Source: IRS Documents > Revenue Rulings > 1974 > REV. RUL. 74-453, 1974-2 C.B. 19

REV. RUL. 74-453, 1974-2 C.B. 19

Nonresident alien's maintenance allowance; U.S. on-the-job trainee. A maintenance allowance received from a U.S. business firm by a nonresident alien, a foreign university degree candidate in the U.S. during his summer vacation under an on-the-job training program intended to supplement his education but not required by the university in his native country with which the U.S. has no tax treaty, does not qualify as a scholarship or fellowship grant and is compensation for services includible in gross income under section 61 of the Code. The remuneration received constitutes income effectively connected with the conduct of his trade or business in the U.S. subject to the rules of sections 871(b) and 873, but his "tax home" is the location of his training and no deduction may be claimed under section 162(a) for travel expenses in connection with the services performed for the U.S. firm.

26 CFR 1.61-1: Gross income.

(Also Sections 117, 162, 873; 1.117-4, 1.162-2, 1.873-1.)

Advice has been requested whether a maintenance allowance received by a nonresident alien trainee, under the circumstances described below, is includible in his gross income and, if includible, whether amounts representing his traveling expenses (including amounts expended for meals and lodging) are deductible under section 162(a) of the Internal Revenue Code of 1954.

A, a nonresident alien and a candidate for a degree at a foreign university, came to the United States as a trainee in 1973 for a period of 90 days during his summer vacation under a program sponsored by a private nonprofit organization that helps foreign students obtain on-the-job training with participating United States industrial companies. A was not gainfully employed while attending the foreign university. The on-the-job training gained through the program is intended to supplement college and university education. In A's case the training period was not required by his university as a prerequisite for a degree.

As a trainee, A received a maintenance allowance from, and in an amount determined by, the company with which he trained. The maintenance allowance was calculated to cover A's living expenses during his training in the United States. A performed services for the United States company that were incident to his training. These services were not performed for an office or place of business maintained by such company in a foreign country or in a possession of the United States. During his training, A was temporarily present in the United States as a nonimmigrant under subparagraph (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, 8 U.S.C. section 1101 (1970). After his training, A returned to college in his native country. There is no treaty under which the amounts received by A would be exempt from United States income tax.

Section 61 of the Code provides that, unless otherwise excluded by law, gross income includes all income from whatever source derived including, but not limited to, compensation for services.

Subject to certain limitations and qualifications, section 117(a) of the Code provides that gross income of an individual does not include any amount received as a scholarship at an educational institution or as a fellowship grant.

Section 1.117-4(c) of the Income Tax Regulations provides, in part, that any amount paid or allowed to, or on behalf of, an individual to enable him to pursue studies or research shall not be considered to be an amount received as a scholarship or a fellowship grant for the purpose of section 117 of the Code if such an amount represents (1) compensation for past, present, or future employment services, (2) payment for services that are subject to the direction or supervision of the grantor, or (3) payment for the pursuit of studies primarily for the benefit of the grantor. Thus, the fact that there is some element of education involved in a grant is not

dispositive of whether a scholarship or fellowship exists for purposes of section 117. However, if the primary purpose of the studies or research is to further the education and training of the recipient in his individual capacity and the amount provided by the grantor does not represent compensation or payment for services as described above, the amount will be considered a scholarship or a fellowship grant for purposes of section 117.

The Supreme Court of the United States in the case of Bingler v. Johnson, 394 U.S. 741 (1969), 1969-2 C.B. 17, upheld the validity of the regulations under section 117 of the Code. The Court stated that the ordinary meaning of "scholarships" and "fellowships" is that they are relatively disinterested, "no strings" educational grants, with no requirement of any substantial "quid pro quo" from the recipient.

In the case of an individual who is not a candidate for a degree at an educational institution, in addition to the definitional requirements of section 117(a) of the Code and section 1.117-4(c) of the regulations, section 117(b)(2) provides, in part, that amounts can be excludable as scholarship or fellowship grants only if received from organizations described in section 117(b)(2)(A).

Whether an amount received by an individual is excludable from his gross income under section 117 of the Code depends upon the facts and circumstances under which the payment is made. In the instant case, although the services A performed may have involved some element of education, such services were subject to the direction or supervision of the United States company and, therefore, his maintenance allowance was not received as a scholarship or a fellowship grant for purposes of section 117. Moreover, since the services were not rendered in satisfaction of requirements for A's degree, A is not considered a degree candidate with respect to those services. Thus, within the definition of a scholarship or fellowship as limited by section 1.117-4(c) of the regulations, it would still not be excludable as a scholarship or fellowship grant because the company is not an organization described in section 117(b)(2)(A).

Accordingly, the remuneration received by A from the United States company, even though designated as a maintenance allowance, does not qualify as a scholarship or fellowship under section 117 of the Code, and is includible in gross income pursuant to section 61.

Section 861(a)(3) of the Code provides, in general, that compensation for labor or personal services performed in the United States shall be treated as income from sources within the United States.

Section 864(b) of the Code provides, in general, that the term "trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year.

Section 1.864-4(c)(6)(ii) of the regulations provides, in pertinent part, that wages, salaries, other remuneration, etc., received by a nonresident alien individual for performing personal services in the United States constitute income that is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual if he is engaged in a trade or business in the United States at some time during the taxable year in which such income is received.

Section 871(b)(1) of the Code provides that a nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 1201(b) on his taxable income that is effectively connected with the conduct of a trade or business within the United States.

Since the remuneration received by A in 1973 from the United States company does not qualify as a scholarship or fellowship under section 117 of the Code, such amount is compensation to A for performing personal services in the United States. This compensation is not exempt from taxation under a treaty between the United States and A's native country. Accordingly, the remuneration received by A for performing services in the United States constitutes income that is effectively connected for 1973 with the conduct of A's trade or business in the United States and is subject to Federal income tax under section 871(b)(1).

Section 162(a) of the Code provides, in part, that there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including traveling expenses (which include amounts expended for meals and lodging other than amounts that are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business.

Under section 873 of the Code, a nonresident alien is permitted deductions for traveling expenses to the extent that such expenses are connected with income that is effectively connected with the conduct of a trade

or business within the United States. The conditions for the deductibility of a traveling expense are set forth in Rev. Rul. 60-189, 1960-1 C.B. 60 (following the Supreme Court decision in Commissioner v. Flowers, 326 U.S. 465 (1946), 1946-1 C.B. 57) as follows: (1) that it must be a reasonable and necessary traveling expense, (2) it must be incurred "while away from home", and (3) it must be incurred "in pursuit of business."

In discussing the concept of "tax home" for traveling expense purposes, Rev. Rul. 60-189 concludes, in part, that a "tax home" is wherever the taxpayer works, unless he has a different principal or regular place of business or employment or a real and substantial business justification for working away from his abode. In the instant case, A had no principal or regular place of business or employment away from the location of his training. His reason for working away from his abode was to supplement his education and, therefore, was not a business justification. Thus, his "tax home" was at the location of his training in the United States, and the traveling expenses incurred in connection therewith were not incurred "while away from home."

Accordingly, A cannot claim a deduction under section 162(a) of the Code for his traveling expenses while performing services for the United States company.

ISSN 1947-3923