regulations (21 CFR 514.11(e)(2)(ii)), summaries of safety and effectiveness data and information submitted to support approval of these applications are available for public examination at the office of the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C 360b(i))) under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.95 is amended by revising paragraphs (b), (d) and (e)(2) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(b) *Approvals.* (1) Premix levels of 2 and 10 grams of bambermycins activity per pound and premix have been granted to 012799 in § 510.600(c) of this chapter for use as provided in paragraph (e)(1), and (e)(2)(i) and (ii) of this section.

(2) Premix level of 0.4 gram of bambermycins activity per pound of premix has been granted to 012799 for use as provided in paragraph (e)(2)(i) and (ii) of this section.

* * * * *

(d) *Special consideration.* The following products are not required to comply with the provisions of section 512(m) of the act:

(1) Premixes containing 0.4 or 2.0 grams of bambermycins per pound used to make complete broiler or swine feeds containing bambermycins as the sole drug and conforming to paragraph (e)(1) or (e)(2) of this section.

(2) Feed supplements containing not more than 40 grams of bambermycins per ton used to make finished growing-finishing swine feeds containing bambermycins as the sole drug and conforming to paragraph (e)(2) of this section.

(e) * * *

(2) *Growing-finishing swine feed.* It is used as follows:

(i) *Amount per ton.* 2 grams.

(*a*) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* Feed continuously as sole ration.

(ii) *Amount per ton.* 2 to 4 grams.

(*a*) *Indications for use.* For increased rate of weight gain.

(*b*) *Limitations.* Feed continuously as sole ration.

Effective date. This regulation is effective August 28, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: August 16, 1979.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 79-26504 Filed 8-27-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 301

[T.D. 7643]

Expenses for Household and Dependent Care Services Necessary for Gainful Employment

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the expenses for household and dependent care services necessary for gainful employment. Changes to the applicable tax law were made by the Tax Reform Act of 1976 and the Revenue Act of 1978. These regulations describe the circumstances under which a credit will be available for expenses for household and dependent care services.

DATE: The amendments apply, in general, to taxable years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT: Walter H. Woo of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C., 20224 (Attention: CC:LR:T) (202-566-3734).

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1978, the **Federal Register** published proposed amendments to the regulations under sections 44A, 213, 214, 3402, and 6096 of the Internal Revenue Code of 1954. The amendments were proposed to conform the regulations to section 504 of the Tax Reform Act of 1976 (90 Stat. 1563). No public hearing was requested or held. After consideration of all comments regarding the proposed amendments, the attached Treasury decision is adopted.

Additionally, certain revisions in the proposed regulation amendments are made by this Treasury decision in order to conform the regulations to the amendments made to section 44A by section 121 of the Revenue Act of 1978 (92 Stat. 2279). This statutory amendment made only minor changes in the credit for expenses for household and dependent care services and prescribes rules favorable to taxpayers. For this reason and because there is need for immediate guidance for taxpayers, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring further notice of proposed rulemaking, opportunity for public participation, and delay in effective date are found to be inapplicable.

These regulations will be reviewed as necessary on the basis of comments received from offices within the Treasury Department and Internal Revenue Service or from the public.

In General

The Tax Reform Act of 1976 allows taxpayers to claim a credit against tax for certain household and dependent care expenses. The credit is 20 percent of the expenses paid for the care of a child under age 15 or for an incapacitated dependent or spouse, in order for the taxpayer to be gainfully employed. The employment-related expenses on which the credit is based are limited to $2,000 for the care of one qualifying individual and $4,000 for the care of more than one qualifying individual.

Definition of Employment-Related Expenses

In response to a comment, § 1.44A-1(a)(4) has been restated to make clear that prepaid expenses will not be deemed employment-related expenses until the services for which the expenses are incurred have been performed.

Paragraph (c) of § 1.44A-1 defines the term "employment-related expenses" contained in section 44A(c)(2). The definition of employment-related expenses is clarified and expanded to include any tax required to be paid by the taxpayer under section 3301 (relating to the Federal Unemployment Tax Act) and similar State payroll taxes.

Earned Income Limitation

Paragraph (b) of § 1.44A-2 provides that the amount of the employment-related expenses during any taxable year which may be taken into account under section 44A cannot exceed the earned income of the taxpayer, or, in the case of married individuals, the earned income of the spouse earning the smaller amount. The rule in paragraph (b)(2) (relating to the definition of earned income) requiring that wages, salaries, tips, and net earnings from self-employment be includible in the eligible individual's gross income is based on § 1.43-1(c)(3) which defines "earned income" for purposes of the earned income credit under section 43. The application of this rule has been limited to taxable years beginning before January 1, 1979 to reflect the amendment made to section 43(c)(2)(B) (defining earned income) made by section 104(d) of the Revenue Act of 1978.

Paragraph (b)(3) of § 1.44A-2 sets forth the rule under section 44A(e)(2) that for purposes of the earned income limitation a spouse who is a full-time student at an educational institution is deemed to have earned income of not less than $166 a month if there is one qualifying individual and $333 a month if there are two or more qualifying individuals. One comment suggested that paragraph (b)(3)(iii) of § 1.44A-2 which provides a cross-reference to § 1.151-3(c) for the definition of "educational institution" be revised to provide instead a cross-reference to section 170(b)(1)(A)(ii) for a definition of "educational organization". This suggestion was not adopted because the term "educational institution" and not "educational organization" appears in section 44A(e)(2) which is the operative provision.

Payments to Related Individuals

Paragraph (a) of § 1.44A-4 provides special rules for determining when payments to related individuals will qualify for the credit. This paragraph is revised to include a new subparagraph (1) to reflect the amendment made to section 44A(f)(6) (relating to payments to related individuals) by section 121 of the Revenue Act of 1978. As amended, section 44A(f)(6) no longer requires that child care services performed by certain relatives constitute employment to come within the exception to the rule generally denying a credit for payments made to relatives.

One comment suggested that § 1.44A-4(a)(3)(ii)(A) be changed to substitute the words "son, daughter, stepson or stepdaughter" for the word "child" to insure inclusion of stepdaughters and stepsons. To achieve this result, the regulations have been clarified to provide that the term "child" means a child as defined in section 151(e)(3).

Drafting Information

The principal author of these regulations is Walter H. Woo of the Legislation and Regulations, Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly, 26 CFR Parts 1, 31, and 301 are amended as follows:

Paragraph 1. Section 1.44A-1, as set forth in paragraph 1 of the notice of proposed rulemaking, is amended—

(1) By revising paragraph (a)(4);

(2) By revising paragraph (b)(2);

(3) By revising paragraphs (c) (1)(i), (3) (i), and (5);

(4) By revising example (3) in paragraph (c)(6);

(5) By revising paragraphs (d) (2) and (3); and

(6) By revising paragraph (e), all to read as follows:

§ 1.44A-1 Expenses for household and dependent care services necessary for gainful employment.

(a) *In general.* * * *

(4) Since an expense cannot be an employment-related expense until the services for which the expense was incurred are performed (see paragraph (c) of this section), prepaid expenses may be claimed only in the taxable year in which the services are performed.

* * * * *

(b) *Qualifying individual.* * * *

(2) *Special dependency test in case of divorced or separated parents.* A child (as defined in section 151(e)(3)) who—

(i) Is under age 15 or is physically or mentally incapable of self-care,

(ii) Receives over half of his or her support during the calendar year from his or her parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement, and

(iii) Is in the custody of one or both of his or her parents for more than one-half of the calendar year.

is treated for any taxable year beginning in the calendar year as a qualifying individual (described in subdivision (i) or (ii), as the case may be, of paragraph (b)(1) of this section) of that parent who has custody for a longer period during the calendar year than the other parent. Accordingly, a child may be treated as a qualifying individual of a parent even though the parent is not entitled to a dependency exemption for the child. The child cannot be treated as a qualifying individual with respect to more than one parent.

* * * * *

(c) *Employment-related expenses*—(1) *Gainful employment*—(i) *In general.* Expenses are considered to be employment-related expenses only if they are incurred to enable the taxpayer to be gainfully employed and are paid for household services or for the care of one or more qualifying individuals. The expenses must be incurred while the taxpayer is gainfully employed or is in active search of gainful employment. The employment may consist of service either within or without the home of the taxpayer and may include self-employment. An expense is not considered to be employment-related merely because it is incurred while the taxpayer is gainfully employed. The purpose of the expense must be to enable the taxpayer to be gainfully employed. Volunteer work for a nominal salary does not constitute gainful employment. Whether the purpose of an expense is to enable the taxpayer to be gainfully employed depends upon the facts and circumstances of the particular case. Any tax required to be paid by the taxpayer under sections 3111 (relating to the Federal Insurance Contributions Act) and 3301 (relating to the Federal Unemployment Tax Act), or under similar State payroll taxes, in respect of any wages which otherwise constitute employment-related expenses is considered to be an employment-related expense.

* * * * *

(3) *Care of qualifying individual*—(i) *In general.* The primary purpose of expenses for the care of a qualifying individual must be to assure that individual's well-being and protection. Not all benefits bestowed upon a qualifying individual are considered as provided for the individual's care. Accordingly, amounts paid to provide food, clothing, or education are not expenses paid for the care of a qualifying individual. However, where the manner of providing care is such that the expense which is incurred includes expenses for other benefits which are incident to and inseparably a part of the care, the full amount of the expense is considered to be incurred for care. Thus, for example, the full amount paid to a nursery school in which a qualifying child is enrolled is considered as being for the care of the child, even though the school also furnishes lunch and educational services. Educational expenses incurred for a child in the first or higher grade level are not expenses incurred for the care of a qualifying individual. Expenses incurred for transportation of a qualifying individual described in paragraph (b)(1)(i) of this section between the taxpayer's household and a place outside the taxpayer's household where services for the care of the qualifying individual are provided are not incurred for the care of a qualifying individual.

* * * * *

(5) *Allocation of expenses.* Where a portion of an expense is for household services or for the care of a qualifying individual and a portion of such expense is for other purposes, a reasonable allocation must be made and only the portion of the expense paid which is attributable to such household services or care is considered to be an employment-related expense. No allocation is required to be made, however, if the portion of expense for the other purpose is minimal or insignificant. An allocation must be made, for example, if a servant performs household duties, cares for the qualifying children of the taxpayer, and also performs social services for the taxpayer (for which a deduction is not allowable) or clerical services in the office of the taxpayer outside the home (for which a deduction may be allowable under section 162). Employment-related expenses include household service expenses which are provided in conjunction with the care of a qualifying individual. Thus, if an expense is in part attributable to the care of a qualifying

individual and in part to household services, no allocation is required.

(6) *Illustrations.* * * *

Example (3). The taxpayer, in order to be gainfully employed, employs a full-time housekeeper who cares for the taxpayer's two children, aged 9 and 15 years, respectively, performs regular household services of cleaning and cooking, and chauffeurs the taxpayer to and from his place of employment. The chauffeuring service never requires more than 30 minutes out of the total period of employment each day. No allocation is required for purposes of determining the portion of the expense attributable to the chauffeuring (not a household service expense) since it is *de minimis.* Further, no allocation is required for the purpose of determining the portion of the expense attributable to the care of the 15 year old child (not a qualifying individual) since the household expense is in part attributable to the care of the 9 year old child, who is a qualifying individual. Accordingly, the entire expense of employing the housekeeper is an employment-related expense. However, the total amount of employment-related expenses taken into account would be limited to the amount allowable for one qualifying individual.

(d) *Maintenance of a household.* * * *

(2) *Two or more families.* Solely for purposes of section 44A and this section, if two or more families occupy living quarters in common, each of the families is treated as constituting a separate household, and the taxpayer who provides more then one-half of the costs of maintaining such a separate household is treated as maintaining that household. Thus, for example, if two unrelated taxpayers each with children occupy living quarters in common and each taxpayer pays more than one-half of the household costs incurred by each respective family, each taxpayer will be treated as maintaining a separate household.

(3) *Costs of maintaining a household.* The costs of maintaining a household are the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of the occupants. The expenses of maintaining a household include property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance, and food consumed on the premises. These expenses do not include the cost of clothing, education, medical treatment, vacations, life insurance, or transportation or payments on mortgage principal or for the purchase, permanent improvement, betterment, or replacement of property. Further, the costs of maintaining a household do not include the value of services performed in the household by a qualifying individual described in paragraph (b) of this section. An expense incurred by a taxpayer which is paid or reimbursed by another is not considered as a cost of maintaining a household.

* * * * *

(e) *Substantiation.* A taxpayer claiming a credit under paragraph (a) of this section for employment-related expenses must substantiate by adequate records or other sufficient evidence any credit taken under this section. For example, if requested, the taxpayer must furnish information as to the nature and period of the physical or mental incapacity of any dependent or spouse in respect of whom a credit is claimed, including necessary information from the attending physician as to the nature of the physical or mental incapacity.

Par. 2. Section 1.44A–2, as set forth in paragraph 1 of the notice of proposed rulemaking, is amended by revising paragraphs (b) (1) and (2) to read as follows:

§ *1.44A–2 Limitations on amount creditable.*

* * * * *

(b) *Earned income limitation*—(1) *In general.* The amount of employment-related expenses incurred during any taxable year which may be taken into account under § 1.44A–1(a) cannot exceed—

(i) For an individual not married at the close of the year, the individual's earned income for the year, or

(ii) For an individual married at the close of the year, the lesser of the individual's earned income or the earned income of his or her spouse for the year.

For purposes of this paragraph (b)(1), the earned income of only the spouse to whom the taxpayer is married at the close of the year is taken into account (and not the earned income of another spouse who died or was divorced from the taxpayer during the year). Further, the spouse's earned income for the entire year is taken into account, even though the taxpayer and his or her spouse were married for only a part of the year. For purposes of this paragraph (b), certain married individuals legally separated or living apart are treated as not married (see § 1.44A–3 (b) and (c), respectively).

Earned income. For purposes of this section, earned income means—

(i) Wages, salaries, tips, other employee compensation, and

(ii) Net earnings from self-employment (within the meaning of section 1402(a) and the regulations thereunder),

For taxable years beginning before January 1, 1979, earned income includes only amounts described in subdivision (i) or (ii) of this paragraph (b)(2) which are includible in the eligible individual's gross income for the taxable year of the individual in which the credit is claimed. For all taxable years, however, earned income is computed without regard to any community property laws which may otherwise be applicable. Earned income is reduced by any net loss in earnings from self-employment. Earned income does not include amounts received as a pension or an annuity, or an amount to which section 871 (a) and the regulations thereunder apply (relating to income of nonresident alien individuals not connected with United states business).

* * * * *

Par. 3. Section 1.44A–4, as set forth in paragraph 1 of the notice of proposed rulemaking, is amended by revising paragraph (a) to read as follows:

§ *1.44A–4 Other special rules relating to employment-related expenses.*

(a) *Payments to related individuals—(1) Taxable years beginning after December 31, 1978.* For taxable years beginning after December 31, 1978, a credit is not allowed under section 44A with respect to the amount of any employment-related expenses paid by the taxpayer to an individual—

(i) With respect to whom for the taxable year a deduction under section 151(e) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his or her spouse, or

(ii) Who is a child of the taxpayer (within the meaning of section 151(e)(3)) who is under age 19 at the close of the taxable year.

For purposes of this paragraph (a)(1), the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

(2) *Taxable years beginning before January 1, 1979.* For taxable years beginning before January 1, 1979, except as otherwise provided in paragraph (a)(3) of this section, a credit is not allowed under section 44A with respect to 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, a 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 credit is allowed with respect to 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.

(3) *Exception for payments to certain related individuals.* For taxable years beginning before January 1, 1979, a credit is allowed for the amount of any employment-related expenses paid by the taxpayer to an individual provided that neither the taxpayer nor his or her spouse is entitled to a deduction under section 151(e) (relating to deduction for personal exemptions for dependents) with respect to such individual for the taxable year in which the service is performed; and the service with respect to which the amount is paid constitutes employment within the meaning of section 3121(b). The following services performed for a taxpayer by a relative who is an employee of the taxpayer may qualify as employment within the meaning of section 3121(b):

(i) Services performed by the taxpayer's child age 21 or over.

(ii) Domestic services in the taxpayer's home performed by the taxpayer's parent if—

(A) The taxpayer has living in his or her home a child (as defined in section 151(e)(3)) who is under age 18 or who has a physical or mental condition requiring the personal care of an adult during at least four continuous weeks in the calendar quarter, and

(B) The taxpayer is a widow or widower or is divorced, or has a spouse living in the home who, because of a physical or mental condition, is incapable of caring for his or her child during at least four continuous weeks in the calendar quarter in which services are rendered.

(iii) Services of all relatives other than a child, spouse, or parent of the taxpayer.

For taxable years beginning before January 1, 1979, a credit is not allowed under section 44A with respect to employment-related expenses paid by the taxpayer to a relative for services which do not constitute employment under section 3121(b). Services performed by a relative do not constitute employment if they relate to the relative's trade or business the income from which is includible in computing the relative's net earnings for purposes of the self-employment tax under section 1401.

(4) *Payments to entities or partnerships.* If the services are performed by an entity or partnership, paragraphs (a) (1) and (2) of this section is normally not applicable. If, however, the entity or partnership is established or maintained primarily to avoid the application of paragraph (a) (1) or (2) in order to permit the taxpayer to obtain the credit with respect to employment-related expenses, for purposes of this paragraph (a), the payments of employment-related expenses shall be treated as made directly to each owner of the entity or partner in proportion to his or her share of the entity or partnership. A factor to consider for purposes of determining whether an entity or partnership is so established or maintained is whether the entity or partnership is set up solely to care for the taxpayer's qualifying individual and to provide household services to the taxpayer.

(5) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). For A's taxable year ending December 31, 1978, A, a divorced taxpayer, pays $5,000 of employment-related expenses to his mother for the care of his child age 5. A's mother cares for the child in her home. The services performed by A's mother do not constitute employment under section 3121(b). Accordingly, A is not allowed a credit with respect to the amounts paid to the mother for the care of his child.

Example (2). Assume the same facts as in example (1) except that A's taxable year under consideration begins after December 31, 1978. A is not entitled to a deduction under section 151(e) for his mother. Accordingly, A is allowed a credit with respect to the amounts paid to the mother for the care of his child, even though the services performed by A's mother do not constitute employment under section 3121(b).

Example (3). For B's taxable year ending December 31, 1978, B, a divorced taxpayer, pays $6,000 of employment-related expenses to his sister (who is not a dependent of the taxpayer) for the care of his child. The services performed by B's sister in the care of his child constitute a trade or business the income from which is includible in computing net earnings for purposes of the self-employment tax under section 1401. Accordingly, B is not allowed a credit with respect to the amounts paid to the sister for the care of his child.

Example (4). Assume the same facts as in example (3) except that B's taxable year under consideration begins after December 31, 1978. B is allowed a credit with respect to the amounts paid to the sister for the care of his child, even though the services performed by B's sister do not constitute employment under section 3121(b).

* * * * *

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)).)

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: August 14, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The following new sections are added immediately after § 1.44–5:

§ 1.44A–1 Expenses for household and dependent care services necessary for gainful employment.

(a) *In general.* (1) This section applies only for expenses incurred in taxable years beginning after December 31, 1975. For deductibility of expenses incurred in taxable years beginning before January 1, 1972, see § 1.214–1. For deductibility of expenses incurred in taxable years beginning after December 31, 1971, and before January 1, 1976, see §§ 1.214A–1 through 1.214A–5.

(2) Section 44A allows a credit against the tax imposed by chapter 1 of the Code to an individual who maintains a household (within the meaning of paragraph (d) of this section) which includes as a member one or more qualifying individuals (as defined in paragraph (b) of this section). The amount of the credit is equal to 20 percent of the employment-related expenses (as defined in paragraph (c) of this section) paid by the individual during the taxable year (but subject to the limits prescribed in § 1.44A–2(a)). However, the credit cannot exceed the tax imposed by chapter 1, reduced by the sum of the allowable credits enumerated in section 44A(b).

(3) Generally, the credit for employment-related expenses is allowable, regardless of the taxpayer's method of accounting, only for expenses which are actually paid during the taxable year and which are incurred during the taxable year or were incurred during a prior taxable year beginning after December 31, 1975. If the expenses are incurred but not paid during the taxable year, no credit may be taken for that year on account of those expenses. Thus, if an expense is incurred in the last month of a taxable year but not paid until the following taxable year, a credit for the expense is not allowed for the earlier taxable year but is allowed for the following taxable year. However, if an expense is incurred in a taxable year beginning before January 1, 1976, and paid in a later taxable year, no credit is allowed with respect to the expense under section 44A. Section 214 and the regulations thereunder are applicable in determining whether a deduction for the expense is allowed in the year of payment.

(4) Since an expense cannot be an employment-related expense until the services for which the expense was incurred are performed (see paragraph (c) of this section), prepaid expenses may be claimed only in the taxable year in which the services are performed.

(5) The requirements of section 44A, this section and §§ 1.44A–2 through 1.44A–4 are applied to expenses as of the time they are incurred regardless of when they are paid.

(6) For special rules relating to employment-related expenses which also qualify as medical expenses deductible under section 213, see § 1.44A–4(b).

(7) For substantiation of the credit, see paragraph (e) of this section.

(b) *Qualifying individual*—(1) *In general.* A person is considered to be a qualifying individual if he or she is—

(i) The taxpayer's dependent who is under the age of 15 and is an individual for whom the taxpayer is entitled to a deduction for a personal exemption under section 151(e);

(ii) The taxpayer's dependent (not described in subdivision (i)) who is physically or mentally incapable of self-care; or

(iii) The taxpayer's spouse who is physically or mentally incapable of self-care.

The term "dependent," as used in this paragraph (b)(1), includes any individual who is a dependent within the meaning of section 152. However, see paragraph (b)(2) of this section for special rules for determining which parent may treat a child as a qualifying individual where the parents are divorced, legally separated, or separated under a written separation agreement.

(2) *Special dependency test in case of divorced or separated parents.* A child (as defined in section 151(e)(3)) who—

(i) Is under age 15 or is physically or mentally incapable of self-care,

(ii) Receives over half of his or her support during the calendar year from his or her parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement, and

(iii) Is in the custody of one or both of his or her parents for more than one-half of the calendar year,

is treated for any taxable year beginning in the calendar year as a qualifying individual (described in subdivision (i) or (ii), as the case may be, of paragraph (b)(1) of this section) of that parent who has custody for a longer period during the calendar year than the other parent. Accordingly, a child may be treated as a qualifying individual of a parent even though the parent is not entitled to a dependency exemption for the child. The child cannot be treated as a qualifying individual with respect to more than one parent.

(3) *Qualification on a daily basis.* The status of a person as a qualifying individual is determined on a daily basis. Thus, if a dependent or spouse of a taxpayer ceases to be a qualifying individual on September 16, the dependent or spouse is treated as a qualifying individual through September 15 only.

(4) *Physical or mental incapacity.* An individual is considered to be physically or mentally incapable of self-care if as a result of a physical or mental defect the individual is incapable of caring for his or her hygienical or nutritional needs, or requires full-time attention of another person for his or her own safety or the safety of others. The fact that an individual, by reason of a physical or mental defect, is unable to engage in any substantial gainful activity, or is unable to perform the normal household functions of a homemaker or to care for minor children, does not of itself establish that the individual is physically or mentally incapable of self-care. An individual who is physically handicapped or is mentally defective, and for such reason requires constant attention of another person, is considered to be physically or mentally incapable of self-care.

(c) *Employment-related expenses*—(1)—*Gainful employment*—(i) *In general.* Expenses are considered to be employment-related expenses only if they are incurred to enable the taxpayer to be gainfully employed and are paid for household services or for the care of one or more qualifying individuals. The expenses must be incurred while the taxpayer is gainfully employed or is in active search of gainful employment. The employment may consist of service either within or without the home of the taxpayer and may include self-employment. An expense is not considered to be employment-related merely because it is incurred while the taxpayer is gainfully employed. The purpose of the expense must be to enable the taxpayer to be gainfully employed. Volunteer work for a nominal salary does not constitute gainful employment. Whether the purpose of an expense is to enable the taxpayer to be gainfully employed depends upon the facts and circumstances of the particular case. Any tax required to be paid by the taxpayer under section 3111 (relating to the Federal Insurance Contributions Act) and 3301 (relating to the Federal Unemployment Tax Act), or under similar State payroll taxes, in respect of any wages which otherwise constitute employment-related expenses is considered to be an employment-related expense.

(ii) *Determination of period of employment on a daily basis.* An allocation of expenses is required on a daily basis when the expenses cover any period during part of which the taxpayer is gainfully employed or is in active search of gainful employment and during the other part of which there is no employment or active search for gainful employment. Thus, for example, if a taxpayer incurs during each month of the taxable year $60 of expenses which would be employment-related if he or she were gainfully employed all year, and the taxpayer is gainfully employed, or in active search of gainful employment, for only 2 months and 10 days during such year, the amount of employment-related expenses is limited to $140.

(2) *Household services.* Expenses are considered to be paid for household services if they are paid for the performance in and about the taxpayer's home of ordinary and usual services necessary to the maintenance of the household. However, expenses are not considered as paid for household services unless the expenses are attributable in part to the care of the qualifying individual. Thus, amounts paid for the services of a domestic maid or cook are considered to be expenses paid for household services if a part of those services is provided to the qualifying individual. Amounts paid for the services of an individual who is employed as a chauffeur, bartender, or gardener, however, are not considered to be expenses paid for household services.

(3) *Care of qualifing individual*—(i) *In general.* The primary purpose of expenses for the care of a qualifying individual must be to assure that individual's well-being and protection. Not all benefits bestowed upon a qualifying individual are considered as provided for the individual's care. Accordingly, amounts paid to provide food, clothing, or education are not expenses paid for the care of a qualifying individual. However, where the manner of providing care is such that the expense which is incurred includes expenses for other benefits which are incident to and inseparably a part of the care, the full amount of the expense is considered to be incurred for care. Thus, for example, the full amount paid to a nursery school in which a qualifying child is enrolled is considered as being for the care of the child, even though the school also furnishes lunch and educational services. Educational expenses incurred for a child in the first or higher grade level are not expenses incurred for the care of a qualifying individual. Expenses incurred for transportation of a qualifying individual described in paragraph (b)(1)(i) of this section between the taxpayer's household and a place outside the taxpayer's household where services for the care of the qualifying individual are provided are not incurred for the care of a qualifying individual.

(ii) *Manner of providing care.* The manner of providing the care need not be the least expensive alternative available to the taxpayer. For example, the taxpayer's mother may reside at the taxpayer's home and be available to provide adequate care at no cost for the taxpayer's wife who is physically or mentally incapable of caring for herself. Nevertheless, the expenses incurred in providing a nurse for the wife may be an expense for the care of the wife. See paragraph (c)(1)(i) of this section with respect to the requirement that the expense must be for the purpose of permitting the taxpayer to be gainfully employed.

(4) *Services outside the taxpayer's household.* The credit is allowed under section 44A with respect to employment-related expenses incurred for services performed outside the household of the taxpayer only if the expenses are incurred for the care of one or more qualifying individuals of the taxpayer who are under the age of 15. Otherwise, the credit is only allowed with respect to employment-related expenses incurred for services performed in the household of the taxpayer. Thus for example, if a taxpayer places his or her invalid father in a nursing home, the taxpayer is not entitled to a credit with respect to employment-related expenses incurred for the father's care provided by the nursing home. If, however, the father remains in the taxpayer's

household, the taxpayer is allowed a credit with respect to employment-related expenses attributable to the care for the father.

(5) *Allocation of expenses.* Where a portion of an expense is for household services or for the care of a qualifying individual and a portion of such expense is for other purposes, a reasonable allocation must be made and only the portion of the expense paid which is attributable to such household services or care is considered to be an employment-related expense. No allocation is required to be made, however, if the portion of expense for the other purpose is minimal or insignificant. An allocation must be made, for example, if a servant performs household duties, cares for the qualifying children of the taxpayer, and also performs social services for the taxpayer (for which a deduction is not allowable) or clerical services in the office of the taxpayer outside the home (for which a deduction may be allowable under section 162). Employment-related expenses include household service expenses which are provided in conjunction with the care of a qualifying individual. Thus, if an expense is in part attributable to the care of a qualifying individual and in part to household services, no allocation is required.

(6) *Illustrations.* The application of this paragraph (c) may be illustrated by the following examples:

Example (1). The taxpayer lives with her mother who is physically incapable of caring for herself. In order to be gainfully employed the taxpayer hires a practical nurse whose sole duty consists of providing for the care of the mother in the home while the taxpayer is at work. All amounts spent for the services of the nurse are employment-related expenses.

Example (2). The taxpayer has a dependent child 10 years of age who has been attending public school. The taxpayer, who has been working part time, is offered a position involving full-time employment which she can accept only if the child is placed in a boarding school. The taxpayer accepts the position and the child is sent to a boarding school. The expenses paid to the school must be allocated between that part of the expenses which represents care for the child and that part which represents tuition for education. The part of the expense representing care of the child is incurred for the purpose of permitting the taxpayer to be gainfully employed.

Example (3). The taxpayer, in order to be gainfully employed, employs a full-time housekeeper who cares for the taxpayer's two children, aged 9 and 15 years, respectively, performs regular household services of cleaning and cooking, and chauffeurs the taxpayer to and from his place of employment. The chauffeuring service never requires more than 30 minutes out of the total period of employment each day. No allocation is required for purposes of determining the portion of the expense attributable to the chauffeuring (not a household service expense) since it is *de minimis*. Further, no allocation is required for the purpose of determining the portion of the expense attributable to the care of the 15-year-old child (not a qualifying individual) since the household expense is in part attributable to the care of the 9-year-old child, who is a qualifying individual. Accordingly, the entire expense of employing the housekeeper is an employment-related expense. However, the total amount of employment-related expenses taken into account would be limited to the amount allowable for one qualifying individual.

(d) *Maintenance of a household*—(1) *In general.* An individual is considered to have maintained a household for the taxable year (or lesser period) only if the individual (and his or her spouse if the individual is married) have furnished over one-half of the cost incurred for such taxable year (or lesser period) in maintaining the household. The household must actually constitute for the taxable year the principal place of abode of the taxpayer and the qualifying individual or individuals described in paragraph (b) of this section. It is not sufficient that the taxpayer maintain the household without being its occupant. A physical change in the location of the home does not, however, prevent the home from constituting the principal place of abode of the taxpayer and a qualifying individual. The fact that an individual is born or dies during the taxable year does not prevent a home from constituting his or her principal place of abode for such year. An individual is not considered to have terminated a household as his or her principal place of abode merely by reason of temporary absences therefrom by reason of illness, education, business, vacation, military service, or a custody agreement.

(2) *Two or more families.* Solely for purposes of section 44A and this section, if two or more families occupy living quarters in common, each of the families is treated as constituting a separate household, and the taxpayer who provides more than one-half of the costs of maintaining such a separate household is treated as maintaining that household. Thus, for example, if two unrelated taxpayers each with children occupy living quarters in common and each taxpayer pays more than one-half of the household costs incurred by each respective family, each taxpayer will be treated as maintaining a separate household.

(3) *Costs of maintaining a household.* The costs of maintaining a household are the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of the occupants. The expenses of maintaining a household include property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance, and food consumed on the premises. These expenses do not include the cost of clothing, education, medical treatment, vacations, life insurance, or transportation or payments on mortgage principal or for the purchase, permanent improvement, betterment, or replacement of property. Further, the costs of maintaining a household do not include the value of services performed in the household by a qualifying individual described in paragraph (b) of this section. An expense incurred by a taxpayer which is paid or reimbursed by another is not considered as a cost of maintaining a household.

(4) *Monthly proration of annual costs.* In determining the cost incurred for a period of less than a taxable year in maintaining a household, the cost incurred during the entire taxable year must be prorated on the basis of the number of calendar months within such lesser period. For this purpose a period of less than a calendar month will be treated as a calendar month. Thus, for example, if the cost of maintaining a household for a taxable year is $6,600, and the period in respect of which a determination is being made under section 44A is from June 20 to December 31, the taxpayer must furnish more than $1,925 ([$6,600 $\times$ 7/12] $\times$ 50 percent) in maintaining the household from June 1 to December 31.

(e) *Substantiation.* A taxpayer claiming a credit under paragraph (a) of this section for employment-related expenses must substantiate by adequate records or other sufficient evidence any credit taken under this section. For example, if requested, the taxpayer must furnish information as to the nature and period of the physical or mental incapacity of any dependent or spouse in respect of whom a credit is claimed, including necessary information from the attending physician as to the nature of the physical or mental incapacity.

§ 1.44A-2 Limitations on amount creditable.

(a) *Annual dollar limit on amount creditable.* The amount of the employment-related expenses incurred during any taxable year which may be taken into account under § 1.44A-1(a) cannot exceed—

(1) $2,000 if ther is one qualifying individual with respect to the taxpayer at any time during the taxable year, or

(2) $4,000 if there are two or more qualifying individuals with respect to

the taxpayer at any one time during the taxable year.

For example, a calendar year taxpayer whose only qualifying individual reaches age 15 on April 1, 1976, is subject for 1976 to the entire annual dollar limit of $2,000, without proration of the $2,000 limit. However, only expenses incurred prior to the child's 15th birthday may be employment-related expenses.

(b) *Earned income limitation*—(1) *In general.* The amount of employment-related expenses incurred during any taxable year which may be taken into account under § 1.44A–1(a) cannot exceed—

(1) For an individual not married at the close of the year, the individual's earned income for the year, or

(ii) For an individual married at the close of the year, the lesser of the individual's earned income or the earned income of his or her spouse for the year.

For purposes of this paragraph (b)(1), the earned income of only the spouse to whom the taxpayer is married at the close of the year is taken into account (and not the earned income of another spouse who died or was divorced from the taxpayer during the year). Further, the spouse's earned income for the entire year is taken into account, even though the taxpayer and his or her spouse were married for only a part of the year. For purposes of this paragraph (b), certain married individuals legally separated or living apart are treated as not married (see § 1.44A–3 (b) and (c), respectively).

(2) *Earned income.* For purposes of this section, earned income means—

(i) Wages, salaries, tips, other employee compensation, and

(ii) Net earnings from self-employment (within the meaning of section 1402(a) and the regulations thereunder).

For taxable years beginning before January 1, 1979, earned income includes only amounts described in subdivision (i) or (ii) of this paragraph (b)(2) which are includible in the eligible individual's gross income for the taxable year of the individual in which the credit is claimed. For all taxable years, however, earned income is computed without regard to any community property laws which may otherwise be applicable. Earned income is reduced by any net loss in earnings from self-employment. Earned income does not include amounts received as a pension or an annuity or an amount to which section 871(a) and the regulations thereunder apply (relating to income of nonresident alien individuals not connected with United States business).

(3) *Special rule for spouse who is a student or incapable of self-care.* (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 § 1.44A–1(b)(1)(iii), to be gainfully employed and to have earned income of not less than—

(A) $166, if there is one qualifying individual with respect to the taxpayer at any time during the taxable year, or

(B) $333, if there are two or more qualifying individuals with respect to the taxpayer at any one time during the taxable year.

However, in the case of any husband and wife, this subparagraph shall apply with respect to only one spouse for any one month.

(ii) A "full-time student" is an individual who is enrolled at and attends and educational institution during each of 5 calendar months of the taxable year of the taxpayer for the number of course hours which is considered to be a full-time course of study. The enrollment for 5 calendar months need not be consecutive. School attendance exclusively at night does not constitute a full-time course of study. However, a full-time course of study may include some attendance at night.

(iii) For the definition of "educational institution", see § 1.151–3(c).

(4) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). During the taxable year, A, a married taxpayer, incurs and pays employment-related expenses of $4,000 for the care of a qualifying individual. A's earned income for the taxable year is $20,000 and his wife's earned income is $1,500. Under these circumstances, the amount of employment-related expenses for the year which may be taken into account under § 1.44A–1(a) is $1,500, determined as follows:

Employment-related expenses incurred during taxable year ($40,000, but limited to $2,000 by paragraph (a)(1) of this section)	$2,000
Application of paragraph (b)(1)(ii) of this section (employment-related expenses, may not exceed wife's earned income of $1,500)	1,500
Employment-related expenses taken into account	1,500

Example (2). Assume the same facts as in example (1) except that A's wife is a full-time student for nine months of the taxable year and earns no income for the year. Under these circumstances, the amount of employment-related expenses for the yeai which may be taken into account under § 1.44A–1(a) is $1,494, determined as follows:

Employment-related expenses incurred during taxable year ($4,000, but limited to $2,000 by paragraph (a)(1) of this section)	$2,000
Application of paragraph (b)(3) of this section [employment-related expenses may not exceed wife's earned income of $1,494 ($166 x 9)]	1,494
Employment-related expenses taken into account	1,494

§ 1.44A–3 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 credit provided by section 44A with respect to employment-related expenses is allowed only if for the taxable year the taxpayer and his or her spouse file a joint return. If either spouse dies during the taxable year and a joint return may be made for the year under section 6013(a)(2) for the survivor and the deceased spouse, the credit is allowed for the year only if a joint return is made. If, however, the surviving spouse remarries before the end of the taxable year in which his or her first spouse dies, a credit is allowed on the separate return which is made for the decedent spouse. For purposes of this section, certain married individuals legally separated or living apart are treated as not married, as provided in paragraphs (b) and (c), respectively, of this section.

(b) *Marital status.* For purposes of section 44A, an individual legally separated from his or her spouse under a decree of divorce or of separate maintenance is not considered as married.

(c) *Certain married individuals living apart.* For purposes of section 44A, an individual who is married within the meaning of section 143(a) is treated as not married for the entire taxable year, if the individual—

(1) Files a separate return for the year,

(2) Maintains as his or her home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(3) Furnishes over one-half of the cost of maintaining the household for the year,

and if the individual's spouse is not a member of the household at any time during the last 6 months of the year. Thus for example, an individual who is married during the taxable year, but is treated as not married by reason of this paragraph, may determine the earned income limitation upon the amount of employment-related expenses without taking into account the earned income of his or her spouse under § 1.44A–2(b).

§ 1.44A–4 Other special rules relating to employment-related expenses.

(a) *Payments to related individuals*—(1) *Taxable years beginning after December 31, 1978.* For taxable years beginning after December 31, 1978, a credit is not allowed under section 44A with respect to the amount of any employment-related expenses paid by the taxpayer to an individual—

(i) With respect to whom for the taxable year a deduction under section 151(e) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his or her spouse, or

(ii) Who is a child of the taxpayer (within the meaning of section 151(e)(3)) who is under age 19 at the close of the taxable year.

For purposes of this paragraph (a)(1), the term "taxable year"means the taxable year of the taxpayer in which the service is performed. (1943)

(2) *Taxable years beginning before January 1, 1979.* For taxable years beginning before January 1, 1979, except as otherwise provided in paragraph (a)(3) of this section, a credit is not allowed under section 44A with respect to 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, a 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 credit is allowed with respect to 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.

(3) *Exception for payments to certain related individuals.* For taxable years beginning before January 1, 1979, a credit is allowed for the amount of any employment-related expenses paid by the taxpayer to an individual provided that neither the taxpayer nor his or her spouse is entitled to a deduction under section 151(e) (relating to deduction for personal exemptions for dependents) with respect to such individual for the taxable year in which the service is performed; and the service with respect to which the amount is paid constitutes employment within the meaning of section 3121(b). The following services performed for a taxpayer by a relative who is an employee of the taxpayer may qualify as employment within the meaning of section 3121(b):

(i) Services performed by the taxpayer's child age 21 or over.

(ii) Domestic services in the taxpayer's home performed by the taxpayer's parent if—

(A) The taxpayer has living in his or her home a child (as defined in section 151(e)(3)) who is under age 18 or who has a physical or mental condition requiring the personal care of an adult during at least 4 continuous weeks in the calendar quarter, and

(B) The taxpayer is a widow or widower or is divorced, or has a spouse living in the home who, because of a physical or mental condition, is incapable of caring for his or her child during at least 4 continuous weeks in the calendar quarter in which services are rendered.

(iii) Services of all relatives other than a child, spouse, or parent of the taxpayer.

For taxable years beginning before January 1, 1979, a credit is not allowed under section 44A with respect to employment-related expenses paid by the taxpayer to a relative for services which do not constitute employment under section 3121(b). Services performed by a relative do not constitute employment if they relate to the relative's trade or business the income from which is includible in computing the relative's net earnings for purposes of the self-employment tax under section 1401.

(4) *Payments to entities or partnerships.* If the services are performed by an entity or partnership, paragraph (a) (1) and (2) of this section is normally not applicable. If, however, the entity or partnership is established or maintained primarily to avoid the application of paragraph (a) (1) or (2) in order to permit the taxpayer to obtain the credit with respect to employment-related expenses, for purposes of this paragraph (a), the payments of employment-related expenses shall be treated as made directly to each owner of the entity or partner in proportion to his or her share of the entity or partnership. A factor to consider for purposes of determining whether an entity or partnership is so established or maintained is whether the entity or partnership is set up solely to care for the taxpayer's qualifying individual and to provide household services to the taxpayer.

(5) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). For A's taxable year ending December 31, 1978, A, a divorced taxpayer, pays $5,000 of employment-related expenses to his mother for the care of his child age 5. A's mother cares for the child in her home. The services performed by A's mother do not constitute employment under section 3121(b). Accordingly, A is not allowed a credit with respect to the amounts paid to the mother for the care of his child.

Example (2). Assume the same facts as in example (1) except that A's taxable year under consideration begins after December 31, 1978. A is not entitled to a deduction under section 151(e) for his mother. Accordingly, A is allowed a credit with respect to the amounts paid to the mother for the care of his child even though the services performed by A's mother do not constitute employment under section 3121(b).

Example (3). For B's taxable year ending December 31, 1978, B, a divorced taxpayer, pays $6,000 of employment-related expenses to his sister (who is not a dependent of the taxpayer) for the care of his child. The services performed by B's sister in the care of his child constitute a trade or business the income from which is includible in computing net earnings for purposes of the self-employment tax under section 1401. Accordingly, B is not allowed a credit with respect to the amounts paid to the sister for the care of his child.

Example (4). Assume the same facts as in example (3) except that B's taxable year under consideration begins after December 31, 1978. B is allowed a credit with respect to the amounts paid to the sister for the care of his child, even though the services performed by B's sister do not constitute employment under section 3121(b).

(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 with respect to which a credit is allowable under section 44A. In such a case, that part of the amount with respect to which a credit is allowed under section 44A will not be considered as an expense for purposes of determining the amount deductible 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 44A. The application of this paragraph may be illustrated by the following examples:

Example (1). A taxpayer pays $5,000 of employment-related expenses during the taxable year for the care of his child when the child is physically incapable of self-care. 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 $100,000. Of the total expenses, the taxpayer may take $2,000 into account under section 44A; the balance of the expenses, or $3,000, 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). It is not proper for the taxpayer first to determine his deductible medical expenses of $2,000 ($5,000—[$100,000×3 percent]) under section 213 and then claim the $3,000 balance as employment-related expenses for purposes of section 44A. This is because the $3,000 balance has been treated as a medical expense in computing the amount deductible under section 213.

Example (3). A taxpayer incurs and pays $12,000 of employment-related expenses during the taxable year for the care of his child. These expenses are incurred for services performed in the taxpayer's household, and they also qualify as medical expenses under section 213. The taxpayer's adjusted gross income for the taxable year is $18,000. The taxpayer takes $2,000 of such expenses into account under section 44A. The balance, or $10,000, he treats as medical expenses for purposes of section 213. The allowable deduction under section 213 for the expenses is limited to the excess of the balance of $10,000 over $540 (3 percent of the taxpayer's adjusted gross income of $18,000), or $9,460.

§ 1.213 and Historical Note [Deleted]

Par. 2. Section 1.213 and the historical note are deleted.

Par. 3. Paragraph (f) of ⁶ 1.213–1 is revised to read as follows:

§ 1.213-1 Medical, dental, etc., expenses.

* * * * *

(f) *Exclusion of amounts allowed for care of certain dependents.* Amounts taken into account under section 44A in computing a credit for the care of certain dependents shall not be treated as expenses paid for medical care.

* * * * *

§ 1.214 and Historical Note [Deleted]

Par. 4. Section 1.214 and the historical note are deleted.

Par. 5. Paragraph (a)(1) of § 1.214–1 is revised to read as follows:

§ 1.214-1 Expenses for the care of certain dependents incurred during taxable years beginning before January 1, 1972.

(a) *General rule.* (1) This section applies only for expenses incurred during taxable years beginning before January 1, 1972. For expenses incurred in taxable years beginning after December 31, 1971, and before January 1, 1976, see §§ 1.214A–1 through 1.214A–5.

§ 1.214A and Historical Note [Deleted]

Par. 6. Section 1.214A and the historical note are deleted.

Par. 7. Section § 1.214A–1 is amended by revising the heading thereto and by revising so much of paragraph (a)(1) thereof as precedes subdivision (i) to read as follows:

§ 1.214A-1 Certain expenses to enable individuals to be gainfully employed incurred during taxable years beginning after December 31, 1971, and before January 1, 1976.

(a) *In general.* For expenses incurred during taxable years beginning after December 31, 1971, and before January 1, 1976, section 214 allows (subject to the requirements of this section and §§ 1.214A–2 through 1.214A–5) a deduction for employment-related expenses (as defined in paragraph (c) of this section) which are paid during the taxable year by an individual who maintains a household (within the meaning of paragraph (d) of this section) that includes as a member one or more qualifying individuals (as defined in paragraph (b) of this section). The deduction for expenses allowed under section 214 may be taken only as an itemized deduction and may not be taken into account in determining adjusted gross income under section 62. No deduction shall be allowed under section 214 in respect of any expenses incurred during a taxable year beginning after March 29, 1975, and before January 1, 1976, for which the taxpayer's adjusted gross income is $44,600 or more (or incurred during a taxable year beginning after December 31, 1971, and before March 30, 1975, for which the taxpayer's adjusted gross income is $27,600 or more). Expenses which are taken into account in determining the deduction under section 214—

* * * * *

Par. 8. Section 1.214A–2 is amended by revising so much of paragraph (c)(1) thereof as precedes example (3) to read as follows:

§ 1.214A-2 Limitations on deductible amounts.

* * * * *

(c) *Taxpayer's income limitation*—(1) *In general.* This paragraph applies only if the adjusted gross income of the taxpayer for the taxable year exceeds the amount of $35,000, in the case of a taxable year beginning after March 29, 1975, and before January 1, 1976 (or the amount of $18,000 in the case of a taxable year beginning after December 31, 1971, and before March 30, 1975). In either case, in determining the deduction allowable under § 1.214A–1(a) for employment-related expenses, the amount of the expenses incurred during any calendar month of the taxable year must be reduced by an amount equal to the excess of the adjusted gross income of the taxpayer for the taxable year over the applicable income limitation ($35,000 or $18,000 as the case may be) divided by twice the number of calendar months in the taxable year. For purposes of applying the taxpayer's income limitation a period of less than a calendar month will be treated as a calendar month. The limitation provided by this paragraph must be applied after making the reduction in the amount of employment-related expenses provided by paragraph (a) of § 1.214A–3 and after the appplication of the limitations upon the amount deductible provided by paragraph (a) of § 1.214A–3 and after the application of the limitations upon the amount deductible provided by paragraphs (a) and (b) of this section. The application of this subparagraph may be illustrated by the following examples:

Example (1). A, a single individual who uses a fiscal year ending March 31 as the taxable year, incurs (and pays) during May 1975 employment-related expenses of $600. He has adjusted gross income of $41,000 for the fiscal year ending March 31, 1976. Under these circumstances the amount of employment-related expenses for the month of May 1975 which may be taken into account under paragraph (a) of § 1.214A–1 is $150, determined as follows:

Employment-related expenses incurred during May ($600, but not to exceed $400 under paragraph (a) of this section		$400
Less: Reduction under this subparagraph:		
Adjusted gross income for taxable year	$41,000	
Less: Taxpayer's income limitation applicable to taxable year beginning after March 29, 1975	35,000	
Excess adjusted gross income over income limitation	6,000	
Excess divided by twice the number of calendar months in taxable year ($6,000 + [2×12])		250
Employment-elated expenses to be taken into account		150

Example (2). Assume the same facts as in example (1) except that A incurs employment-related expenses of only $200 during May 1975. Under these circumstances no amount of employment-related expenses may be taken into account for the month of May under paragraph (a) of § 1.214A–1 because the expenses of $200 for the month are fully offset by the reduction of $250 required under this subparagraph.

* * * * *

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

§ 31.3402 [Amended]

Par. 19. Section 31.3402(m) and the historical note are deleted.

PART 301—PROCEDURE AND ADMINISTRATION

§ 301.6096 and Historical Note [Deleted]

Par. 10. Section 301.6096 and the historical note are deleted.

Par. 11. Paragraph (b) of § 301.6096–1 is amended to read as follows:

§ 301.6096-1 Designation by individuals for taxable years beginning after December 31, 1972.

* * * * *

(b) *Income tax liability.* For purposes of paragraph (a) of this section, the income tax liability of an individual for any taxable year is the amount of the tax imposed by chapter 1 on such individual for the taxable year (as shown on his or her return) reduced by the sum of the credits (as shown on his or her return) allowable under sections 33, 37, 38, 40, 41, 42, 44, and 44A.

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[FR Doc. 79-26743 Filed 8-27-79; 8:45 am]
BILLING 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Safety and Health Standards; Occupational Exposure to Lead; Correction

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Correction to final standard for occupational exposure to lead.

SUMMARY: OSHA's final standard for occupational exposure to lead was published in the Federal Register on November 14, 1978 (43 FR 52952). Corrections to the regulation were published in the Federal Register on January 26, 1979 (44 FR 5446). This notice corrects the language of the standard's exemption for construction work to avoid any possible ambiguity in the scope of the exemption.

DATES: This correction is effective August 28, 1979.

FOR FURTHER INFORMATION CONTACT: Gail Brinkerhoff, OSHA Office of Compliance Programming, U.S. Department of Labor, Room N3112, Washington, D.C. 20210, telephone 202-523-8034.

SUPPLEMENTARY INFORMATION: OSHA's final standard for occupational exposure to lead, 29 CFR 1910.1025, published on November 14, 1978 (43 FR 52952), exempted the construction industry from coverage by the new standard. The preamble to the standard, at 43 FR 52986, discussed the arguments that had been made during the rule-making proceeding in support of a construction industry exemption and articulated OSHA's rationale for incorporating this exemption in the final standard. Briefly, OSHA reviewed the arguments that the unique nature of the construction industry, rendered many of the provisions of the standard infeasible or meaningless, i.e., the mobility and transient nature of employees, worksites and working conditions. OSHA concluded that the record before it was insufficient to resolve the issues raised by the uniqueness of the construction industry and therefore exempted the industry from the standard pending submission of the issues to the Construction Advisory Committee for its recommendations.

In incorporating the construction industry exemption into the lead standard, paragraph (a)(2) provided that the section "does not apply to construction work as defined in 29 CFR 1910.12(b) * * *" Several interested persons, including parties in the current appellate litigation concerning the lead standard, have brought to OSHA's attention that the phrase "construction work as defined in 29 CFR 1910.12(b)" may be interpreted as exempting from the protection of the standard industrial workers in a plant producing or using lead whenever they perform tasks falling under the rubric of "construction work." In view of the broad interpretation given to the term "construction work" by the Occupational Safety and Health Review Commission, there is merit to the suggestion that this term is susceptible to an interpretation which would exempt from coverage a class of employees whom OSHA never intended to exclude. It is therefore necessary to conform the language of the standard to OSHA's intent, expressed in the preamble, to exempt the "construction industry," but to provide protection for workers employed in the lead industry even when they may be performing "construction work."

Since this correction is minor and merely conforms the regulatory language to OSHA's clear intent, we find that there is no purpose or need for notice and public procedure or for a delayed effective date within the meaning of 5 U.S.C. 553(b) and (d) and 29 CFR 1911.5.

Accordingly, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), 5 U.S.C. 553, Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911, paragraph (a)(2) of 29 CFR 1910.1025 is amended to read as follows:

§ 1910.1025 Lead.

(a) * * *

(2) This section does not apply to the construction industry or to agricultural operations covered by 29 CFR Part 1928.

Signed at Washington, D.C. this 23 day of August, 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-26739 Filed 8-27-79; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

Corps of Engineers

33 CFR Part 209

[ER 1140-1-210]

Laboratory Investigations and Materials Testing

AGENCY: Corps of Engineers, DOD

ACTION: Final rule.

SUMMARY: This regulation imposes restrictions on non-Corps work that may be undertaken at Corps of Engineers laboratories other than research and development laboratories. Increasing requests from other Governmental agencies and private firms for investigation and testing services were tending to divert laboratory resources from Corps work, and improperly placing the Corps in competition with private industry. This regulation will prevent unfair competition between Government and private sector materials investigations and testing organizations.

EFFECTIVE DATE: August 31, 1979.

FOR FURTHER INFORMATION CONTACT: James A. Rhodes, Chief, Concrete Section, Office, Chief of Engineers, Washington, DC 20314, (202) 272-0219.

Accordingly, 33 CFR Part 209 is amended by revising § 209.340 to read as follows:

§ 209.340 Laboratory investigations and materials testing.

(a) *Purpose.* The purpose of this section is to define and establish policies and procedures applicable to the performance of investigations and tests at Corps of Engineers laboratory installations for other governmental agencies and private organizations.

(b) *Applicability.* This regulation applies to Corps of Engineers Divisions and Districts operating soils, concrete, water quality and hydraulic laboratories, and to the Inter-Agency Sedimentation Project.

(c) *References.* (1) AR 37-20.
(2) AR 37-27.
(3) ER 1-1-6.
(4) ER 10-1-3, Appendix XIII.
(5) ER 1110-1-8100.
(6) ER 1140-2-303.

(d) *Policy.* Subject to the authority limitations contained in paragraph (f) of this section, laboratory investigations and materials testing may be performed for other agencies of the Federal Government, State and local units of government, foreign governments and private firms under the following conditions:

(1) The work will be performed on a cost reimbursable basis.

(2) Work may be performed for State and local units of government, foreign governments or private firms only when it is firmly established that private commerical laboratory facilities capable of performing such work are not available, or because of location or for other reasons it is clearly impractical to utilize such private commerical laboratory services. The requesting entity must further certify that such services cannot be procured reasonably and expeditiously through ordinary business channels.

(3) Performance of the work will not interfere with provisions of services essential to the mission of the Corps.

(4) Performance of the work will not require an increase in the permanent staff of the facility.

(5) Performance of the work will not require expansion of normal facilities.

(6) The work is within the scope of authorized activities of the laboratory at which the work is to be performed.

(7) Performance of the work will not be adverse to the public interest.

(8) Prior to undertaking laboratory investigations or materials testing for private firms, written certification will be obtained from such firms stating that the results of the work will not be used in litigation or for promotional purposes.

(e) *Terms of providing reimbursement for work performed.* (1) *Federal agencies.* Reimbursement for work for the Department of Defense, the Department of the Army, and other Federal Agencies will be in accordance with the procedures prescribed in AR 37-27.

(2) *State and Local units of Government.* Funds to cover the total estimated cost of the work or an initial increment of the esitmated cost based on an approved schedule of payment will be deposited with the installation performing the work before any obligations or expenses in connection with the work are incurred; and when funds are being deposited on an approved schedule no obligations or expenses will be incurred in connection with the work in excess of funds on deposit.

(3) *Private concerns and foreign governments.* Funds will be deposited in advance of the work as required in paragraph (e)(2) of this section. Charges shall include a surcharge of 15 percent of all applicable costs, except under the following conditions.

(i) When the final product will directly contribute to a specific planning, design, or construction activity which derives its principal support from Federal funds in the form of a grant or otherwise.

(ii) Where an exception is granted based on a direct benefit to the Government. Adequate justification, outlining the direct benefits which are expected to accrue to the Government, will be forwarded to HQDA (DAEN-CWE-DC) Washington, DC 20314, for review and approval prior to deletion of the surcharge.

(f) *Authority.* The following delegations of authority to perform laboratory investigations and materials testing apply.

(1) *Division materials laboratories.* Division Engineers are delegated the authority to approve laboratory work for Federal, State and local units of government when the total estimated cost of each investigation or test project is $15,000 or less. Division Engineers are also delegated the authority to approve laboratory work for private firms and foreign Governments when the total estimated cost of each investigation or test project is $5,000 or less. Approval is required when the estimated or actual costs exceed those delegations of authority. Requests for approval shall be addressed to DAEN-CWE-DC.

(2) *Hydraulic Laboratories.* Division Engineers and District Engineers operating hydraulic laboratories or hydraulic model laboratories are delegated the authority to approve laboratory work for others within the same limitations and in accordance with the same procedures as apply to Division Materials Laboratories.

(3) *Inter-Agency Sedimentation Project, St. Anthony Falls Laboratory, University of Minnesota, Minneapolis, Minnesota.* The District Engineer, St. Paul is authorized to perform work required in procurement, testing and calibration of specialized sediment sampling equipment developed at the Inter-Agency Sedimentation Project. Equipment of this nature will be made available to Federal, State and local governmental agencies at cost. The District Engineer, St. Paul, is also authorized to approve the performance of testing and calibration work for U.S. private firms that fabricate this specialized equipment for commercial sale when the estimated cost for services of Corps personnel is $5,000 or less for a single order. Approval is required when the estimated single order cost for a private firm exceeds $5,000 and when the total cost of work during a fiscal year for any one private firm exceeds $15,000. Requests for approval shall be addressed to HQDA (DAEN-CWE-HY) Washington, DC 20314.

(g) *Reports of testing results.* Final reports of results will be submitted in accordance with instructions provided by the sponsoring organization, with two copies to HQDA (DAEN-CWE-DC) Washington, DC 20314.

Copies of reports of scientific or technical activities of a research and development nature will be transmitted to the Defense Documentation Center as required by AR 70-31. (RCS OSD-1366).

Authority: (Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

Source: ER 1140-1-210.

Dated: August 21, 1979.

Forrest T. Gay, III,

Colonel, Corps of Engineers, Executive Director, Engineer staff.

[FR Doc. 79-26645 Filed 8-27-79; 8:45 am]

BILLING CODE 3710-92-M

VETERANS ADMINISTRATION

38 CFR Part 3

Pension, Compensation, and Dependency and Indemnity Compensation; Proximate Results, Secondary Conditions

AGENCY: Veterans Administration.

ACTION: Final Regulations.

SUMMARY: The Veterans Administration has amended its regulation which grants service connection for a disability which is proximately due to a service-connected disease or injury. This amendment results from a report made by the National Academy of Sciences. The effect of this action is to grant service connection for ischemic heart disease or other cardiovascular disease developing in a veteran who has a service-connected amputation of one lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankles.

EFFECTIVE DATE: August 22, 1979.

FOR FURTHER INFORMATION CONTACT: T.H. Spindle, Jr. (202-389-3005).

SUPPLEMENTARY INFORMATION: On pages 26762-63 of the Federal Register of May 7, 1979, there was published a proposed amendment to 38 CFR 3.310.

Interested persons were given 30 days to submit comments, suggestions, or objections to the proposed amendment. Three comments were received.

One commentator wants us to presume that cardiovascular disease developing in veterans who have