

## **Reg. Section 1.21-2(a)(4)**

### Limitations on amount creditable

#### (a) Annual dollar limitation.

(1) The amount of employment-related expenses that may be taken into account under §1.21-1(a) for any taxable year cannot exceed-

(i) \$2,400 (\$3,000 for taxable years beginning after December 31, 2002, and before January 1, 2011) if there is one qualifying individual with respect to the taxpayer at any time during the taxable year; or

(ii) \$4,800 (\$6,000 for taxable years beginning after December 31, 2002, and before January 1, 2011) if there are two or more qualifying individuals with respect to the taxpayer at any time during the taxable year.

(2) The amount determined under paragraph (a)(1) of this section is reduced by the aggregate amount excludable from gross income under section 129 for the taxable year.

(3) A taxpayer may take into account the total amount of employment-related expenses that do not exceed the annual dollar limitation although the amount of employment-related expenses attributable to one qualifying individual is disproportionate to the total employment-related expenses. For example, a taxpayer with expenses in 2007 of \$4,000 for one qualifying individual and \$1,500 for a second qualifying individual may take into account the full \$5,500.



(4) A taxpayer is not required to prorate the annual dollar limitation if a qualifying individual ceases to qualify (for example, by turning age 13) during the taxable year. However, the taxpayer may take into account only amounts that qualify as employment-related expenses before the disqualifying event. See also §1.21-1(b)(6).

#### (b) Earned income limitation.

(1) In general. The amount of employment-related expenses that may be taken into account under section 21 for any taxable year cannot exceed-

(i) For a taxpayer who is not married at the close of the taxable year, the taxpayer's earned income for the taxable year; or

(ii) For a taxpayer who is married at the close of the taxable year, the lesser of the taxpayer's earned income or the earned income of the taxpayer's spouse for the taxable year.

(2) Determination of spouse. For purposes of this paragraph (b), a taxpayer must take into account only the earned income of a spouse to whom the taxpayer is married at the close of the taxable year. The spouse's earned income for the entire taxable year is taken into

account, however, even though the taxpayer and the spouse were married for only part of the taxable year. The taxpayer is not required to take into account the earned income of a spouse who died or was divorced or separated from the taxpayer during the taxable year. See §1.21-3(b) for rules providing that certain married taxpayers legally separated or living apart are treated as not married.

(3) Definition of earned income. For purposes of this section, the term earned income has the same meaning as in section 32(c)(2) and the regulations thereunder.

(4) Attribution of earned income to student or incapacitated spouse.

(i) For purposes of this section, a spouse is deemed, for each month during which the spouse is a full-time student or is a qualifying individual described in §1.21-1(b)(1)(iii) or (b)(2)(iii), to be gainfully employed and to have earned income of not less than-

(A) \$200 (\$250 for taxable years beginning after December 31, 2002, and before January 1, 2011) if there is one qualifying individual with respect to the taxpayer at any time during the taxable year; or

(B) \$400 (\$500 for taxable years beginning after December 31, 2002, and before January 1, 2011) if there are two or more qualifying individuals with respect to the taxpayer at any time during the taxable year.

(ii) For purposes of this paragraph (b)(4), a full-time student is an individual who, during each of 5 calendar months of the taxpayer's taxable year, is enrolled as a student for the number of course hours considered to be a full-time course of study at an educational organization as defined in section 170(b)(1)(A)(ii). The enrollment for 5 calendar months need not be consecutive.

(iii) Earned income may be attributed under this paragraph (b)(4), in the case of any husband and wife, to only one spouse in any month.

(c) Examples. The provisions of this section are illustrated by the following examples:

Example (1). In 2007, T, who is married to U, pays employment-related expenses of \$5,000 for the care of one qualifying individual. T's earned income for the taxable year is \$40,000 and her husband's earned income is \$2,000. T did not exclude any dependent care assistance under section 129. Under paragraph (b)(1) of this section, T may take into account under section 21 only the amount of employment-related expenses that does not exceed the lesser of her earned income or the earned income of U, or \$2,000.

Example (2). The facts are the same as in Example 1 except that U is a full-time student at an educational organization within the meaning of section 170(b)(1)(A)(ii) for 9 months of the taxable year and has no earned income. Under paragraph (b)(4) of this section, U is deemed to have earned income of \$2,250. T may take into account \$2,250 of employment-related expenses under section 21.

Example (3). For all of 2007, V is a full-time student and W, V's husband, is an individual who is incapable of self-care (as defined in §1.21-1(b)(1)(iii)). V and W have no earned income and pay expenses of \$5,000 for W's care. Under paragraph (b)(4) of this section, either V or W may be deemed to have \$3,000 of earned income. However, earned income may be attributed to only one spouse under paragraph (b)(4)(iii) of this section. Under the limitation in paragraph (b)(1)(ii) of this section, the lesser of V's and

W's earned income is zero. V and W may not take the expenses into account under section 21.

(d) Cross-reference. For an additional limitation on the credit under section 21, see section 26.