

§ 1.214A-1

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

under section 213 for purposes of determining the amount deductible under that section, it shall not be allowed as a deduction under section 214.

(3) The provisions of this paragraph may be illustrated by the following examples:

Example 1. W, a single woman, pays \$720 during the taxable year for the care of her child who suffers from infantile paralysis. It is assumed that the expenses are of a nature which qualify as medical expenses under section 213. It is also assumed that these expenses are for the purpose of permitting W to be gainfully employed. W's adjusted gross income for the taxable year is \$5,000. She is allowed a deduction of \$600 for child care expenses under section 214. The balance of the expenses, or \$120, she treats as medical expenses. However, this amount does not exceed 3 percent of her adjusted gross income and is thus not allowable as a deduction under section 213.

Example 2. It would not be proper in the case presented in (1) for W first to determine under section 213 her deductible medical expenses (which would be \$570 (\$720 less 3% × \$5,000)), and then claim as a deduction under section 214 the \$150 which is not deductible under section 213. The \$150 would be disallowed under section 214 for the reason that it was treated as a medical expense in determining the amount deductible under section 213.

Example 3. W, a single woman under the age of 65 years, is also the head of a household. She pays \$12,000 during the taxable year for child care expenses which also qualify as medical expenses under section 213. W's adjusted gross income for the taxable year is \$18,000. She is allowed a deduction of \$600 for child care expenses under section 214. The balance, or \$11,400, is treated as medical expenses. The allowable deduction under section 213 for such expenses is the excess of 3 percent of W's adjusted gross income, or \$10,860, but subject to the maximum limitation in section 213.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6740, 29 FR 7715, June 17, 1964; T.D. 6778, 29 FR 17900, Dec. 17, 1964; T.D. 7114, 36 FR 9020, May 18, 1971; T.D. 7411, 41 FR 15404, Apr. 13, 1976; T.D. 7643, 44 FR 50337, Aug. 28, 1979]

§ 1.214A-1 Certain expenses to enable individuals to be gainfully employed incurred during taxable years beginning after December 31, 1971, and before January 1, 1976.

(a) *In general.* (1) For expenses incurred during taxable years beginning after December 31, 1971, and before January 1, 1976, section 214 allows (subject

to the requirements of this section and §§ 1.214A-2 through 1.214A-5) a deduction for employment-related expenses (as defined in paragraph (c) of this section) which are paid during the taxable year by an individual who maintains a household (within the meaning of paragraph (d) of this section) that includes as a member one or more qualifying individuals (as defined in paragraph (b) of this section). The deduction for expenses allowed under section 214 may be taken only as an itemized deduction and may not be taken into account in determining adjusted gross income under section 62. No deduction shall be allowed under section 214 in respect of any expenses incurred during a taxable year beginning after March 29, 1975, and before January 1, 1976, for which the taxpayer's adjusted gross income is \$44,600 or more (or incurred during a taxable year beginning after December 31, 1971, and before March 30, 1975, for which the taxpayer's adjusted gross income is \$27,600 or more). Expenses which are taken into account in determining the deduction under section 214:

(i) Must first be reduced by that amount by which a disabled dependent's (age 15 or over) adjusted gross income and nontaxable disability payments for the taxable year exceed \$750 or by the total amount of a disabled spouse's nontaxable disability payments (see section 214(e)(5) and § 1.214A-3),

(ii) Are then disallowed to the extent that, for any calendar month, they exceed \$400, determined after taking into account the \$200 (or more) per calendar-month limitation on the amount of expenses incurred outside the household for the care of a dependent (or dependents) under the age of 15 (see section 214(c)(1) and (2) and § 1.214A-2 (a) and (b)), and

(iii) Finally, when the taxpayer's adjusted gross income for the taxable year exceeds the sum of \$35,000 (or \$18,000 in the case of a taxable year beginning after December 31, 1971, and before March 30, 1975), must be further reduced, on a monthly basis, by one-half of the amount by which the adjusted gross income for the calendar year exceeds such sum (see section 214(d) and § 1.214A-2(c)).

(2) The deduction for employment-related expenses is allowable only for such expenses as are actually paid during the taxable year regardless of when the event which occasions the expenses occurs and of the taxpayer's method of accounting. If such expenses are incurred but not paid during the taxable year, no deduction may be taken for such year. Thus, if such an expense is incurred in the last month of a taxable year but not paid until the following taxable year, a deduction for such expense shall not be allowed for the earlier taxable year. However, if the requirements for deductibility, other than payment, are satisfied in the last month of the taxable year, and the item is paid in the following taxable year, a deduction is allowed under section 214 for such following taxable year.

(3) The requirements of section 214, this section, and §§ 1.214A-2 through 1.214A-5 are to be applied to such expenses as of the time they are incurred regardless of when they are paid.

(4) For special rules relating to the deduction of employment-related expenses which may also qualify as medical expenses deductible under section 213, see § 1.214A-5(b).

(5) For substantiation of the deduction, see paragraph (e) of this section.

(b) *Qualifying individual*—(1) *In general*. A person is considered to be a qualifying individual if he is either (i) the taxpayer's dependent who is under the age of 15 and is an individual for whom the taxpayer is entitled to a deduction for a personal exemption under section 151(e); (ii) the taxpayer's dependent (not described in subdivision (i)) who is physically or mentally incapable of caring for himself; or (iii) the taxpayer's spouse who is physically or mentally incapable of caring for himself. The term *dependent*, as used in this subparagraph, includes any individual who is a dependent within the meaning of section 152. For the rules for determining which parent may claim a child as a dependent where the parents are divorced, legally separated, or separated under a written separation agreement, see section 152(e) and the regulations thereunder.

(2) *Qualification on a daily basis*. The status of a person as a qualifying indi-

vidual will be determined on a daily basis. Thus, if a dependent or spouse of a taxpayer ceases to be a qualifying individual on September 16, the dependent or spouse will be treated as a qualifying individual through September 15 only.

(3) *Physical or mental incapacity*. An individual will be considered to be physically or mentally incapable of caring for himself if as a result of a physical or mental defect he is incapable of caring for his hygienical or nutritional needs, or requires full time attention of another person for his own safety or the safety of others. The fact that an individual, by reason of a physical or mental defect, is unable to engage in any substantial gainful activity, or is unable to perform the normal household functions of a homemaker or to care for minor children, will not of itself establish that the individual is physically or mentally incapable of caring for himself. An individual who is physically handicapped or is mentally defective, and for such reason requires constant attention of another person, is considered to be physically or mentally incapable of caring for himself.

(c) *Employment-related expenses*—(1) *Gainful employment*—(i) *In general*. Expenses are considered to be employment-related expenses only if they are incurred to enable the taxpayer to be gainfully employed and are paid for household services or for the care of one or more qualifying individuals. The expenses must be incurred while the taxpayer is gainfully employed or is in active search of gainful employment. The employment may consist of service either within or without the home of the taxpayer and may include self-employment. Unpaid volunteer work or work for a nominal salary does not constitute qualifying employment. An expense will not be considered to be employment-related merely because it is incurred while the taxpayer is gainfully employed. Whether the purpose of the expense is to enable the taxpayer to be gainfully employed depends upon the facts and circumstances of the particular case. Thus, the fact that the cost of providing care for a qualifying individual is greater than the amounts anticipated to be received from the employment of the taxpayer may indicate

that the purpose of the expenditure is other than to permit the taxpayer to be gainfully employed. Any tax required to be paid by the taxpayer under section 3111 (relating to the Federal Insurance Contributions Act) in respect of any wages which otherwise constitute employment-related expenses shall be considered to be an employment-related expense.

(ii) *Determination of period of employment on a daily basis.* An allocation of expenses is required on a daily basis when such expenses cover any period during part of which the taxpayer is gainfully employed or is in active search of gainful employment and during the other part of which there is no employment or active search for gainful employment. Thus, for example, if a taxpayer incurs during each month of the taxable year \$60 of expenses which would be employment-related if he were gainfully employed all year, and the taxpayer is gainfully employed, or in active search of gainful employment, for only 2 months and 10 days during such year, the amount of employment-related expenses is limited to \$140. If a taxpayer is married, both he and his spouse must be gainfully employed on a substantially full-time basis (see § 1.214A-4(b)). However, certain married individuals living apart are treated as not married for this purpose (see § 1.214A-4(c)).

(2) *Household services.* Expenses will be considered to be paid for household services if they are paid for the performance in and about the taxpayer's home of ordinary and usual services necessary to the maintenance of the household. However, expenses will not be considered as paid for household services unless the expenses are attributable in part to the care of the qualifying individual. Thus, amounts paid for the services of a domestic maid or cook will be considered to be expenses paid for household services if a part of those services is provided to the qualifying individual. Amounts paid for the services of an individual who is employed as a chauffeur, bartender, or gardener, however, will not be considered to be expenses paid for household services.

(3) *Care of qualifying individual—(i) In general.* The primary purpose of ex-

penses for the care of a qualifying individual must be to assure that individual's well-being and protection. Not all benefits bestowed upon such an individual will be considered as provided for his care. Accordingly, amounts paid to provide food, clothing, or education are not expenses paid for the care of a qualifying individual. However, where the manner of providing care is such that the expense which is incurred includes expense for other benefits which are inseparably a part of the care, the full amount of the expense will be considered to be incurred for care. Thus, for example, the full amount paid to a nursery school in which a qualifying child is enrolled will be considered to be for the care of the child, even though the school also furnishes lunch, recreational activities, and other benefits. Educational expenses incurred for a child in the first or higher grade level are not expenses incurred for the care of one or more qualifying individuals. Expenses incurred for transportation of a qualifying individual described in paragraph (b)(1)(i) of this section between the taxpayer's household and a place outside the taxpayer's household where services for the care of such qualifying individual are provided will not be considered to be incurred for the care of such qualifying individual.

(ii) *Manner of providing care.* The manner of providing the care need not be the least expensive alternative available to the taxpayer. For example, the taxpayer's mother may reside at the taxpayer's home and be available to provide adequate care at no cost for the taxpayer's wife who is physically or mentally incapable of caring for herself. Nevertheless, the expenses incurred in providing a nurse for the wife may be an expense for the care of the wife. See, however, paragraph (c)(1)(i) of this section with respect to the requirement that the expense must be for the purpose of permitting the taxpayer to be gainfully employed.

(4) *Allocation of expenses.* Where a portion of an expense is for household services or for the care of a qualifying individual and a portion of such expense is for other unrelated purposes, a reasonable allocation must be made and only the portion of the expense paid which is attributable to such

household services or care will be considered to be an employment-related expense. No such allocation is required to be made, however, if the portion of expense for the unrelated purpose is minimal or insignificant. Such an allocation must be made, for example, if a servant performs household duties, cares for the children of the taxpayer, and also performs social services for the taxpayer (for which a deduction is not allowable) and clerical services in the office of the taxpayer outside the home (for which a deduction may be allowable under section 162). Since a household service expense may be considered employment-related in its entirety even though it is only in part attributable to the care of a qualifying individual, no allocation is required between the part of the household service expense which is attributable to that care of a qualifying individual and that part which is not so attributable.

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

Example 1. The taxpayer lives with her mother who is physically incapable of caring for herself. In order to be gainfully employed the taxpayer hires a practical nurse whose sole duty consists of providing for the care of the mother in the home while the taxpayer is at work. All amounts spent for the services of the nurse are employment-related expenses.

Example 2. The taxpayer has a dependent child 10 years of age who has been attending public school. The taxpayer who has been working part time is offered a position involving full-time employment which she can accept only if the child is placed in a boarding school. The taxpayer accepts the position, and the child is sent to a boarding school. The expenses paid to the school must be allocated between that part of the expenses which represents care for the child and that part which represents tuition for education. The part of the expense representing care of the child is considered to be incurred for the purpose of permitting the taxpayer to be gainfully employed.

Example 3. The taxpayer, in order to be gainfully employed, employs a housekeeper who cares for the taxpayer's two children, aged 9 and 15 years, respectively, performs regular household services of cleaning and cooking, and chauffeurs the taxpayer to and from his place of employment. The chauffeuring service never requires more than 30 minutes out of the total period of employment each day. No allocation is required for purposes of determining the portion of the

expense attributable to the chauffeuring (not a household service expense) since it is de minimis. Further, no allocation is required for the purpose of determining the portion of the expense attributable to the care of the 15 year old child (not a qualifying individual) since the household expense is in part attributable to the care of the 9 year old child, who is a qualifying individual. Accordingly, the entire expense of employing the housekeeper is an employment-related expense.

(d) *Maintenance of a household—(1) In general.* An individual is considered to have maintained a household for his taxable year (or lesser period) only if he (and his spouse if he is married) have furnished over one-half of the cost incurred for such taxable year (or lesser period) in maintaining the household. The household must actually constitute for the taxable year the principal place of abode of the taxpayer and the qualifying individual or individuals described in paragraph (b) of this section. It is not sufficient that the taxpayer maintain the household without being its occupant. A physical change in the location of the home will not, however, prevent the home from constituting the principal place of abode of the taxpayer and a qualifying individual. The fact that an individual is born or dies during the taxable year will not prevent a home from constituting his principal place of abode for such year. An individual will not be considered to have terminated a household as his principal place of abode merely by reason of temporary absences therefrom by reason of illness, education, business, vacation, military service, or a custody agreement.

(2) *Two or more families.* Solely for purposes of section 214 and this section, if two or more families occupy living quarters in common, each of such families will be treated as constituting a separate household, and the taxpayer who provides more than one-half of the costs of maintaining such a separate household will be treated as maintaining such household. Thus, for example, if two unrelated women each with children occupy living quarters in common and each woman pays more than one-half of her proportionate share of household costs incurred by both families, each woman will be treated as maintaining her separate household.

§ 1.214A-2

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

(3) *Costs of maintaining a household.* The cost of maintaining a household shall be the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of such occupants. The expenses of maintaining a household include property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance, and food consumed on the premises. Such expenses do not include the cost of clothing, education, medical treatment, vacations, life insurance, or transportation or payments on mortgage principal or for the purchase, permanent improvement, betterment, or replacement of property. However, the cost of maintaining a household shall not include any amount which represents the value of services performed in the household by the taxpayer or by a qualifying individual described in paragraph (b) of this section. Expenses incurred in respect of which money or other property is received as compensation or reimbursement may not be included as a cost of maintaining a household.

(4) *Monthly proration of annual costs.* In determining the cost incurred for a period of less than a taxable year in maintaining a household, the cost incurred during the entire taxable year must be prorated on the basis of the number of calendar months within such lesser period. For this purpose a period of less than a calendar month will be treated as a calendar month. Thus, for example, if the cost of maintaining a household for a taxable year is \$6,600, and the period in respect of which a determination is being made under section 214 is from June 20 to December 31, the taxpayer must furnish more than \$1,925 ($[\$6,600 \times 7/12] \times 50\%$) in maintaining the household from June 1 to December 31.

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

a deduction is claimed, including necessary information from the attending physician as to the nature of the physical or mental incapacity.

[T.D. 7411, 41 FR 5405, Apr. 13, 1976, as amended by T.D. 7643, 44 FR 50337, Aug. 28, 1979]

§ 1.214A-2 Limitations on deductible amounts.

(a) *Overall monthly limitation of \$400.* The deduction under section 214(a) and § 1.214A-1(a) for employment-related expenses is not allowed in respect of any such expenses in excess of \$400 incurred during any one calendar month. For purposes of the limitation of \$400, a period of less than a calendar month will be treated as a calendar month. Any amount by which employment-related expenses incurred during any calendar month exceed \$400 may not be carried to another calendar month and used in determining the employment-related expenses incurred in such other calendar month. Thus, for example, if a taxpayer incurs employment-related expenses of \$500 during each of the first 6 months of the taxable year and only \$200 of such expenses during each of the last 6 months, the amount of his deduction for the payment during such taxable year of such expenses shall be limited by this paragraph to \$3,600, consisting of \$2,400 ($\$400 \times 6$) incurred during the first 6 months of the taxable year and \$1,200 ($\200×6) incurred during the last 6 months of the taxable year. The limitation provided by this paragraph must be applied after making the reduction in the amount of employment-related expenses provided by paragraph (a) of § 1.214A-3 (relating to disability payments) and after the application of the limitation upon the amount deductible provided by paragraph (b) of this section.

(b) *Restriction to expenses incurred for services in the household—(1) In general.* Except as otherwise provided in paragraph (b)(2) of this section, deduction shall be allowed under § 1.214 A-1(a) only for employment-related expenses incurred for services performed in the household of the taxpayer. Thus, for example, if a taxpayer places his invalid father in a nursing home, he is not entitled to deduct his employment-related expenses incurred for his father's care provided by the nursing