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Federal Taxation

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under the Uniform Act.[63] Such a provision is necessary for many state administrators and the Securities Exchange Commission[64] have taken the position that employees' benefit plans involve an offering of a security and thus are subject to registration under blue sky laws if there is no statutory exemption.

CONCLUSION

As evidenced by the above amendments, the states are realizing the shortcomings of their existing blue sky laws in the areas which demand uniformity. The amendments demonstrate the trend of the states to follow the lead of the Uniform Securities Act in providing this uniformity. No doubt this does produce a degree of uniformity among state blue sky laws, but it is slow and unorganized. It would seem far better for a state to start with the Uniform Securities Act and amend *it* to serve the needs of the state, rather than to attempt in a piecemeal fashion to amend the existing laws to conform to some type of uniform blue sky law.

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FEDERAL TAXATION

Primarily due to congressional efforts to formulate an acceptable tax relief program for 1963, there has been little major legislation enacted recently in the field of federal taxation. It is important, however, to note that a recent amendment to Section 214 of the Internal Revenue Code facilitating the use of the child care deduction for deserted wives will become effective during the present taxable year.[1]

This amendment manifests congressional cognizance of the financial problems which often confront a deserted wife. It is primarily designed to grant a deserted wife the care expense deduction privileges which were formerly afforded only to widows, widowers, or women legally separated from their husbands under a decree of divorce or separate maintenance.[2] The amendment does not, however, affect any provisions applicable to other per-

[63] Uniform Securities Act § 402(a)(11).

[64] Loss, op. cit. supra note 38, at 361.

[1] 77 Stat. 4 (1963). This section amends Int. Rev. Code of 1954, 214(c)(3) by adding 214(c)(3)(B). Section 214(c)(3) now reads:

> DETERMINATION OF STATUS—A woman shall not be considered as married if (A) she is legally separated from her spouse under a decree of divorce or of separate maintenance at the close of the taxable year, *or (B) she has been deserted by her husband, does not know his whereabouts (and has not known his whereabouts at any time during the taxable year), and has applied to a court of competent jurisdiction for appropriate process to compel him to pay support or otherwise to comply with the law or a judicial order, as determined under regulations of the Secretary or his delegate.* (Added provisions italicized.)

The added provisions became effective for taxable years ending after April 2, 1963.

[2] S. Rep. No. 69, 88th Cong., 1st Sess. (1963), U.S. Code Cong. & Ad. News 394 (April 20, 1963).

sons entitled to the child care deduction under section 214. Nor does the amendment alter the existing rule allowing a $600 maximum deduction where the expenses were incurred by the taxpayer for the care of certain dependents in order to enable the taxpayer to remain gainfully employed, or in active search of gainful employment.[3]

Prior to the amendment, section 214 lacked any specific provisions for special treatment of a deserted wife. As such, she was left with no alternative but to claim the care deduction as the "working wife" of a self-supporting husband.[4] This unfortunate situation unavoidably subjected her to provisions curtailing the use of the deduction, these provisions having primarily been intended to place limitations upon married couples filing jointly.[5] Being classified as a "working wife" resulted in the following problems for the deserted wife. First, the $600 maximum deduction could be reduced by any amount of the combined adjusted gross income exceeding $4,500 (based on a joint return), the entire deduction being completely lost where the combined adjusted gross income exceeded $5,100.[6] Secondly, it was mandatory that a deserted wife (like a "working wife" having a self-supporting husband) file a joint return with her spouse.[7] This requirement unfortunately precluded her from claiming the deduction in any instance where she was unable to locate her husband.

The unrealistic treatment previously accorded deserted wives was exemplified in the case of *Jean L. Conti Price*.[8] The failure of a wife, living apart from her estranged husband, to file a joint return deprived her of the right to claim the child care deduction. The court, without considering the possibility of a deserted wife's inability to locate her husband, held that for tax purposes she was still considered a married "working wife" under section 214(b)(2), and thus she was precluded from the deduction unless she filed a joint return as required under section 214(b)(2)(A).[9]

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[3] Int. Rev. Code of 1954, § 214(a). The original purpose of the child care deduction was to afford relief in situations where a wife was compelled to work in order to provide at least subsistence standards in the household, and at the same time obligated to pay for the care of her children in order to enable her to remain working outside her home.

[4] Int. Rev. Code of 1954, § 214(b)(2). Prior to the amendment, deserted wives failed to qualify for special status treatment as an unmarried woman as determined under § 214(c)(3), and thus were treated as a married "working wife" and subjected to the provisions of § 214 (b)(2).

[5] The limitations imposed upon working wives are found in subsections 214(b)(2)(A), and 214(b)(2)(B).

[6] Int. Rev. Code of 1954, § 214(b)(2)(B). E.g., where a "working wife" incurred $800 child care expenses during the taxable year, and the combined adjusted gross income when filed jointly with her husband was $4,900; the allowable deduction under § 214(b)(2)(B) would be $200. ($600 maximum deduction, less the amount of the adjusted gross income exceeding $4,500 ($400)). Thus where the combined adjusted gross income exceeds $5,100, the entire $600 deduction will be lost. See examples 2 and 3, Treas. Reg. § 1.214-1(c) (1956).

[7] Int. Rev. Code of 1954, § 214(b)(2)(A).

[8] 34 T.C. 163 (1960).

[9] Prior to the amendment, only a woman having the status of an "unmarried woman" under § 214(c)(3), as included under the definition of "widowers" under § 214(c)(2), would qualify for special treatment extended to single women. Those qualifying as such

The need to re-evaluate the status of a deserted wife under section 214 was clearly illustrated from a 1958 revenue ruling[10] where an *abandoned* wife under a North Carolina support decree[11] was denied special status treatment under section 214(c)(3). The holding interpreted the support decree as one which was primarily intended to enforce "the husband's marital duty to *support* his wife . . .", and not one resulting in a legal separation or separate maintenance; both of which were exclusively required under section 214(c)(3) for special status treatment as an unmarried woman.[12] Therefore, the failure to qualify, as such, subjected her to treatment as a "working wife" under section 214(b)(2) and the ensuing limitations attached to that classification.

The new amendment appears to reflect an attempt by Congress to correct these former unjust impediments by equating the status of a deserted wife with that of an unmarried woman,[13] who shares similar "care" and financial problems.[14] In order to qualify for such treatment, a deserted wife must show (1) that she has in fact been deserted by her husband; (2) that she had no knowledge of her husband's whereabouts at any time during the taxable year; and (3) that she has applied to a court of competent jurisdiction for a support decree.[15] If a deserted wife meets the foregoing qualifications, she will be allowed a maximum $600 deduction for care expenses for certain dependents regardless of her total income, without having to file jointly with her husband, and without being subjected to the reduction limitation for adjusted gross income exceeding $4,500.[16]

It should be noted that there are several provisions under section 214 affecting both deserted wives and other persons covered thereunder which require clarification. First, a deserted wife apparently will lose her special status privileges if she fails to apply to a court of competent jurisdiction for a support decree ("or otherwise to comply with the law . . . as determined under regulations of the Secretary . . ."),[17] or if it is shown that she was in fact aware of her husband's whereabouts during the taxable year. In either case, the benefits conferred upon her by the amendment will be lost, and she will again become subjected to the limitations imposed upon "working wives" under section 214(b)(2).[18] Second, special attention should be directed to the fact that the "care" expenses deductible under section 214

were not required to file jointly as a "working wife" under § 214(b)(2)(A), or subjected to the reduction limitation for adjusted gross income exceeding $4,500 as required under § 214(b)(2)(B).

[10] Rev. Rul. 321, 1958-1 Cum. Bull. 35.

[11] The decree was issued pursuant to N.C. Gen. Stat. § 50-16 (Cum. Supp. 1957). The ruling also referred to similar support decrees of other states.

[12] Supra note 10, at 37.

[13] Supra notes 1 and 9.

[14] Most of the factors precluding the availability of the deduction in Jean L. Conti Price and Rev. Rul. 58-321, supra notes 8 & 10, have been removed by the new classification of a deserted wife's status under § 214(c)(3)(B).

[15] Int. Rev. Code of 1954, § 214(c)(3)(B), supra note 1.

[16] Deserted wives will now qualify for special status treatment as a single woman under Treas. Reg. § 1.214-1(b)(4) (1956).

[17] Int. Rev. Code of 1954, § 214(c)(3)(B), supra note 1.

[18] Int. Rev. Code of 1954, § 214(b)(2)(A) & (B).

must still be incurred for purposes of allowing the taxpayer to remain "gainfully employed", or to search for such employment.[19] Third, for expenses to qualify for the deduction it must be shown that they were expended not only to permit the taxpayer to remain "gainfully employed", but also for the "primary purpose of assuring the dependent's well being and protection."[20] Generally, "amounts expended to provide food, clothing or education are not, in themselves, amounts expended for 'care' so as to be deductible under section 214," but may be considered as part of the total amount expended for "care" when furnished by nurseries, day camps, or other similar baby-sitter services and organizations.[21] Fourth, although commonly referred to as *child care* expenses, in addition to children and stepchildren under 12 (within the meaning of section 152), a taxpayer may claim as a dependent for the purpose of this section any person that he would be entitled to claim as a dependent under section 151(e)(1) for a personal exemption, providing such person is mentally or physically "incapable of caring for himself."[22] Fifth, the taxpayer (including a deserted wife) is limited to a maximum of $600 for all "care" expenses incurred during the taxable year,[23] regardless of the number of care dependents, and regardless of whether such sums were expended for services performed within or without the taxpayer's home.[24] Finally, this deduction should not be confused with the $600 personal exemption provided for under section 151. The child care deduction is listed under "other deductions", and can be claimed only upon the taxpayer's waiver of the "standard deduction". It can also be claimed in addition to the $600 personal exemptions claimed under section 151.[25]

In light of the fact that the administration's tax program, now pending before Congress, calls for a further liberalization of the child care deduction rules;[26] this amendment is at least an indication of Congress' present intent to provide minimum subsistence standards in financially unsound households, and to alleviate some of the inequities inadvertently created by the 1954 Code.

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[19] Int. Rev. Code of 1954, § 214(a); Treas. Reg. § 1.214-1(f)(4) (1956).

[20] Treas. Reg. § 1.214-1(f)(2) (1956).

[21] 2 CCH 1963 Stand. Fed. Tax Rep. ¶ 2031.03.

[22] Int. Rev. Code of 1954, § 214(c)(1)(B).

[23] Int. Rev. Code of 1954, § 214(b)(1)(A).

[24] Treas. Reg. § 1.214-1(a) (1956).

[25] Section 214(b)(1)(B) denies the care deduction for "any amount paid *to* an individual with respect to whom the taxpayer is allowed for his taxable year a deduction under section 151 (relating to deductions for personal exemptions)." Therefore, if a deserted wife (or others claiming under section 214) is supporting her father whom she is claiming for a personal exemption under § 151, she could use the child care deduction for money paid *to* her father for the care of her children or other qualified dependents. See Treas. Reg. § 1.214-1(e) (1956).

[26] 4 P-H Fed. Tax Serv. ¶ 32070 (1963).