

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

RANDY R. MYRUP, PAULA)	Docket No. IT-2011-4
EHRMANTRAUT-MYRUP,)	
)	
Appellant,)	
-vs-)	
)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

Taxpayers, Randy Myrup and Paula Ehrmantraut-Myrup, bring this appeal from the decision of the Office of Dispute Resolution, which upheld the Department of Revenue's (DOR) denial of a deduction for tuition and educational expenses. A hearing was held before this Board in Helena on March 7, 2012. The DOR was represented by Brenda Gilmer, senior tax counsel, Cameron LaRocque, auditor and Douglas Peterson, unit manager. Taxpayers represented themselves at the hearing.

Issue

The issue is whether the expenses incurred by Taxpayers for tuition and educational expenses are deductible as ordinary and necessary business expenses. By consent of the parties, the Board agreed to bifurcate the case by initially hearing only the question of whether the deductions are allowable in general, without addressing the question of the specific amounts that would be allowable were the Taxpayers to prevail on the first part. Having fully considered the

testimony, exhibits, evidence submissions and all matters presented, this Board upholds the decision of the Office of Dispute Resolution.

Facts

1. Taxpayer Ehrmantraut-Myrup is a licensed clinical professional counselor (LCPC) in the State of Montana. She holds a B.S. degree in counseling as well as an M.S. in rehabilitation and mental health and holds a national certification as a rehabilitation counselor. She offers individual therapy to private clients and also does contract work for school systems, counseling students. She is required to obtain 20 hours of continuing education each year to maintain her license. (Testimony, Ehrmantraut-Myrup)
2. Taxpayers Randy Myrup and Paula Ehrmantraut-Myrup deducted a total of \$65,650 of tuition and educational expenses incurred over three years, 2007, 2008 and 2009, on their joint income tax return. The tuition was paid to Walden University, an online program, offering a Psy. D. degree that would lead to licensing as a clinical psychologist. (DOR Exh. CC, pp. 9-12.)
3. Ms. Ehrmantraut-Myrup has completed the coursework and the internship required by Walden but has not completed her dissertation. (Testimony, Myrup.)
4. Under Montana law and regulations, the Board of Social Workers and Professional Counselors requires applicants for a license as a psychologist to meet educational standards set by attending a doctoral program approved by the American Psychological Association (APA) or the standards set out by the Board. (§37-17-302, MCA and associated administrative rules.)

5. Walden is not approved by the APA, so the minimum standards set by the Board apply. The current rules require a one-year residency at the institution granting the degree, with the residency defined as “continuous, full time, active engagement” in the program while the student is “physically present” at the institution. (ARM 24.189.301(2); ARM 24.189.604(1)(i).) This language was added in an amendment adopted in June, 2010 (MAR Notice No. 24-189-32.) Taxpayer’s residency in the Walden program does not meet this amended standard. (Testimony, Myrup.) The rules in place during the tax years in question also required a one-year residency, but the definition of residency was less specific. (MAR Notice No. 24-189-32)
6. The Department of Revenue audited the Taxpayers’ returns for 2007, 2008 and 2009 (DOR Exh. AA, Letter of Cameron LaRocque, January 11, 2011) and disallowed the deduction for the tuition because “the expenses for obtaining her Psy.D. are part of a program that will qualify her for a new trade or business and are needed to meet the minimum educational requirements of that trade or business and therefore are not deductible as a business expense.” (DOR Exh. CC, p. 9.)
7. Taxpayers appealed that decision to the Office of Dispute Resolution, which held a hearing and affirmed the DOR’s decision to disallow the deduction. (Decision of Howard Heffelfinger, Hearings Examiner, Sept. 21, 2011.)
8. Taxpayers appealed to this Board (Notice of Appeal, Oct. 17, 2011) stating that Montana Regulations required further study to qualify for licensure. “The FACT is Tres. Reg. 1.162.5 states ONLY the program of study, not the program of study plus addition (sic) qualifiers.”

9. Taxpayers argued that the program of study does not qualify Ms. Ehrmantraut-Myrup for a new trade or business because Walden is not APA accredited, and she would have to complete further study to qualify. Taxpayer further stated that she did not attend Walden for the psychologist license but rather to learn testing techniques and improve her skills for her counseling practice and that the study was in furtherance of her existing trade or business as a counselor. Her enrollment in the program “was never about getting licensed.” (Testimony, Ehrmantraut-Myrup.)
10. Several pieces of evidence, however, suggest she did plan to pursue a license. First, she enrolled in the licensure track of the Psy.D. program at Walden. (Professional Goal Statement of Paula L. Ehrmantraut, Walden University, DOR Exh. C, p.1.) Second, in her goal statement, Taxpayer stated “I have to consider a program with accreditation that will allow me to apply for licensure upon graduation.” (DOR Exh C., p.5.) Third, she inquired about licensing with the Montana Board of Psychologists in an email stating her “plan to pursue licensing” once she has completed her dissertation. (Taxpayers’ Pre-hearing submission, p.1.) Fourth, she described herself on her own website as a “Clinical Psychologist PsyD – ABD” a title that requires a license in Montana. (DOR Exh. CC, p. 9.) By her testimony, ABD stands for “all but dissertation.”
11. The requirements for the Taxpayers’ counseling (LCPC) license is a Master’s degree and 20 hours per year of continuing education. The state’s requirement for the Clinical Psychologist license is a doctorate in psychology which includes 2,000 hours of internship. The coursework and standards for the two licenses are different. (Testimony, Ehrmantraut-Myrup.)

12. Taxpayer stated she did not take the Walden courses to satisfy her continuing education requirements. She took continuing education courses for that purpose. (Testimony, Ehrmantraut-Myrup.)
13. The Clinical Psychologist license would allow Taxpayer to advertise herself as a clinical psychologist, bill insurance companies for her services as a clinical psychologist, perform psychological testing, and charge a higher hourly rate for her services. (Testimony, Ehrmantraut-Myrup.)
14. The DOR argues that the Psy.D. program is preparation for a different trade or business from the business of counseling she was engaged in at the time of her enrollment, with different educational and licensing standards, and her tuition is therefore not deductible. (DOR Exh. CC, p. 9.)
15. The DOR further argues Ms. Ehrmantraut-Myrup collected unemployment for the three years in question and therefore did not have a trade or business at the time of the deductions. (DOR argument, Brenda Gilmer.)
16. Taxpayer's income tax returns for those three years show her gross income from her business, "Counciling Solutions," exceeded \$126,000. (DOR Exhs. G, O and V.)

Principles of Law

1. In Montana, gross income and net income are defined in the same way as the Internal Revenue Code defines those terms for federal tax purposes. (§15-30-111, MCA.) The definition of ordinary and necessary business expenses in the Montana income tax statute is, therefore, the same as the definition in 26 U.S.C. § 62.
2. Education expenses are deductible under §162 I.R.C. as ordinary and necessary business expenses. Regulation §1.162.5 defines the test for deductibility. If the education “(a)(1) Maintains or improves skills required by the individual in his employment or other trade or business, or (2) Meets the express requirements of the individual’s employer. . .” the expenses are deductible.
3. Nondeductible educational expenditures are defined in (b)(2) as those required to meet minimum education requirements for qualification in his employment and in (b)(3) expenditures which will lead to qualifying in a new trade or business. A change of duties while in the same general type of work does not constitute a new trade or business, such as an elementary school classroom teacher moving to secondary school teaching. (§26 CFR 1.162-5(b)(3).)
4. An example in the regulations cited by Taxpayers states that a taxpayer engaged in the private practice of psychiatry, undertaking a program of study leading to his qualifying to practice psychoanalysis, is not entering a new trade or business. (26 CFR 1.162-5(b)(3)(ii)(4).)
5. The regulations state that an individual’s intentions with regard to the use of the education are not decisive. If it qualifies the person for a new

occupation, it is non-deductible even if the person does not intend to use the education to enter a new trade or business. (26 CFR 1.162-5(b)(3)(ii)(3).)

Findings of Fact and Conclusions of Law

The case before us presents the issue of whether expenses of a doctoral program are deductible when the Taxpayer has not yet qualified for a new trade or business. The Taxpayer argues that the tasks of a psychologist are basically the same as those she performs as a counselor and the necessity for further training means the degree did not prepare her to be a licensed clinical psychologist. She claims her training was to improve her counseling skills in her current position rather than the pursuit of licensing in a new trade or business.

Although there are several facts indicating the Taxpayer did intend to pursue licensing, the regulations (*see* POL 5) as well as the case law establishes that her subjective intent is not decisive. In *Siewert v. U.S.*, 500 F. Supp. 1076, 1975, the Court denied a deduction for the expenses of medical school incurred by a chiropractor who claimed that the medical education was only intended to assist him in his chiropractic practice. The Court said:

The question of whether the education qualifies one for a new trade or business is measured by objective standards; a taxpayer's motive and intent in pursuing the education is irrelevant. *Melnik v. United States*, 521 F.2d 1065 (C.A. 9, 1975), *aff'g* 73-2 U.S.T.C., par. 9521 (C.D.Calif., 1973); *Burnstein v. Commissioner*, 66 T.C. 492 (1976). The fact that the taxpayer did not intend to qualify for a new trade or business does not render the expenses deductible so long as such expenditures would lead to qualifying the taxpayer for a new trade or business. *O'Donnell v. Commissioner*, 62 T.C. 781 (1974), *aff'd per curiam*, 519 F.2d 1406 (C.A. 7, 1975).

Similarly, a deduction was denied in *Thompson v. Comm.*, T.C. Memo 2007-174. The taxpayer was an aeronautical engineer who took flight lessons and obtained a pilot's license to improve his ability to evaluate cockpit ergonomics and design, with no intentions of becoming a professional pilot. "The mere capacity to engage

in a new trade or business is sufficient to disqualify the expenses for the deduction.” *Id.* at 4. The issue in this case, therefore, is whether obtaining a Psy.D. in clinical psychology could qualify the Taxpayer for a new trade or business.

Taxpayer claims the Walden program is not APA approved, therefore, she cannot become licensed in Montana without further education, but we find and conclude that requirement is not dispositive. The requirement of an internship does not make medical school tuition deductible, because the medical school education is a basic requirement for entering a new trade or business and the internship is part of the program. Furthermore, the definition of an acceptable internship specified in the regulations was amended in 2010, after the Taxpayer’s courses were completed and the tuition at issue here was paid. In the comments published with the amendments, the Board of Psychologists stated the goal was not to outlaw online learning programs, but that some “areas of competence must be assessed by working closely with professors, supervisors and other students over time.” (MAR Notice No. 24-189-32.) A change in the regulations cannot retroactively render the tuition deductible. The amended regulations do increase the educational requirements the Taxpayer will have to meet to be licensed in the State of Montana but do not prevent her from obtaining a license. Further, we would note that licensure in Montana *specifically* is not the test under the internal revenue code. Rather, the test is whether she will be qualified for a new trade or business generally.

An additional issue is whether the licensed psychologist is a new trade or business or just an extension of her current trade or business as a licensed counselor. The case law makes it clear that if the training is within the same general trade or business but qualifies the individual for significantly different tasks or greater responsibilities and management opportunities, the tuition

expenses are nondeductible as leading to a new trade or business. Thus in *Robinson v. Comm.*, 78 T.C.550 (1982), a licensed practical nurse was denied a deduction of the expenses of education leading to a registered nurse license. The Court found that the separate licensing of the two nursing positions was significant in concluding they were separate trades or businesses even though the tasks of caring for the ill and infirm might be similar. See also *Johnson v. Comm.*, 77 T.C, 876 (1981) (real estate agent and real estate broker); *Glenn v. Comm.*, 62 T.C. 270 (1974) (licensed public accountant and certified public accountant); and *Antzoulatos v. Comm.*, T.C. Memo 1975-327 (intern pharmacist and registered pharmacist.)

The value of the rights and privileges obtained by licensing in a certain profession, even for those already employed in that profession, are also significant in rendering the expense of that education nondeductible because licensing provides widely varying employment options and greater earning capacity. See *Mitrevis v. Commissioner*, P-H Memo T.C., par. 63,066 (1963) (dental school expenses of foreign dentist not deductible where the education was undertaken to qualify the taxpayer for the practice of dentistry in the United States) and *Sharon v. Commissioner*, 66 T.C. 515 (1976), *aff'd per curiam*, 591 F.2d 1273 (C.A. 9, 1978) (expenses incurred for a bar review course to gain admission to the bar of a second state constituted nondeductible personal educational expenditures.)

The example in the regulations cited by the Taxpayers (*see* POL 4) as controlling in this case involves a psychiatrist who studies psychoanalysis and is permitted to deduct the tuition expenses. In that example, the taxpayer was already a licensed psychiatrist and the education he obtained did not result in further licensing or a new trade or business.

A recent case with similar facts to the one before us, *Ortega v. Comm.*, T.C. Summary Opinion, 2009-120, involved a taxpayer with a master's degree in clinical psychology who worked as a mental health practitioner with the Corrections Department. She obtained a PhD and later gained employment as a staff psychologist with the Bureau of Prisons in another state. She claimed that she worked in the same field and performed similar tasks in both jobs, but the Court denied the deduction, citing the difference in the educational requirements of the two licenses and the varying tasks and employment opportunities for which the advanced education prepared the taxpayer.

In this case, there are very different educational requirements and separate licensing procedures for the counselor and psychologist licenses. The education the Taxpayer has obtained prepared her, specifically, and by design, for licensure as a psychologist. A change in the regulations after her coursework and internship were complete (but before she applied for a license) have added to the educational requirements she must meet, but will not prevent her from obtaining a license. We affirm the decision of the DOR in denying the Taxpayers' deduction.

ORDER

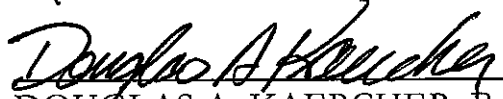
IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the tax, penalties, and interest, as assessed by the Department of Revenue, are properly due and owing.

Dated this 23rd day of March, 2012.

BY ORDER OF THE
STATE TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman



DOUGLAS A. KAERCHER, Board Member



SAMANTHA SANCHEZ, Board Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of March, 2012, a true and correct copy of the foregoing has been served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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