

Office of Chief Counsel

**Internal Revenue Service
memorandum**

CC:DOM:IT&A:2

GHBradley - SPR-111443-98

AUG 24 1998

date:

to: Technical Publications Branch PM:S:FP:P
ATTN: Phil Parisi Room 5607

from: Assistant Chief Counsel (Income Tax & Accounting)

subject: Deductions for Repayments

This responds to your Technical Assistance Request of May 21, 1998, in which you asked us to review the technical accuracy of a statement in Publication 525. The statement appears on page 20 under the heading "Repayments" and instructs an individual taxpayer to deduct on line 27 of Schedule A (Form 1040) any repaid amount that had been included in the taxpayer's income as wages in an earlier year. You have received correspondence from a taxpayer questioning the accuracy of that advice. The taxpayer believes that the amount should be deducted "above the line".

We recommend that in your reply to the taxpayer you include language substantially similar to the following:

Whether and to what extent deductions are allowed in computing federal income tax depends on legislative grace. Only when there is a clear provision enacted by Congress can a taxpayer claim any particular deduction. A taxpayer seeking a deduction must be able to point to an applicable statute and show that the claimed deduction comes within its terms. New Colonial Ice Co. v. Helvering, 292 U.S. 435 (1934), XIII-1 C.B. 194 (1934).

In computing income tax, "above the line" deductions are deductions that are taken into account in determining adjusted gross income. "Below the line" deductions are deductions that are subtracted from adjusted gross income in determining taxable income.

Section 62(a) of the Internal Revenue Code provides that in the case of an individual, adjusted gross income means gross income minus the deductions specifically listed in § 62(a)(1) - (17). No provision in § 62(a) or elsewhere in the Code allows an individual to deduct from gross income a repayment of an amount included in income in an earlier year. Therefore, a deduction for the repayment, if allowable, is allowable only as a "below the line" deduction.

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If we may be of further assistance in this matter, please telephone George Bradley of this office at 622-7848.

(signed) Robert A. Berkovsky

By _____
Robert A. Berkovsky
Chief, Branch 2