



Internal Revenue Service

DEPARTMENT OF THE TREASURY

LB&I Process Unit

Unit Name	Examining Education Expenses Claimed by Nonresident Alien Individual Employees	
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Process Overview

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

 **CAUTION:** This unit applies only to tax years beginning before 2018 and after 2025. The Tax Cuts and Job Acts of 2017 suspended the deductibility of unreimbursed employee expenses as itemized deduction from 2018 through 2025.

This unit focuses on examining the education expenses claimed by nonresident alien individuals (NRAs) engaged in a U.S. trade or business (USTB) as employees and will discuss the issues and audit steps that the examiners will need to consider for these taxpayers.

NRAs come to the U.S. for a number of reasons on various nonimmigrant visas each year. They can range from professionals, students, apprentices, researchers, trainees, professors, scholars, teachers and others. In order for an NRA to be able to deduct business expenses, he or she must be engaged in USTB and have income effectively connected with a USTB that is not otherwise exempt, such as income exempt by a tax treaty. Examiners will need to verify that the NRA is engaged in a USTB (e.g., his or her employment status) and has effectively connected income (ECI) that is not exempt. If an NRA is self-employed, he or she may deduct the qualifying work-related education expenses directly from his or her self-employment income on Schedule C, *Profit or Loss From Business (Sole Proprietorship)*. For tax years beginning before 2018 and after 2025, if the NRA has ECI and is considered an employee, he or she may claim any allowable education expenses on his or her Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, or 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*, as a miscellaneous itemized deduction subject to a 2% adjusted gross income limitation on Schedule A, *Itemized Deductions*. This unit will focus on NRAs claiming employee education expense deductions. Therefore, this unit will not address NRAs who are self-employed or who are deemed to be in a USTB under IRC 871(c), *Participants in Certain Exchange or Training Programs*.

Examiners also need to analyze the claimed expenses and determine whether the taxpayer claimed any nondeductible personal, living, or family expenses. Finally, examiners need to apply objective tests for determining whether or not the education expenses claimed are deductible under Treas. Reg. 1.162-5, *Expenses for education*. Expenses will be disallowed if (1) the education meets the minimal educational requirements of the taxpayer's trade or business, or (2) the education qualifies the taxpayer for a new trade or business. Furthermore, the expenses are only allowed if (1) the expenses were used for education that maintains or improves his or her job skills required in his or her trade or business as an employee, or (2) the education is required as a condition of employment by the employer or by law. These rules apply to NRAs in the same manner as they apply to U.S. citizens and resident aliens.

Summary of Process Steps

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

Process Steps

Examining employee education expenses claimed by NRAs with the following five steps.

Step 1	Determine If NRA Engaged in a USTB as an Employee
Step 2	Determine If NRA Has ECI That Is Not Exempt
Step 3	Review Form 2106 or 2106-EZ
Step 4	Apply Disallowance Tests

Summary of Process Steps (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

Process Steps

[Step 5](#)

Apply Allowance Tests

Step 1: Determine If NRA Engaged in a USTB as an Employee

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

Step 1

Determine if the NRA is engaged in a USTB as an employee.

Considerations	Resources
<p>First, verify that the taxpayer is performing personal services in the United States as an employee and nature of such employment.</p> <p>As discussed later in this unit, the taxpayer's USTB as an employee is a key factor in determining the deductibility of education expenses as employee business expenses (EBE). It is recommended that examiners request information for the taxpayer's previous and current employment in order to determine whether the taxpayer started a new trade or business.</p>	<ul style="list-style-type: none">▪ IRM 4.10.3.6.2

Step 2: Determine If NRA Has ECI That Is Not Exempt

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

Step 2

Determine if NRA has income effectively connected with that trade or business that is not otherwise exempt.

Considerations	Resources
<p>In order for an NRA to deduct EBE, the NRA must have ECI that is not exempt income. Examples of ECI include income from personal services such as wages and salaries, tips, honoraria, and commissions. Taxable scholarship and fellowship grants may be treated as income from the performance of personal services as an employee if the NRA is required to perform a service in exchange for the scholarship or grant, such as teaching or research. No deduction is allowed under IRC 873 for the amount of any item or part thereof allocable to a class or classes of exempt income, including income exempt by a tax treaty or a tax-free scholarship or fellowship grant. In addition, under IRC 262, NRAs, like U.S. citizens and residents, are not entitled to deduct personal, living, or family expenses.</p> <p>For example, if NRA Taxpayer A receives a tax-free scholarship, A cannot deduct the education expense on her tax return. This is because she does not have ECI from her USTB as an employee. However, if A receives a taxable U.S.-source scholarship that requires A to perform teaching assistance, the scholarship may be treated as compensation for such performance of services, and A may be able to deduct the education expense as an EBE if the education satisfies the allowance and disallowance tests (to be discussed later), but only to the extent that such compensation is not otherwise exempt under a treaty between the United States and A's country of residence.</p>	<ul style="list-style-type: none"> ▪ IRC 873 ▪ IRC 262 ▪ IRC 265 ▪ IRC 874 ▪ IRC 864(b) and (c) ▪ Treas. Regs. 1.873-1(a)(5)

Step 2: Determine If NRA Has ECI That is Not Exempt (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

[Step 2](#)

Considerations	Resources
<p>Examiners should perform the following audit steps and issue Form 4564, <i>Information Document Request</i> (IDR) when necessary.</p> <p><u>1) Reconciliation of Form W-2</u></p> <p>Examiners should review Form W-2, <i>Wage and Tax Statement</i>, and analyze whether taxable reimbursements such as education assistance payments were reported by the taxpayer's employer as income. Generally, employer will combine the amount of any reimbursement or other allowance paid to taxpayer under a non-accountable plan with wages, salaries or other pay and report the total on Form W-2, box 1. The taxpayer may deduct the eligible education expenses as EBE regardless of whether they are more than, less than, or equal to the reimbursement.</p> <p><u>2) Reconciliation of Form 1042-S</u></p> <p>Examiners should match Form 1042-S, <i>Foreign Person's U.S. Source Income Subject to Withholding</i>, with the taxpayer's Form 1040NR to confirm other income such as sponsorship income, both taxable and non-taxable scholarship and fellowship grants, and any other payments. As mentioned before, deduction against tax exempt income is not allowable.</p>	<ul style="list-style-type: none">▪ Form 4564▪ IRM 4.10.3.6.2▪ Form W-2▪ Form 1042-S

Step 2: Determine If NRA Has ECI That is Not Exempt (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

Step 2

Considerations	Resources
<p><u>3) Reconciliation of Other Income</u></p> <p>Examiners should review whether any miscellaneous income is reported on Form W-2 or Form 1042-S. Examiners should request the taxpayer submit any forms such as Form 1099-MISC, <i>Miscellaneous Income</i>, other than Form W-2 or Form 1042-S that the taxpayer received while present in the U.S. during the tax year and verify it with Integrated Data Retrieval System (IDRS) information.</p> <p><u>4) Review Employer's Reimbursement Policy</u></p> <p>Only unreimbursed education expenses maybe deductible. If a taxpayer's employer fully reimburses an NRA's educational expenses under an accountable plan, the expenses are not allowable as an EBE.</p> <p>If a taxpayer's employer partly reimburses an NRA's educational expenses under an accountable plan, the expenses may be allowable as an EBE. The NRA taxpayer must reduce the education expenses by the amount of any reimbursement.</p> <p>Examiners should request documents to verify any education expense reimbursement or assistance such as logs, diaries or other records of expenses maintained at the time of the expenditures showing that unreimbursed expenses were incurred as part of his or her employment. Ask taxpayer to provide employer's reimbursement policy.</p>	<ul style="list-style-type: none"> ▪ Form W-2 ▪ Form 1042-S ▪ Form 1099-MISC ▪ Treas. Reg. 1.62-2(c)(2) ▪ IRC 162(a) ▪ IRM 4.10.3.6.2

Step 2: Determine If NRA Has ECI That is Not Exempt (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

[Step 2](#)

Considerations	Resources
<p><u>4) Review Employer's Reimbursement Policy (cont'd)</u></p> <p>In addition, information regarding any reimbursements or other assistance from non-employers should be requested, including scholarship or fellowship grants. Examiners should request a break down of the reimbursement or other assistance by category of expense and the name and address of the payor.</p>	<ul style="list-style-type: none">▪ Treas. Reg. 1.62-2(c)(2)▪ IRC 162(a)▪ IRM 4.10.3.6.2

Step 3: Review Form 2106 or 2106-EZ

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

Step 3

Review Form 2106, *Employee Business Expenses*, or 2106-EZ, *Unreimbursed Employee Business Expenses*.

Considerations	Resources
<p>Follow IRM 4.10.3, <i>Examination of Returns - Examination Techniques</i> to review Form 2106 or 2106-EZ.</p> <p>An NRA employee will claim education expenses as an EBE on Form 2106 or 2106-EZ, which will carry over to Schedule A and Form 1040NR or 1040NR-EZ. In order to be deductible, the education expenses must be allowable EBE and not be personal in nature. Examples of potentially deductible payments include, but are not limited to, tuition, books, supplies, lab fees, or similar items, certain transportation and travel costs, and other education expenses such as costs of research when writing a paper as part of an education program.</p> <p>Examiners should issue Form 4564 to verify whether the unreimbursed educational expenses are in fact deductible. Taxpayers bear the burden of proving the expense. The examiners should:</p> <ul style="list-style-type: none"> ▪ Ask the taxpayer to substantiate the expenses <ul style="list-style-type: none"> – Only allowable education expenses incurred and paid during the taxable year are deductible as an EBE. Bank statements, credit card statements, or cancelled checks should be provided to substantiate the payment of the expenses such as transportation, and meals and lodging while away from home overnight. 	<ul style="list-style-type: none"> ▪ IRM 4.10.3 ▪ Form 2106 ▪ Form 2106-EZ ▪ Schedule A ▪ Form 1040NR ▪ Form 1040NR-EZ ▪ Form 4564

Step 3: Review Form 2106 or 2106-EZ (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

Step 3

Considerations	Resources
<ul style="list-style-type: none">▪ Request a summary sheet of the expenses<ul style="list-style-type: none">– The summary sheet should categorize and provide summary explanations of the education expenses.▪ Reconciliation amounts claimed on return with Form 1098-T, <i>Tuition Statement</i><ul style="list-style-type: none">– Examiners should review Form 1098-T and verify the reported expenses. Ask the taxpayer to provide a billing statement from his or her school which will show the break down of the expense amounts and billing period.▪ Reimbursements or other assistance from the taxpayer's employer<ul style="list-style-type: none">– Examiners should request documents that verify education expense reimbursement or assistance such as logs, diaries or other records of expenses maintained at the time of the expenditures. Ask taxpayer to provide employer's reimbursement policy.▪ Reimbursements or other assistance from non-employer including U.S. or foreign scholarships or fellowship grants<ul style="list-style-type: none">– Examiners should request a breakdown of the reimbursement or other assistance by category of expense and the name and address of the payor.	<ul style="list-style-type: none">▪ IRM 4.10.3.6.2 ▪ IRM 4.10.3.6.6▪ Form 1098-T ▪ IRM 4.10.3.6.4

Step 4: Apply Disallowance Tests

Examining Education Expenses Claimed By Nonresident Alien Individual Employees

Step 4

Apply disallowance tests to determine if the education was to (1) meet the minimum education requirements or (2) qualify for a new trade or business.

Considerations	Resources
<p>Examiners will need to apply objective tests to determine whether the education expenditures claimed by the NRA are deductible. The NRA must overcome the two disallowance tests and meet at least one of the two allowance tests in order to claim the expenses.</p> <p>If the taxpayer meets either of the two disallowance tests, the education expenses are not deductible. Under the two disallowance tests, education expenses are not deductible if the education:</p> <ol style="list-style-type: none">1. Is required to meet the minimum educational requirements for qualification in the taxpayer's employment or other trade or business, or2. Is part of a program of study which will lead to qualify the taxpayer in a new trade or business.	<ul style="list-style-type: none">▪ Treas. Reg. 1.162-5(b)(2)▪ Treas. Reg. 1.162-5(b)(3)

Step 4: Apply Disallowance Tests (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

[Step 4](#)

Considerations	Resources
<p><u>Disallowance Test 1: Education is to Meet the Minimum Educational Requirements for Qualification in the Taxpayer's Employment or Other Trade or Business.</u></p> <p>Expenses for education needed to meet the minimum education requirements for the taxpayer's present trade or business are not allowable EBE. The minimum education requirements are determined by law and regulations, standards of a particular profession, trade, or business, and employer.</p> <p>For example, if the job specifications require that NRA Taxpayer B to have a specific degree, then the expenses to obtain that degree will be considered to meet the minimum education requirements. In this case, the expenses would be nondeductible as the education meets one of the disallowance tests.</p>	<ul style="list-style-type: none">▪ Treas. Reg. 1.162-5(b)(2)

Step 4: Apply Disallowance Tests (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

[Step 4](#)

Considerations	Resources
<p><u>Disallowance Test 2: Education is Part of a Program of Study Which Will Lead to Qualify the Taxpayer in a New Trade or Business</u></p> <p>Education that qualifies a taxpayer for a new trade or business is not deductible even though the taxpayer does not actually change jobs. It should be noted that a change in duties is not a new trade or business if the new duties involve the same general type of work. For example, teaching and related duties are considered to involve the same general type of work, so a teacher who changes a teaching assignment after receiving additional education would not be considered in a new trade or business. Examiners compare the types of tasks and activities the taxpayer was qualified to perform both before and after the education.</p> <p>Rev. Rul. 75-412 discusses whether expenses incurred by a taxpayer to meet the minimum educational requirements to sit for a state's bar examination are deductible under IRC 162. In the revenue ruling, the state where the taxpayer resided required persons holding foreign law degrees to complete a special 18-month law course before being allowed to sit for the bar examination. The revenue ruling concluded that expenses incurred in taking a special law course to enable the holder of a foreign law degree to qualify for a state's bar examination are NOT deductible business expenses.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.162-5(b)(3) ▪ Treas. Reg. 1.162-5(b)(3)(i) ▪ Rev. Rul. 75-412

Step 4: Apply Disallowance Tests (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

[Step 4](#)

Considerations	Resources
<p><u>Disallowance Test 2: Education is Part of a Program of Study Which Will Lead to Qualify the Taxpayer in a New Trade or Business (cont'd)</u></p> <p>In <i>Glenn v. Commissioner</i>, 62.T.C. 270 (1974), the taxpayer was employed as a public accountant in Tennessee. In order to be considered for a promotion to a new position, the taxpayer would have to be a certified public accountant (CPA). In preparation for sitting for the CPA exam, taxpayer took a CPA review course. Although noting that the question was extremely close and not free from doubt, the court found that there was a significant difference between the taxpayer's scope of potential practice as a public accountant and as a CPA. Therefore, the CPA position was a new trade or business. Because the CPA review course was taken in order to qualify for a new trade or business, the court held that the expenses were not deductible. Although the taxpayer in <i>Glenn</i> was a U.S. individual, the same analysis applies to NRA individuals who deduct education expenses.</p>	<ul style="list-style-type: none">▪ <i>Glenn v. Commissioner</i> - 62.T.C. 270 (1974)

Step 4: Apply Disallowance Tests (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

[Step 4](#)

Considerations	Resources
<p><u>Disallowance Test 2: Education is Part of a Program of Study Which Will Lead to Qualify the Taxpayer in a New Trade or Business (cont'd)</u></p> <p>In <i>O'Connor v. Commissioner</i>, T.C. Memo 2015-155, taxpayer, a U.S. citizen, studied law in Germany and was licensed to practice law in Germany. Taxpayer moved to the U.S. to work as a project manager. While in the U.S., taxpayer attended law school in San Diego, and received a degree of Juris Doctor (J.D.). After receiving his J.D., taxpayer took the New York State bar examination and passed, thereby making him eligible to practice law in the State of New York. Taxpayer claimed a business expense deduction related to his law school education in the U.S. as an expense necessary to maintain his skills as a legal professional.</p> <p>Taxpayer's legal studies in Germany did not qualify him to be a legal professional in the United States. The court further noted that because taxpayer had not received a Master of Laws Degree (LLM) from an American Bar Association (ABA) approved law school, he would have been required to prove that his legal studies program "was substantially equivalent in duration to the legal education provided by an ABA approved law school in the United States, and in substantial compliance with the instructional and academic calendar requirements" provided by the State of New York. Accordingly, taxpayer's educational expenses for his J.D. were incurred in connection with entering into a new trade or business and are nondeductible.</p>	<ul style="list-style-type: none"> ▪ <i>O'Connor v. Commissioner</i> - T.C. Memo 2015-155

Step 4: Apply Disallowance Tests (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

[Step 4](#)

Considerations	Resources
<p><u>Disallowance Test 2: Education is Part of a Program of Study Which Will Lead to Qualify the Taxpayer in a New Trade or Business (cont'd)</u></p> <p>In <i>McEuen v. Commissioner</i>, T.C. Summ. Op. 2004-107, the taxpayer, a U.S. citizen, was employed as a “financial analyst.” She later resigned to pursue her Master of Business Administration (MBA) degree. After graduation, the taxpayer was hired into the general management program of a different company, for which an MBA or equivalent was required. Upon completion of the program, she was promoted to an “associate brand manager.”</p> <p>The Tax Court determined that the taxpayer's degree allowed her to perform significantly different tasks and activities, and qualified her for a new trade or business. The taxpayer was not allowed to deduct her education expenses under either of the disallowance tests. Although the taxpayer in <i>McEuen</i> was a U.S. individual, the same analysis applies to NRA individuals who deduct education expenses.</p>	<ul style="list-style-type: none">▪ <i>McEuen v. Commissioner</i> - T.C. Summ. Op. 2004-107

Step 5: Apply Allowance Tests

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

Step 5

Apply allowance tests to determine if the education was to (1) maintain or improve job skills or (2) meet the requirement of employer or law.

Considerations	Resources
<p>Even if the taxpayer overcome both of the two disallowance tests in step 4, the taxpayer will still need to satisfy either of the two allowance tests below to deduct the education expenses as EBE.</p> <p>Under the two allowance tests, education expenses may be deductible if the education:</p> <ol style="list-style-type: none">1. Maintains or improves skills required by the individual in his or her employment or other trade or business, or2. Meets the express requirements of the individual's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation.	<ul style="list-style-type: none">▪ Treas. Reg. 1.162-5(c)(1)▪ Treas. Reg. 1.162-5(c)(2)

Step 5: Apply Allowance Tests (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

[Step 5](#)

Considerations	Resources
<p><u>Allowance Test 1: Education Maintains or Improves Skills Required by the Individual in Taxpayer's Employment or Other Trade or Business</u></p> <p>An NRA may be allowed to deduct the education expense if it was used to maintain or improve skills. The expenses must be attributable to a trade or business or employment already established at the time the education was undertaken. The taxpayer must show that the educational expenses are directly and proximately related to the skills required in his or her trade or business or employment.</p> <p>In <i>Allemeier v. Commissioner</i>, T.C. Memo 2005-207, the Tax Court allowed a U.S. individual taxpayer who was employed by an orthodontic and pediatric laboratory to deduct education expenses for obtaining a MBA because the MBA was not necessary to meet the minimum education requirements for the taxpayer's job and it did not qualify him for a new trade or business. Although he was initially hired as a sales person, the taxpayer expanded his job responsibilities to include developing marketing strategies and conducting information seminars. After about three years with his company, the taxpayer decided to enter an MBA program. The Tax Court found that the taxpayer's MBA enhanced his preexisting skills rather than qualified him to perform significantly different tasks and activities. Although the taxpayer in <i>Allemeier</i> was a U.S. individual, the same analysis applies to NRA individuals who deduct education expenses.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.162-5(c)(1) ▪ Treas. Reg. 1.162-5(a) ▪ <i>Allemeier v. Commissioner</i> - T.C. Memo 2005-207

Step 5: Apply Allowance Tests (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

[Step 5](#)

Considerations	Resources
<p><u>Allowance Test 1: Education Maintains or Improves Skills Required by the Individual in Taxpayer's Employment or Other Trade or Business (cont'd)</u></p> <p>In <i>Dancausa Valle v. Commissioner</i>, T.C. Summ. Op. 2018-51, however, the Tax Court held that an NRA taxpayer who was employed as a lawyer was not allowed to deduct his education expenses for obtaining an LLM degree in the United States because the LLM degree qualified the taxpayer for a new trade or business. After completing the LLM degree, the taxpayer was eligible to take the bar exam in New York, and upon passing the bar exam and meeting other eligibility requirement, be admitted to practice as an attorney in New York. Accordingly, the taxpayer's education expenses were personal expenditures rather than ordinary and necessary business expenses. Therefore, it is important to determine whether the taxpayer was involved in the same duties before and after obtaining the degree.</p>	<ul style="list-style-type: none">▪ <i>Dancausa Valle v. Commissioner</i> - T.C. Summ. Op. 2018-51

Step 5: Apply Allowance Tests (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

[Step 5](#)

Considerations	Resources
<p><u>Allowance Test 1: Education Maintains or Improves Skills Required by the Individual in Taxpayer's Employment or Other Trade or Business (cont'd)</u></p> <p>In <i>Blair v. Commissioner</i>, T.C. Memo 1980-488, the taxpayer was a U.S. individual who had a degree in English Literature. She was hired as a personnel representative for a company, and was later promoted to a personnel manager. There was no minimum education qualification for the positions. While employed, the taxpayer enrolled in a two-year MBA program and attended evening classes. The Tax Court allowed the taxpayer to deduct certain unreimbursed education expenses incurred in attending the MBA program because the coursework did not qualify or contribute to qualifying the taxpayer for a new trade or business. Rather, it improved her skills in relation to her current employment. Although the taxpayer in <i>Blair</i> was a U.S. individual, the same analysis applies to NRA individuals who deduct education expenses.</p>	<ul style="list-style-type: none">▪ <i>Blair v. Commissioner</i> - T.C. Memo 1980-488

Step 5: Apply Allowance Tests (cont'd)

Examining Education Expenses Claimed by Nonresident Alien Individual Employees

Step 5

Considerations	Resources
<p><u>Allowance Test 2: Education Meets the Express Requirements of the Taxpayer's Employer, or the Requirements 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.</u></p> <p>Taxpayer may be allowed to deduct the education expense if the education is required by an employer or by law as a condition to the retention employment, status, or rate of compensation.</p> <p>In <i>Sumner v. Commissioner</i>, T.C. Memo. 1982-561, the taxpayer was a welder employed by Company. Because of new regulatory requirements, he was required to become certified in a specific type of welding to remain employed with Company. Before the regulatory change, the taxpayer met the minimum standards for his position. The taxpayer travelled to take the welding course, and deducted course fees, as well as food, lodging, and transportation expenses. The Tax Court held that the taxpayer satisfied the requirements in Treas. Reg. 1.162-5(b)(2) and (c)(2) for the deductions. The taxpayer previously met the minimum requirements for his job and needed to meet the new regulatory requirements to continue his employment. Although the taxpayer in <i>Sumner</i> was a U.S. individual, the same analysis applies to NRA individuals who deduct education expenses.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.162-5(c)(2) ▪ <i>Sumner v. Commissioner</i> - T.C. Memo. 1982-561

Other Considerations / Impact to Audit

Examining Education Expenses Claimed by Nonresident Alien Individual Employees	
Considerations	Resources
<ul style="list-style-type: none">▪ Unlike the education expense deduction as EBE, education credits such as American Opportunity and Lifetime Learning credits are not available to an NRA taxpayer. If a taxpayer was an NRA individual for any portion of the taxable year, the taxpayer may claim the education credit only while he or she was treated as a resident alien of the U.S.	<ul style="list-style-type: none">▪ IRC 25A(b)(3)▪ IRC 25A(g)(7)
<ul style="list-style-type: none">▪ Tax home issues related to travel expense deductions as EBE may be relevant if an NRA taxpayer travels away from home primarily to obtain education, the expenses of which are deductible.	<ul style="list-style-type: none">▪ IRC 162(a)▪ Treas. Reg. §1.162-5(e)

Index of Referenced Resources

Examining Education Expenses Claimed by Nonresident Alien individual Employees

IRC 25A - *American Opportunity and Lifetime Learning credits*

IRC 162(a) - *Trade or Business Expenses, In General*

IRC 262 - *Personal, Living, and Family Expenses*

IRC 265 - *Expenses and Interest Relating to Tax-exempt Income*

IRC 864 - *Definitions and Special Rules*

IRC 873 - *Deductions*

IRC 874 - *Allowance of Deductions and Credits*

Treas. Reg. 1.62-2(c)(2) - *Accountable plans*

Treas. Reg. 1.162-5 - *Expenses for Education*

Treas. Reg. 1.873-1(a)(5) - *Exempt income*

Allemeier v. Commissioner - T.C. Memo 2005-207

Blair v. Commissioner - T.C. Memo 1980-488

Dancausa Valle v. Commissioner - T.C. Summ. Op. 2018-51

Glenn v. Commissioner - 62 T.C. 270 (1974)

McEuen v. Comm’r - T.C. Summ. Op. 2004-107

O’Connor v. Commissioner - T.C. Memo. 2015-155

Sumner v. Commissioner - T.C. Memo. 1982-561

Index of Referenced Resources (cont'd)

Examining Education Expenses Claimed by Nonresident Alien individual Employees

Form 1040NR - *U.S. Nonresident Alien Income Tax Return*

Form 1040NR-EZ - *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*

Form 1042-S - *Foreign Person's U.S. Source Income Subject to Withholding*

Form 1098-T - *Tuition Statement*

Form 1099-MISC - *Miscellaneous Income*

Form 2106 - *Employee Business Expenses*

Form 2106-EZ - *Unreimbursed Employee Business Expenses*

Form 4564 - *Information Document Request*

Schedule A - *Itemized Deductions*

Form W-2 - *Wage and Tax Statement*

Rev. Rul. 75-412 - *Educational Expenses; Required Law Course for Foreign Degree Holders*

IRM 4.10.3 - *Examination of Returns - Examination Techniques*

Training and Additional Resources

Examining Education Expenses Claimed by Nonresident Alien individual Employees

Type of Resource	Description(s)
Saba Meeting Sessions	▪ <i>IIC Taxation of Non Resident Aliens</i> - 2015 Saba Meeting
Databases / Research Tools	▪ <i>BNA Tax Management Int'l Portfolio</i> 907-3rd

Glossary of Terms and Acronyms

Term/Acronym	Definition
ABA	American Bar Association
CPA	Certified Public Accountant
EBE	Employee Business Expense
ECI	Effectively Connected Income
IDR	Information Document Request
IDRS	Integrated Data Retrieval System
IRM	Internal Revenue Manual
J.D.	Juris Doctor
LLM	Master of Laws Degree
MBA	Master of Business Administration
NRA	Non-Resident Alien
USTB	U.S. Trade or Business

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit
9431.01-01	<i>Substantial Presence Test</i>
9441.01	<i>Identification of a U.S. Trade or Business of a Nonresident Alien</i>
9441.02-01	<i>Effectively Connected Income (ECI)</i>
9441.02-01	Source of Income for Nonresident Alien Individuals