

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81 (10) I
Income Tax
December 31, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1810820A

On August 20, 1981, a Petition for Advisory Opinion was received from Frank and Susan O'Donnell, 411 Kings Court, West Babylon, New York 11704.

The issue raised is whether Petitioners are entitled to a deduction, under Article 22 of the Tax Law (Personal Income Tax), for certain educational expenses incurred in 1978, with respect to which year they filed a tax return as residents of New York.

Petitioner Frank O'Donnell (hereinafter referred to as "Petitioner") states that he is a professional airplane pilot, licensed as such by the Federal Aviation Administration since 1967, and that prior to 1978 he was employed as a pilot by a charter airline. From January 9, 1978 through March 16, 1978 Petitioner attended a course at the Braniff Education System Inc. flight school which qualified him to operate a B727 aircraft, a two engine plane. Subsequent to March, 1978 Petitioner was employed as a professional pilot with Evergreen International Airlines.

Section 615(a) of the Tax Law provides that the New York itemized deduction of a resident individual means the total amount of his Federal itemized deductions, with certain modifications. Section 162 of the Internal Revenue Code provides for a deduction for trade or business expenses. Federal Income Tax Regulations, 26CFR§ 1.162-5 provides that certain expenditures made by an individual for education may constitute deductible trade or business expenses. It is there provided, in relevant part, that expenditures "made by an individual for education . . . which are not expenditures of a type described in paragraph (b)(2) or (3) of this section are deductible as ordinary and necessary business expenses if the education -- (1) Maintains or improves skills required by the individual in his employment or other trade or business, " 26 CFR § 1.162-5(a). Paragraph (b)(2) and(3) refer, respectively, to "education which is required of . . . [the taxpayer] in order to meet the minimum educational requirements for qualification in his employment or other trade or business," and "expenditures made by an individual for education which is part of a program of study being pursued by him which will lead to qualifying him in a new trade or business."

In the present case the education in question was designed to improve Petitioner's skills in his career as a commercial pilot, and constituted education beyond that necessary to meet the minimum educational requirements pre-requisite to entering upon such a career. Further, although Petitioner by virtue of the course in question became qualified to operate a type of aircraft which he was not formerly qualified to fly, such does not constitute qualification for a new trade or business. See in this regard Matter of Carl J. Richter, State Tax Commission decision, March 13, 1981, TSB-H-81(121)i; Rev. Rul. 74-78, 1974-1CB 44; 26 CFR § 1.162-5(b)(3). Finally, the fact that Petitioner's educational expenses were incurred during a brief hiatus in his employment warrants no different conclusion.

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See Rev. Rul. 68-591, 1968-2 CB 73. Accordingly, the educational expenses described by Petitioner herein are includible in the Petitioners' New York itemized deduction on their personal income tax return for 1978.

DATED: November 4, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau