to P are incurred (\$846÷6)	141
Employment-related expenses to be taken into account for each month of P's incapacity	309
Deduction for 1972 (\$309×6)	1,854

(b) *Disability payment defined.* For purposes of paragraph (a) of this section, the term *disability payment* means any payment not includible in gross income which is made on account of the physical or mental incapacity of an individual. A disability payment may include social security payments, State or local payments, private disability insurance payments, or payments from a private person on account of a civil wrong, if attributable to the mental or physical disability of the individual. Gifts are not considered to be disability payments for purposes of this paragraph.

(c) *Expenses not solely attributable.* An employment-related expense which is not solely attributable to a qualifying individual to whom paragraph (a) (1) or (2) of this section applies shall not be reduced under this section. Thus, for example, if household expenses are incurred with respect to a qualifying individual to whom paragraph (a) (1) or (2) of this section applies and also with respect to a qualifying dependent under the age of 15, such expenses shall not be considered to be solely attributable to a qualifying individual to whom paragraph (a) (1) or (2) of this section applies, and such expenses shall not be reduced under this section. The application of this paragraph may be illustrated by the following examples:

Example 1. A taxpayer has a child, aged 6, and his spouse is physically incapable of caring for herself. During the taxable year he incurs employment-related expenses of \$500 solely attributable to the care of the child, of \$1,000 solely attributable to the care of his spouse, and of \$1,500 for household services attributable to both the child and spouse. Of the taxpayer's total employment-related expenses of \$3,000, only the \$1,000 solely attributable to his spouse must be reduced as provided in paragraph (a) of this section.

Example 2. A taxpayer has a dependent, aged 15, and a spouse both of whom are physically incapable of caring for themselves.

During the taxable year he incurs employment-related expenses of \$500 solely attributable to the care of the dependent, of \$1,000 solely attributable to the care of his spouse, and of \$1,500 for household services equally attributable to both the dependent and spouse. The \$1,500 of household expenses must be allocated one-half to the dependent and one-half to the spouse. Accordingly, employment-related expenses of \$1,250 are attributable to the dependent, and employment-related expenses of \$1,750 are attributable to the spouse. The expenses attributable to each must be reduced as provided in paragraph (a) of this section.

(d) *Ordering of reductions and limitations.* For purposes of determining the amount of employment-related expenses which may be taken into account under section 214, the employment-related expenses incurred by the taxpayer during any calendar month of the taxable year are first to be reduced by the amount of reduction determined under section 214(e)(5) and paragraph (a) (1) or (2) of this section in respect of disability payments and adjusted gross income, then by the outside-of-household limitation prescribed by section 214(c)(2)(B) and § 1.214A-2(b)(2), then by the overall monthly limitation of \$400 prescribed by section 214(c)(1) and § 1.214A-2(a), and finally by the taxpayer's income limitation (\$35,000 or \$18,000, as the case may be) prescribed by section 214(d) and § 1.214A-2(c), in that order. The application of this subparagraph may be illustrated by the following examples:

Example 1. The taxpayer's wife is physically incapable of caring for herself. He incurs employment-related expenses of \$1,000 during the calendar month for services within the household. Disability payments of the wife applicable to such month under paragraph (a)(2) of this section amount to \$350. The taxpayer's excess adjusted gross income (over the taxpayer's income limitation) applicable to such month under § 1.214A-2(c)(1) amounts to \$300. Under such circumstances, the amount of employment-related expenses for such month which may be taken into account for purposes of section 214 is \$100, determined as follows:

Employment-related expenses	\$1,000
Less: Reduction under paragraph (a)(2) of this section	350
Balance	650
Application of limitation under § 1.214A-2(a) (employment-related expenses of \$650, but not to exceed \$400)	400

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Less: Reduction under § 1.214A-2(c)(1)	300
Employment-related expenses to be taken into account	100

Example 2. The taxpayer's child, aged 15, is physically incapable of caring for himself the taxpayer incurs employment-related expenses of \$487 during June for services within the household. The excess of the adjusted gross income and disability payments of the dependent child for the taxable year (over the \$750 limitation) applicable to June under paragraph (a)(1) of this section amounts to \$112. The taxpayer's excess adjusted gross income (over the taxpayer's income limitation) applicable to June under § 1.214A-2(c)(1) amounts to \$125. Under such circumstances, the amount of employment-related expenses for June which may be taken into account for purposes of section 214 is \$250, determined as follows:

Employment-related expenses	\$487
Less: Reduction under paragraph (a)(1) of this section	112
Balance	375
Less: Reduction under § 1.214A-2(c)(1)	125
Employment-related expenses to be taken into account	250

[T.D. 7411, 41 FR 15408, Apr. 13, 1976]

§ 1.214A-4 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 deduction provided by section 214(a) and § 1.214A-1(a) for such expenses shall be allowed only if for such taxable year the taxpayer files a single return jointly with his spouse. If either spouse dies during the taxable year and a joint return may be made for such year under section 6013(a)(2) for the survivor and the deceased spouse, the deduction shall be allowed for such year only if a joint return is made. If, however, the surviving spouse remarries before the end of his taxable year in which his first spouse dies, a deduction is allowed under section 214(a) on the separate return which is made for the decedent spouse. For purposes of this section, certain married individuals living apart are treated as not married, as provided in paragraph (c) of this section.

(b) *Gainful employment requirement—*
 (1) *In general.* The employment-related expenses incurred during any month of any period within the taxable year of a

taxpayer who is married for such period shall be taken into account under section 214(a) and § 1.214A-1(a) only if both the taxpayer and his spouse are gainfully employed on a substantially full-time basis or are in active search of gainful employment on a substantially full-time basis, or if his spouse is physically or mentally incapable of caring for herself. For such purposes, an individual is considered to be gainfully employed on a substantially full-time basis if he is employed for three-quarters or more of the normal or customary work week (or the equivalent on the average during a month).

(2) *Determination of qualifying periods on a daily basis.* For purposes of this paragraph, the determination as to whether an individual is gainfully employed on a substantially full-time basis shall be made on a daily basis in accordance with the provisions of paragraph (c)(1)(ii) of § 1.214A-1, and the determination as to whether a spouse is physically or mentally incapable of caring for himself shall be made on a daily basis in accordance with paragraph (b)(2) of such section. Thus, for example, if a taxpayer is gainfully employed throughout the taxable year on a substantially full-time basis but his spouse ceases on August 17 of such year to be employed on a substantially full-time basis and on November 16 of the same year becomes physically or mentally incapable of caring for herself, an allocation must be made to determine the period ending on August 17 during which both spouses are gainfully employed on a substantially full-time basis, and the incapacitated spouse is to be treated as a qualifying individual described in section 214(b)(1)(C) only for the period commencing with November 16. Employment-related expenses incurred from August 18 through November 15 may not be taken into account since only one spouse is gainfully employed on a substantially full-time basis during such period and the other spouse is not physically or mentally incapable of caring for herself during such period.

(c) *Certain married individuals living apart.* For purposes of section 214 an individual who for his taxable year would be treated as not married under section 143(a)(2), or would be treated as not