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 duing 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

married under section 143(b) if paragraph (1) of such section referred to any dependent of the taxpayer (and not simply to a son, stepson, daughter, or stepdaughter of such individual), shall be treated as not married for such taxable year. Thus, an individual who is married within the meaning of section 143(a) will be treated as not married for his entire taxable year for purposes of section 214, if:

(1) He files a separate return for such year,

(2) He maintains as his home a household which constitutes for more than one-half of such year the principal place of abode of one or more of his dependents with respect to whom he is entitled to a deduction under section 151 for such year,

(3) He furnishes over one-half of the cost of maintaining such household for such year, and

(4) His spouse is not a member of such household for any part of such year.

Thus, for example, an individual who is married during the taxable year and is living apart from his spouse, but is not legally separated under a decree of divorce or separate maintenance, may, if he is treated as not married by reason of this paragraph, determine the limitation upon the amount of his employment-related expenses without taking into account the adjusted gross income of his spouse under §1.214A–2(c)(2), without complying with the requirement under paragraph (a) of this section for filing a joint return with his spouse, and without complying with the requirement under paragraph (b) of this section that his spouse be gainfully employed. The principles of §1.143–1(b) shall apply in making determinations under this paragraph.

[T.D. 7411, 41 FR 15409, Apr. 13, 1976]

§1.214A–5 Other special rules relating to employment-related expenses.

(a) *Payments to related individuals.* No deduction will be allowed under section 214(a) and §1.214A–1(a) for 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 descendant thereof; a stepson or stepdaughter; a brother, sister, stepbrother, or stepsister; a father or mother or an ancestor of either; a stepfather or stepmother; 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 deduction will be allowed under section 214(a) for 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.

(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 for which a deduction is allowable under section 214(a) and §1.214A–1(a). In such a case, that part of the amount for which a deduction is allowed under section 214(a) will not be considered as an expense allowable as a deduction 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 214. The application of this paragraph may be illustrated by the following examples:

Example 1. A Taxpayer pays $520 of employment-related expenses in the taxable year for the care of his child during one month of such year when the child is physically incapable of caring for himself. 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 $5,000. Of the total expenses, the taxpayer may take $400 into account under section 214; the balance of the expenses, or $120, 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.* In such case it is not proper for the