

Revenue Ruling 77-32

Business expenses; indefinite suspension of trade or business. Expenses incurred by an anesthesiologist for the maintenance of professional skills and medical equipment during a period when the anesthesiologist suspended practice indefinitely due to increased rates for malpractice insurance coverage are not deductible as trade or business expenses.

Advice has been requested whether, under the circumstances described below, a taxpayer may deduct certain expenditures to maintain professional skills and to maintain equipment used in a medical practice.

The taxpayer, who had been engaged in the practice of anesthesiology for several years, suspended practice indefinitely because of increases in premium rates for malpractice insurance coverage. While the practice is suspended the taxpayer intends to attend educational sessions, medical meetings, and conventions to maintain professional competence, knowledge, and expertise; and to maintain in adequate condition the equipment used in the medical practice. The taxpayer does not expect to have any income from the medical practice of anesthesiology during the period the practice is suspended.

Section 162 of the Internal Revenue Code of 1954 provides that a deduction shall be allowed for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. Among the items comprising deductible business expenses are traveling expenses (including amounts expended for meals and lodging, provided the amounts are not lavish and extravagant under the circumstances) while away from home in the pursuit of a trade or business.

Section 1.162-2 of the Income Tax Regulations provides, in part, that traveling expenses that are reasonable and necessary in the conduct of the taxpayer's business and directly attributable to it may be deducted. Expenses paid or incurred in attending a convention or other meeting may be ordinary and necessary business expenses under section 162 of the Code, depending on the facts and circumstances of each case. Deductions may be allowed for such expenses if there is a sufficient relationship between the trade or business and the attendance at the convention or other meeting that benefits or advances the interests of the trade or business.

Section 1.162-5 of the regulations, which provides the general rule for the deduction of expenditures by an individual for educational expenses, denies a deduction for educational expenditures of a personal nature.

Section 1.162-6 of the regulations provides that a taxpayer engaged in a profession may deduct the cost of supplies used in the practice of that profession, expenses paid or accrued in the operation and repair of an automobile used in making professional calls, dues to professional societies and subscriptions to professional journals, rent paid or accrued for office space, cost of

fuel, light, water, telephone, etc. used in such offices, and the hire of office assistants. Amounts currently paid or accrued for books, furniture, and professional instruments and equipment, the useful life of which is short, also may be deducted.

In *McDonald v. Commissioner*, 323 U.S. 57, 60-61, 89 L. Ed. 68, 65 S. Ct. 96, 1944-1 C.B. 94 (1944), the Supreme Court of the United States said that to qualify for the business deduction the expense must relate to the existing, as opposed to the future, occupation of the taxpayer. See also *Morton Frank*, 20 T.C. 511 (1953), *Henry G. Owen*, 23 T.C. 377 (1954), *Canter v. United States*, 354 F. 2d 352, 173 Ct. Cl. 723 (Ct. Cl. 1965), and *Munroe v. United States*, 62 Civil 3701 (S.D.N.Y. June 16, 1965).

In *Owen* which involved a government attorney who had previously been in the private practice of law and continued during the indefinite government employment to maintain an office available for such private law practice, the court said.

We believe that there is a distinction which must be drawn between practicing law and maintaining an office available for the practice of law. * * * Keeping an office in readiness for use is not equivalent to actually using it for the practice of law. * * * In the instant case, [the government attorney] in effect incurred expenses in preparation for the resumption of his trade or business; that is, his return to the [private] practice of law * * * at some indefinite future date. * * *

In the case of *Furner v. Commissioner*, 393 F.2d 292 (7th Cir. 1968), the court held that the amounts spent by a teacher who left a teaching position to pursue a full-time graduate course for one academic year were deductible as educational expenses under section 1.162-5 of the regulations even though the teacher was not on leave status. However, Rev. Rul. 68-591, 1968-2 C.B. 73, states that the Service does not agree with any construction of the *Furner* opinion under which an expense could be considered incurred while carrying on a trade or business within the meaning of section 162 of the Code (although in fact such trade or business is not being carried on) merely because the study might be a "normal incident" of carrying on a trade or business and the taxpayer subjectively intends to resume that trade or business at some indefinite future date.

In this case, the taxpayer has ceased to practice as an anesthesiologist. Expenses to attend educational sessions, medical meeting and conventions, and to maintain medical equipment are to be incurred only in preparation for return to medical practice at some indefinite future date and are not related to an existing business.

Accordingly, any expenses for the activities contemplated in this case that the taxpayer incurs during the period the medical practice is suspended are not deductible for Federal income tax purposes.