UNITED STATES TAX COURT
WASHINGTON, DC 20217

SERGE RAYMOND BANINI,	)	**SYM**
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 6699-18S.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

O R D E R

This case is before the Court on respondent's motion for partial summary judgment (motion) filed on August 2, 2018, pursuant to Rule 121.[1] In support of his motion respondent filed a declaration of Janet F. Appel, Associate Area Counsel Small Business/Self Employed and who is respondent's counsel in this case. By order dated August 6, 2018, the Court directed petitioner to file a response to respondent's motion on or before August 27, 2018. Petitioner filed a response on September 4, 2018, opposing respondent's motion (response). In his response petitioner stated that the acceptance letter from his employer "required that 1) [petitioner] attends evening law school; and 2) maintains a degree status." The motion was assigned on October 18, 2018, to the undersigned for disposition.

The Court by order dated October 29, 2018, directed petitioner to file a First Supplement to Petitioner's Opposition to Motion for Partial Summary Judgment (first supplement) on or before November 9, 2018, and include a copy of the acceptance letter from petitioner's employer that he referenced in his response. Petitioner filed his first supplement late on November 19, 2018. Petitioner attached to his first supplement the acceptance letter from his employer and a document titled "Patent Agent Tuition Plan Term Sheet".

Petitioner resided in Massachusetts at the time the petition was filed in this case.

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended, in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

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Background

Petitioner timely filed a Federal income tax return for 2013 and 2014. On those returns petitioner claimed a deduction for law school tuition for 2013 of $46,700 and for 2014 of $45,784.[2] On January 10, 2018, the IRS[3] issued a notice of deficiency. In that notice of deficiency, among other things, the IRS determined that the deductions petitioner claimed for his law school tuition for both 2013 and 2014 were not allowable. Petitioner filed a petition disputing, among other things, the IRS' proposed determination to disallow his claimed deductions for his law school tuition.

Respondent in his motion asserts and petitioner does not dispute the following material facts. Petitioner obtained his Baccalaureate in Chemistry from the University of Yaounde I, Cameroon, in September 2001. Petitioner was awarded his Ph.D. in Chemistry from West Virginia University in 2008. From December 2010 through June 2011, petitioner was employed as a Patent Technical Advisor with LeClairRyan, PC. In that position petitioner assisted lawyers, but did not practice law.

From June 2011 through December 2014, petitioner was employed by the law firm, Cooley, LLP (Cooley) as a Patent Technical Advisor (Life Sciences). By letter dated June 3, 2011, Cooley offered petitioner a position as Patent Technical Advisor- Provisional Registration for the Life Sciences Patent Prosecution and Counseling group. The letter listed several conditions of the offer but did not list obtaining a law degree as one of the conditions.

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[2] The Internal Revenue Service (IRS) also determined that petitioner had not reported interest income of $99 for 2014 and that petitioner was liable for the accuracy-related penalty under section 6662(a) for 2013 and 2014. In the notice of deficiency the IRS also disallowed the claimed deductions on the 2013 and 2014 Schedules A, Itemized Deduction, for state and local income taxes, personal property taxes, tax preparation fees, and other expenses because the total of these deductions was less than the standard deduction for 2013 and 2014.

[3] The Court uses the term "IRS" to refer to administrative actions taken outside of these proceedings. The Court uses the term "respondent" to refer to the Commissioner of Internal Revenue, who is the head of the IRS and is respondent in this case, and to refer to actions taken in connection with this case.

Cooley sent a letter dated June 28, 2011, to the U.S. Citizenship and Immigration Services in support of an H-1B petition filed to allow petitioner to work for Cooley. In that letter Cooley indicated that petitioner was to "apply his expertise in chemistry and life sciences to advise attorneys and patent agents on the technical and scientific technologies involved in patent applications and related patent documents."

During 2013 and 2014, Cooley offered a Patent Agent Tuition Plan to qualifying patent agents who could apply for non-interest bearing loans for the actual amount of law school tuition for the academic year. Petitioner applied for such a loan and was required to repay the loan according to the terms of the program.

During 2013 and 2014, petitioner attended Suffolk University Law School. Petitioner graduated from Suffolk University Law School with a Juris Doctorate in January 2015. After petitioner graduated from law school, Cooley provided him with a letter discussing the changes to his employment status. The letter informed petitioner that he was required to sit for the Massachusetts bar exam in February 2015, and be admitted to the Massachusetts bar within two months of successfully passing the bar exam.

Discussion

A. Summary Judgment

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy. Rule 121(a). The Court may grant summary judgment only "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b); see Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

Respondent, as the moving party, bears the burden of proving that no genuine dispute exists as to any material fact with respect to the claimed deductions for petitioner's law school tuition and that respondent is entitled to judgment as a matter of law. See FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v.

Commissioner, 85 T.C. at 529. In deciding whether to grant summary judgment, the factual materials and inferences drawn from them must be considered in the light most favorable to the nonmoving party. FPL Group, Inc. v. Commissioner, 115 T.C. at 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529. The party opposing summary judgment must set forth specific facts which show that a question of genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988); King v. Commissioner, 87 T.C. 1213, 1217 (1986).

The Court concludes that there is not any genuine dispute as to any material fact regarding claimed deductions for petitioner's law school tuition and that respondent is entitled to judgment as a matter of law.

B. Education Expenses

Respondent asserts that petitioner's law school tuition expenses qualified him for a new trade or business and, therefore, are not deductible. Petitioner asserts that attending law school was a condition of his employment at Cooley and did not qualify him for a new trade or business.

Section 162(a) generally allows deductions for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business". The taxpayer bears the burden of proving that expenses were of a business nature rather than personal and that they were ordinary and necessary. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115.

In general, education expenses are deductible as ordinary and necessary business expenses (even though the education may lead to a degree) if the education: (1) maintains or improves skills required by the taxpayer in his employment or other trade or business or (2) meets the express requirements of the taxpayer's employer, or of applicable law or regulations, imposed as a condition to the retention by the taxpayer of an established employment relationship, status, or rate of compensation. Sec. 1.162-5(a), Income Tax Regs. Expenses that fall into either of these categories are nevertheless not deductible if the education: (1) is necessary to meet the minimum education requirements for qualification in the taxpayer's employment or (2) qualifies the taxpayer for a new trade or business. Id. para. (b). Such expenses are considered "personal expenditures or constitute an inseparable aggregate of personal and capital expenditures". Id. subpara. (1).

The record on the motion contradicts petitioner's assertion that attending law school was a condition of his employment with Cooley or that he needed to attend law school to qualify for his position as a patent advisor. Instead, the undisputed material facts indicate that attending law school qualified petitioner for a new trade or business–a practicing attorney. Sec. 1.162-5(b)(3), Income Tax Regs.; Robinson v. Commissioner, 78 T.C. 550, 552 (1982); see Weiszmann v. Commissioner, 52 T.C. 1106, 1110 (1969), aff'd per curiam 443 F.2d 29 (9th Cir. 1971); Lunsford v. Commissioner, T.C. Memo. 1973-17, 1973 Tax Ct. Memo LEXIS 269; Castel v. Commissioner, T.C. Memo. 1982-164, 1982 Tax Ct. Memo LEXIS 580.

Alternatively, petitioner asserts that the deduction of his legal education expenses should be allowed at least in part because some of the law school courses were only taken to maintain and improve his skills as a patent advisor. However, the regulation provides that expenditures for education which qualify a taxpayer for a new trade or business are not deductible even though the education may maintain or improve skills required for his employment. Sec. 1.162-5(b)(1), Income Tax Regs.; see Bodley v. Commissioner, 56 T.C. 1357, 1361 (1971). The undisputed material facts indicate that attending law school qualified petitioner for the new trade or business of a practicing attorney. Therefore, no partial deduction is allowed even if the education may have maintained or improved petitioner's skills required for his employment as a patent advisor.

In sum, the Court concludes that there is not any genuine dispute as to any material fact with respect to the claimed deductions for law school tuition for 2013 and 2014 and that respondent is entitled to judgment as a matter of law with respect to the determination to disallow such deductions. Premises considered, it is

ORDERED that, respondent's motion for partial summary judgment filed August 2, 2018, is granted.

(Signed) Diana L. Leyden
Special Trial Judge

Dated: Washington, D.C.
December 13, 2018