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Furner Not Limited To One-Year Hiatus

TP was employed as the principal of the school in "X". TP had a M.A. degree. He did not renew his contract at the close of the 1967/1968 academic year, and in the summer of 1968 he commenced further graduate studies on a full-time basis.

In June, 1970, some two years after he had resigned his position, TP completed the requirements for his doctoral degree in education and, shortly thereafter, accepted employment as principal of the school in "Y". TP's salary in his new position was the same as it had been in his former position. Moreover, TP's employment duties at the school in "Y" were not appreciably different from the duties he performed at the school in "X". In addition, the schools themselves were similar, in terms of both the number of students and the number of teachers at each institution. At issue was whether TP was entitled to claim a business expense deduction for his educational outlays. The I.R.S. ruled, despite the two-year lacuna in TP's employment history, that such expenses were, indeed, deductible. See LTR 710818032A, August 18, 1971.

Carrying on a Trade or Business

Sec. 162(a) provides that there shall be allowed as a deduction all of the "ordinary and necessary" expenses paid or incurred during the taxable year in *carrying on* any trade or business. Thus, for an expense to be deductible under Sec. 162(a), it must relate to a **present trade or business**. See Peter G. Corbett *et ux. v. Commissioner*, 55 T.C. 884 (1971).

In *Furner v. Commissioner*, 393 F.2d 292 (7th Cir. 1968), it was held that amounts spent by a teacher who had left her position to pursue a full-time graduate course **for one academic year** were deductible even though Ms. Furner was not on "leave" status from the school system and, upon graduation, she accepted a teaching position different from her previous job.

Rev. Rul. 68-591, 1968-2 C.B. 73, provides that the I.R.S. will follow the decision in *Furner v. Commissioner* but only where the facts are "substantially the same." The facts are substantially the same, in the Service's view, where a taxpayer, in order to undertake education or training to maintain or improve the skills required in his or her employment, or other trade or business, **temporarily** ceases to engage, actively, in such employment or other trade or business. Ordinarily, the ruling goes on to say, a suspension for a period of **one year or less**, after which the taxpayer resumes the same employment or other trade or business, will be regarded as temporary.

The word, ordinarily, in Rev. Rul. 68-591, indicates that there are situations where a suspension of more than one year can, nonetheless, be considered temporary. The instant case was just such a situation. Thus, here, the courses taken by TP were directly related to his present employment in the educational field and TP resumed employment as a school principal upon completion of his doctoral degree. Thus, in the Service's estimation, TP "manifested his intent to remain in the educational field." Accordingly, the period of time during which TP was not engaged, actively, in employment is, within the meaning of Rev. Rul. 68-591, to be considered temporary. Therefore, TP's expenses were deductible.

This ruling, in our view, is directly applicable to the case of the employee who ceases employment, in order to pursue an M.B.A. degree, and then resumes, upon graduation, the pursuit of the trade or business he or she had been plying prior to matriculation. The taxpayer, in the M.B.A. case, who resumes employment in the same or similar field upon graduation, will have "manifested his or her intent" to remain in the field and, therefore, the period of time during which the M.B.A. candidate was not engaged, actively, in employment should be, within the meaning of Rev. Rul. 68-591, considered temporary. Thus, the candidate's expenses should be deductible (since it is clear that an M.B.A. does not satisfy the minimum educational requirements for qualification in the type of trade or business that M.B.A. students regularly pursue on graduation and the degree does not qualify the student for a new trade or business*) because, even while a full-time student, the M.B.A. candidate is, within the meaning of Sec. 162(a), carrying on a trade or business with respect to which the educational expenses are paid or incurred.

*See Reg. Sec. 1.162-5(b)(3): "...the second category of non-deductible educational expenses...are expenditures made by an individual for education which is part of a program of study being pursued by him which will lead to qualifying him in a new trade or business. In the case of an employee, a change of duties does not constitute a new trade or business **if the new duties involve the same general type of work as is involved in the individual's present employment....**"

By Robert Willens

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