

§ 1.44B-1

26 CFR Ch. I (4-1-01 Edition)

B's sister do not constitute employment under section 3121(b).

(b) *Expenses qualifying as medical expenses.* An expense which may constitute an amount otherwise deductible under section 213, relating to medical, etc., expenses, may also constitute an expense with respect to which a credit is allowable under section 44A. In such a case, that part of the amount with respect to which a credit is allowed under section 44A will not be considered as an expense for purposes of determining the amount deductible under section 213. On the other hand, where an amount is treated as a medical expense under section 213 for purposes of determining the amount deductible under that section, it may not be treated as an employment-related expense for purposes of section 44A. The application of this paragraph may be illustrated by the following examples:

Example 1. In 1982, a calendar year taxpayer incurs and pays \$5,000 of employment-related expenses during the taxable year for the care of his child when the child is physically incapable of self-care. These expenses are incurred for services performed in the taxpayer's household and are of a nature which qualify as medical expenses under section 213. The taxpayer's adjusted gross income for the taxable year is \$100,000. Of the total expenses, the taxpayer may take \$2,400 into account under section 44A; the balance of the expenses, or \$2,600, may be treated as medical expenses to which section 213 applies. However, this amount does not exceed 3 percent of the taxpayer's adjusted gross income for the taxable year and is thus not allowable as a deduction under section 213.

Example 2. Assume the same facts as in *Example 1*. It is not proper for the taxpayer first to determine his deductible medical expenses of \$2,000 ($\$5,000 - [\$100,000 \times 3 \text{ percent}]$) under section 213 and then claim the \$3,000 balance as employment-related expenses for purposes of section 44A. This is because the \$3,000 balance has been treated as a medical expense in computing the amount deductible under section 213.

Example 3. In 1982, a calendar year taxpayer incurs and pays \$12,000 of employment-related expenses during the taxable year for the care of his child. These expenses are incurred for services performed in the taxpayer's household, and they also qualify as medical expenses under section 213. The taxpayer's adjusted gross income for the taxable year is \$18,000. The taxpayer takes \$2,400 of such expenses into account under section 44A. The balance, or \$9,600, he treats as med-

ical expenses for purposes of section 213. The allowable deduction under section 213 for the expenses is limited to the excess of the balance of \$9,600 over \$540 (3 percent of the taxpayer's adjusted gross income of \$18,000), or \$9,060.

(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 50335, Aug. 28, 1979, as amended by T.D. 7951, 49 FR 18092, Apr. 27, 1984]

§ 1.44B-1 Credit for employment of certain new employees.

(a) *In general—(1) Targeted jobs credit.* Under section 44B a taxpayer may elect to claim a credit for wages (as defined in section 51(c) paid or incurred to members of a targeted group (as defined in section 51(d)). Generally, to qualify for the credit, the wages must be paid or incurred to members of a targeted group first hired after September 26, 1978. However, wages paid or incurred to a vocational rehabilitation referral (as defined in section 51(d)(2)) hired before September 27, 1978, may qualify for the credit if a credit under section 44B (as in effect prior to enactment of the Revenue Act of 1978) was claimed for the individual by the taxpayer for a taxable year beginning before January 1, 1979. The amount of the credit shall be determined under section 51. Section 280C(b) (relating to the requirement that the deduction for wages be reduced by the amount of the credit) and the regulations thereunder will not apply to taxpayers who do not elect to claim the credit.

(2) *New jobs credit.* Under section 44B (as in effect prior to enactment of the Revenue Act of 1978) a taxpayer may elect to claim as a credit the amount determined under sections 51, 52, and 53 (as in effect prior to enactment of the Revenue Act of 1978). Section 280C(b) (relating to the requirement that the deduction for wages be reduced by the amount of the credit) and the regulations thereunder will not apply to taxpayers who do not elect to claim the credit.

(b) *Time and manner of making election.* The election to claim the targeted jobs credit and the new jobs credit is made by claiming the credit on an original return, or on an amended return, at any time before the expiration

of the 3-year period beginning on the last date prescribed by law for filing the return for the taxable year (determined without regard to extensions). The election may be revoked within the above-described 3-year period by filing an amended return on which the credit is not claimed.

(c) *Election by partnership, electing small business corporation, and members of a controlled group.* In the case of a partnership, the election shall be made by the partnership. In the case of an electing small business corporation (as defined in section 1371(a)), the election shall be made by the corporation. In the case of a controlled group of corporations (within the meaning of section 52(a) and the regulations issued thereunder) not filing a consolidated return under section 1501, the election shall be made by each member of the group. In the case of an affiliated group filing a consolidated return under section 1501, the election shall be made by the group.

(Secs. 44B, 381, and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2834, 26 U.S.C. 44B; 91 Stat. 148, 26 U.S.C. 381(c)(26); 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7921, 48 FR 52904, Nov. 23, 1983]

RESEARCH CREDIT—FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1990

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This section lists the paragraphs contained in §§ 1.41-0A, 1.41-3A, 1.41-4A and 1.41-5A.

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 - (1) In general.
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[T.D. 8930, 66 FR 295, Jan. 3, 2001]

§ 1.41-3A Base period research expense.

(a) *Number of years in base period.* The term “base period” generally means the 3 taxable years immediately preceding the year for which a credit is being determined (“determination year”). However, if the first taxable year of the taxpayer ending after June 30, 1981, ends in 1981 or 1982, then with respect to that taxable year the term “base period” means the immediately preceding taxable year. If the second taxable year of the taxpayer ending after June 30, 1981, ends in 1982 or 1983, then with respect to that taxable year the term “base period” means the 2 immediately preceding taxable years.

(b) *New taxpayers.* If, with respect to any determination year, the taxpayer has not been in existence for the number of preceding taxable years that are