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Articles

Squeezing deductions out of job search expenses (08/05/2010)

Federal Taxes Weekly Alert,

Squeezing deductions out of job search expenses

As the jobless rate continues to hover over 9% nationwide, legions of individuals are engaged in a determined search to find new employment. Although taxes are way down the list of their priorities, job-hunters may want to know whether job-hunting expenses are deductible, and what kinds of expenses qualify. This article reviews the rules for such expenses, as well as the related topic of job-related moving expenses.

When job-hunting expenses are deductible. An individual's expenses in looking for a job in his or her line of work can be claimed as miscellaneous itemized deductions (subject to the 2%-of-AGI floor). (Rev Rul 77-16, 1977-1 CB 37) However, if an individual is looking for work in a new field (or has not worked before), then there's no deduction for job-hunting expenses. (Rev Rul 75-120, 1975-1 CB 55)



RIA observation: The 2%-of-AGI floor may be less of an impediment where the taxpayer lost his job early in the year.

When determining whether an individual is seeking work in his field, the focus is on the nature of the employment rather than the status of employment. Thus, for example, a CPA who worked for an accounting firm could deduct expenses in seeking new employment as a CPA whether or not he eventually found employment as a self-employed CPA or in some other accounting capacity. (Cornutt, Howard, (1983) TC Memo 1983-24) Similarly, a CPA who was employed as general manager by one employer could deduct the expenses of looking for a position as controller of another company. (Gerhard, W. Richard, (1970) TC Memo 1970-262) And a corporate executive serving as secretary-treasurer who got a position as controller and assistant to the vice president of finance at another corporation was also seeking employment in the same trade or business. (Primuth, (1970) 54 TC 374 , acq. in result 1972-2 CB 2)

Types of job-hunting expenses that are deductible. The following are examples of deductible job-hunting expenses:

- ... Employment and outplacement agency fees (Huber, (1970) TC Memo 1970-219 , (IRS Pub No. 529 (2009), pg 5) even if the fee is payable in any event and not contingent on the securing of a position. (Primuth, (1970) 54 TC 374 , acq in result 1972-2 CB 2) Nor does it matter that taxpayer voluntarily terminated his relationship with the agency before a new position was secured. (Blewitt, Roy Jr., (1972) TC Memo 1972-247) If an employee pays for an agency fee and is reimbursed for it by his employer, the reimbursement is includible in the employee's gross income. But if an individual gets a job through an employment agency and the new employer pays the fee, then the fee isn't includible in income if the job hunter is not liable for it. (IRS Publication 17, 2009, pg. 93)
- ... Cost of preparing a resume. (Rev Rul 77-16, 1977-1 CB 37 , IRS Pub No. 529, pg 5)
- ... Job counselling and referral services. (Cremona, Leonard, (1972) 58 TC 219 , acq 1975-2 CB 1)
- ... Legal expenses to get reinstated on a civil service list of eligibles. (Caruso, Carmen v. U.S., (1964, DC NJ) 15 AFTR 2d 99 ,)
- ... "Professional career consultants." (Motto, (1970) 54 TC 558 ; Kenfield, (1970) 54 TC 1197 , acq 1978-2 CB 2)
- ... Travel expenses if undertaken primarily to look for a new job. If a person travels out of town for a job interview he may deduct the round-trip travel cost, plus lodging and 50% of meals.

Individuals who use their cars in 2010 to look for a job can deduct 50¢ cents per job-hunting mile if they own their cars and haven't (a) depreciated them in prior years using MACRS, (b) expensed any of the cost of the auto under Code Sec. 179 , or (c) or claimed additional first year depreciation for the auto. A taxpayer may use the mileage allowance method for a leased auto only if he uses that method (or a fixed and variable rate (FAVR) allowance method) for the entire lease period (including renewals). They must keep records of the time, place, mileage and purpose of each trip. (Rev Proc 2009-54, 2009-51 IRB 930) Alternatively, individuals who keep records of all expenses in addition to the mileage record can deduct actual expenses plus depreciation (or lease payments), in the ratio of total annual business miles to total miles traveled during the year. Job-hunting mileage qualifies as business mileage. (See, e.g., Campana, TC Memo 1990-35)

Expenses incurred by a taxpayer in seeking employment are deductible regardless of whether he actually obtains a new job. For example, deduction was allowed for a fee paid in advance to an employment counselling firm which was not conditioned on the taxpayer's obtaining a new position and which in fact failed to produce any job offers. (Cremona, Leonard, (1972) 58 TC 219 , acq 1975-2 CB 1; Black, Leonard, (1973) 60 TC 108)

When a job-hunter must travel out of town for a job interview, a prospective employer may reimburse the applicant's out-of-pocket costs (travel, meals and lodging). As long as the reimbursement doesn't exceed actual expenses, the applicant doesn't wind up with compensation income. That's true whether or not the applicant actually gets an offer or if an offer is made, accepts the job. (Rev Rul 63-77, 1963-1 CB 177)

What's not deductible as job-related expenses. A recently released Information Letter points out that under Code Sec. 262(a) , an individual cannot deduct personal, living, or family expenses unless the deduction is specifically provided for by another Code section. Examples of expenses related to looking for a new job that are nondeductible personal or living expenses are: (1) the cost of a new suit, shoes, and a tie for interviewing; (2) the cost of a phone, a fax machine, a computer, and phone and internet service; and (3) the cost of newspapers and magazines.

A loss incurred on forfeiture of deposit for purchase of home in area where the taxpayer expected to get employment is nondeductible. (Krych, Walter B., (1961) TC Memo 1961-11 , PH TCM ¶61011 , 20 CCH TCM 44) Also nondeductible is a real estate broker's commission on sale of taxpayer's home in connection with move to a new job in another state. (Black, Leonard, (1973) 60 TC 108)

Deductible job-related moving expenses. An employee or self-employed individual who moves his residence because of a change in his principal place of work may deduct the reasonable expenses of: (1) moving household goods and personal effects from the old residence to the new place of residence; and (2) traveling (including lodging but not meals) from the old residence to the new place of residence. (Code Sec. 217(b)(1)) If a taxpayer uses his auto to travel to the new home, he may deduct actual expenses (e.g., gas and oil) or for 2010, 16.5¢ per mile.

Moving expenses are "above-the-line" deductions; that is, they are deductible from gross income in arriving at adjusted gross income. (Code Sec. 62(a)(15))

The new job site must be at least 50 miles farther from the taxpayer's old principal residence than was the old principal job site. If he didn't have a full-time job before the move, the new job site must be at least 50 miles from his old residence. (Code Sec. 217(c)(1)) Additionally, either (1) during the 12-month period immediately following his arrival, the taxpayer must be a full-time employee during at least 39 weeks, or (2) during the 24-month period immediately following his arrival, the taxpayer must be a full-time employee or be self-employed on a full-time basis, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period immediately following his arrival.

Moving expenses aren't deductible to the extent they are reimbursed by the employer and the reimbursements are excludable from the taxpayer's income.

A taxpayer excludes from gross income any qualified moving expense reimbursement. (Code Sec. 132(a)(6)) Such a reimbursement is any amount received (directly or indirectly) by the taxpayer from an employer as a payment of (or reimbursement for) moving expenses that would have been deductible had the taxpayer paid them directly. Expenses aren't excludable if the taxpayer actually deducted them in an earlier year. (Code Sec. 132(g)) Otherwise an employer's payment or reimbursement is income to the employee. (Code Sec. 82)