Educational Deductions: IRS Wants to Tighten Up

A sideline skirmish is shaping up in Washington over a proposed ruling by the Internal Revenue Service that would limit federal tax deductions for educational expenditures. Since the new ruling would hit hardest at established teachers returning to college for advanced training, it is not surprising that the National Education Association (NEA), an organization composed of individual teachers, is leading the opposition. But the interests of a number of other professional groups—doctors, lawyers, university professors—also are affected by the proposed rule change, and representatives of the professional organizations in these fields have been among those petitioning the IRS for a hearing and, they hope, a change of heart.

Technically speaking, there is very little new in the IRS proposal. Under the proposed rule, as at present, educational expenses are tax-deductible only if the education: (i) "maintains or improves skills required by the individual in his present employment . . . ," or (ii) "meets the express requirements of the individual's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation." Educational expenses are not deductible if the education is undertaken to qualify the taxpayer for a position for which he lacks the minimum qualification, to qualify him for substantial advancement in his present position, or for the purpose of obtaining a degree.

The gist of the IRS's position is that there is no such thing as an "educational deduction," there are only deductions that may be made for ordinary and necessary business expenses. The tax agency therefore is less interested in benefits accruing to the individual taxpayer than in the relation between the taxpayer and his employer. Strictly speaking, the IRS does not itself have a "position"; in issuing the regulations—which it terms "clarifying regulations"—it is merely interpreting the law, which does not provide a separate tax category for educational expenses.

The NEA, however, regards the new IRS "clarifications" as a setback in its campaign to win acceptance of the view that expenses incurred in going to college are ordinary and necessary business expenses for teachers. The first major step in its favor, the NEA believes, were the regulations issued in 1958—the ones now being revised. At that time legislation to facilitate educational deductions had been approved by the House Ways and Means Committee and, in the post-Sputnik enthusiasm for education, was thought to have a reasonably good chance of passage.

At that point the IRS stepped in and issued its rules. These were not entirely favorable to the teachers, but they were regarded as an improvement on the previous situation in which allowable deductions were rare. In addition, the 1958 rules left a broad area of uncertainty about what was allowable and what wasn't; and while the uncertainty produced various interpretations by regional IRS agents—to the despair of the agency, which seeks to have tax rules applied identically everywhere—it also left room for considerable litigation, a substantial amount of which was decided in favor of the taxpayers. Thus, while the new IRS rule —which merely eliminates some ambiguous language—is regarded at IRS as simply a more lucid explanation of its original purpose, to the NEA it signifies a hardening of IRS determination to be tough on the teachers. "They'll get uniformity, alright," commented an NEA spokesman; "They'll be uniformly anti-taxpayer."

Even with the most lucid explanations, however, the tax regulations are almost bound to seem arbitrary. Take the following cases: Every 3 years, state *X* requires its permanent teachers to take certain courses that yield 6 hours of academic credit. Teacher *A* takes the courses—but not as part of a degree program—and receives an automatic salary increase as a result. Since he took the courses as part of a condition of employment, his expenses are deductible; had he taken them in order to obtain the salary increase, they would not be deductible; and they would not be deductible if he had taken them under a program leading to a degree. Another example: a general practitioner taking a summer review course may deduct his expenses because the courses are designed to maintain or improve his skills; if he were taking the course to qualify him for a new specialty—for example, pediatrics —they would not be deductible because he would be considered to be attempting to qualify for a new position. A third example: a student two-thirds of the way through law school takes a job with a law firm while continuing his schooling at night. In order to qualify for continued employment with the firm, he must receive an LLB and pass the state bar examination. But his expenses are not deductible because they represent an effort to obtain the minimum level of training required for his position. Similarly, a graduate student with a BA becomes an instructor at a university while continuing to take graduate courses. To become a member of the regular faculty he must obtain his degree, and to continue as an instructor he must demonstrate that he is working to obtain it. His expenses, however, are nondeductible; they are considered personal capital expenditures undertaken to qualify him for advancement.

The reasoning behind these IRS distinctions goes back to its effort to effect equal application of the law: in the absence of a Congressional mandate to the contrary, the agency feels that it is unjust to give a tax break to the employed student because he is employed while it seeks to obtain full payment from the student who is going straight through school and will work afterward.

The same reasoning applies to one of the few points in the IRS ruling that does represent a substantive change. Under the present rules the

agency took the position that, if a taxpayer had once been certified as having met the minimum requirements of his position, he would always be considered to have met them. An example is a teacher with a BA degree and a permanent teaching certificate in a state that suddenly changes its certification requirement to a master's degree. Under the present rules the teacher may deduct the cost of the required further training; under the new proposal, he may not—because the additional education is undertaken to attain the minimum required standard. The IRS believes that this ruling will eliminate an inequity under the present laws: a February graduate who has taught for one semester, for example, may currently deduct expenses incurred in meeting upgraded state requirements, whereas a June graduate who has never taught may not deduct her further expenses.

Even if the IRS regulations were flawless in both logic and fairness, however, they would still touch on a basic contradiction: the government is giving away a lot of money for education with one hand (under NDEA and many other programs) and taking it back with the other. It is this contradiction that bothers the NEA and that may yet prompt Congressional intervention. Nearly half the members of the U.S. Senate have already associated themselves (as either sponsors or cosponsors) with bills that would make educational deductions an express national policy. Similar moves are underway in the House, and, while they may amount to little more than election-year gambits—tax deductions are especially popular with the folks back home, and this particular IRS effort has drawn a lot of mail—it appears that the IRS is in no great hurry to advance implementation of the regulations. The 30 days allotted for filing complaints and requests for a hearing were up last week, but the IRS has not yet set a hearing date. This does not necessarily mean, as the NEA hopes, that the IRS is backing off, but the agency does appear to be moving cautiously. The most that can be said at this moment is that, while both death and taxes remain certain, some taxes are more certain than others.

—ELINOR LANGER

Dogs and Cats: Humane Treatment Legislation Nears Passage

House and Senate conferees agreed last week on a version of controversial legislation to regulate the handling of dogs, cats, and certain other animals used in research. The legislation has been around for so long, has been the object of so much position-trading, and has such complex implications in terms of the long battle between scientists and the humane movement that conventional descriptions of the bill as "strong" or "weak" seem no longer to apply.

The bill does not provide for federal regulation of actual experimentation on animals, a perennial objective of large segments of the humane movement. But it does provide for considerable federal regulation of what goes on in research laboratories before and after the animals leave the operating table—something the scientists had hoped to avoid. In short, the bill, appears likely to leave all interests partly satisfied and partly dissatisfied. All the parties have more cards up their sleeves: in the case of the humane movement, plans for further legislation; in the case of the research community, hopes to forestall such legislation by strengthening self-regulation. All these factors add up to the conclusion that this particular war is not yet over.

The bill approved by the conference committee (HR 13881) provides for the Secretary of Agriculture to license dealers who buy and sell dogs and cats in interstate commerce. Research institutions are required to register with the Secretary of Agriculture, but need not be licensed. Dealers and institutions are required to keep records of the purchase, sale, transportation, identification, and previous ownership of dogs and cats. Monkeys, hamsters, guinea pigs, and rabbits are included under humane standard provisions that are binding on both dealers and institutions, but records are not required for them.

The Secretary of Agriculture, in cooperation with federal agencies and other interested parties, is authorized to establish standards governing the humane care, treatment, handling, and transportation of animals by both dealers and research institutions. These standards will include minimum requirements concerning housing, feeding, watering, sanitation, ventilation, shelter, separation by species, and veterinary care. These standards, however, will not apply to institutions during the conduct of the actual research or experimentation.

The Secretary of Agriculture is authorized to make necessary investigations to see that dealers and research units are complying with departmental regulations; inspectors are authorized to confiscate or destroy any animals found to be suffering either as a result of violations of the humane standards regulations or unnecessarily beyond the duration of the experiments for which they were utilized. Dealers and research institutions are required to open their premises and records to inspectors and to law-enforcement agencies in search of lost animals.

The penalties for an animal dealer found in violation include suspension of his license and 1-year imprisonment or a $1000 fine—or both. For research facilities there is a civil penalty of $500 for each offense, with the added proviso that each daily continuation of a violation constitutes a separate offense. The punitive provisions include the customary opportunities for administrative hearings and review.

Floor debate on the bill will be either nonexistent or brief, as it has already been thoroughly discussed in both Houses. Anything but easy passage for the bill is extremely unlikely; and the new deal for dogs and cats is practically under way.—E.L.