

Issue:

Are home school teachers “eligible educators” for the \$250 educator expense deduction?

Discussion:

For 2003 and following, an eligible educator is allowed a pre-AGI deduction of up to \$250 for classroom expenses paid during the tax year [IRC Sec. 62(a)(2)(D)]. The deduction is reported on line 23 of the Form 1040. Eligible expenses include books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment and supplementary materials used by the educator in the classroom. These expenses must meet the definition of IRC Sec. 162 ordinary and necessary employee business expenses.

An eligible educator is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a K–12 school for at least 900 hours during a school year [IRC Sec. 62(d)(1)(A)].

Taxpayers filing joint returns who are both eligible educators are each eligible for the \$250 deduction, for a total of \$500 on the return. However, neither spouse can deduct more than \$250 of his or her own expenses.

Note: The school year is used in determining if an individual meets the 900-hour requirement for defining an eligible educator, whereas the \$250 deduction is for expenses paid during the tax year. Because a school year spans two tax years, an individual that qualifies as an eligible educator for either the 2003/2004 or 2004/2005 school year is eligible for the deduction for both the 2003 and 2004 tax year.

Warning: The statute also provides that expenses are allowed only to the extent they were not otherwise reimbursed via a tax-free withdrawal from a Section 529 plan, a Section 530 Coverdell Education Savings Account, or a Section 135 tax-free U.S. savings bond redemption. This provision appears to be overkill, as an educator’s personal continuing education expenses that might be reimbursed under any of these three arrangements are unlikely to overlap with the definition of eligible K–12 classroom materials and supplies.

Example: Teacher’s deduction for classroom expenses.

John, age 30 and single, is a tenth grade history teacher. During 2007, he routinely incurs \$350 for supplemental classroom materials and supplies that are not reimbursed by his employer. John can deduct \$250 on line 23 of his 2007 Form 1040. If John’s marginal federal rate is 15%, this saves \$38; if his marginal federal rate is 25%, savings are \$63. This provision does not allow John to claim a pre-AGI deduction for his teaching union dues, nor summer course work that he takes at the university under the continuing education requirements for teaching certification.

Note: The educator expense deduction was previously set to expire after 2003. The Working Families Tax Relief Act of 2004 extended this deduction through 2005. If the taxpayer claimed such an expense in 2003, be sure to check on it for 2004 and 2005. They may not be aware that the deduction is available for both years.

INTERNAL REVENUE CODE (in pertinent part)

§ 62 Adjusted gross income defined.

(a) General rule.

(2) Certain trade and business deductions of employees.

(D) Certain expenses of elementary and secondary school teachers. In the case of taxable years beginning during 2002, 2003, 2004, or 2005 the deductions allowed by section 162 which consist of expenses, not in excess of \$250, paid or incurred by an **eligible educator** in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

(d) Definition; Special rules

(1) Eligible educator.

(A) In general. For purposes of subsection (a)(2)(D), the term "eligible educator" means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for **at least 900 hours during a school year**.

(B) School. The term "**school**" means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under **State law**.

Source: IRC Sec 62

HOME SCHOOLS ARE PRIVATE SCHOOLS Some in the home school community, including our friends at Home School Legal Defense Association, fear that if the term "home school" is mentioned in state law, it will somehow lead to a definition of home school as something other than a private school and will endanger the freedom from regulation that we now enjoy. However, **in the Leeper case the Texas Supreme Court clarified that the legislature intended home schools to be considered private schools** and exempt from the compulsory attendance law when it passed that statute in 1915. **The court also defined a "home school" as a parent or one standing in parental authority that is pursuing a curriculum that covers the basic educational goals of reading, spelling, grammar, math and a study of good citizenship.**

The term "home school" is already in the Texas law. In the last legislative session, Texas law was changed to require junior colleges and community colleges to allow private school students to take part in dual credit courses to receive high school and college credit for courses taken. This change included the term "**home school**" to clarify that home schools **were private schools and home**

school students must be given equal treatment. Far from endangering our freedom this measure reinforced that the legislature views home schools as private schools while at the same time removing a discriminatory policy against home schoolers.

Source: www.thsc.org

Excerpts from Senate Bill 1 - Texas Education Code As Passed by the 78th Texas Legislature

Chapter 25

SUBCHAPTER C. OPERATION OF SCHOOLS AND SCHOOL ATTENDANCE
Section 25.085. COMPULSORY SCHOOL ATTENDANCE.

(a) A child who is required to attend school under this section shall attend school each school day for the entire period the program of instruction is provided.

(b) Unless specifically exempted by Section 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 18th birthday shall attend school.

Section 25.086. EXEMPTIONS.

(a) A child is exempt from the requirements of compulsory school attendance if the child:

(1) attends a **private** or parochial **school** that includes in its course a study of good citizenship;

Source: www.tea.state.tx.us/home.school/hometec.html

Conclusion:

Home school teachers **ARE** eligible educators for purposes of the \$250 educator expense deduction. According to Texas state law, a home school is a private school and the deduction is based on whether the educator teaches in a school that is recognized under state law.