

the household due to special circumstances. For example, a nonpermanent failure to occupy the household by reason of illness or vacation shall be considered temporary absence due to special circumstances. Such absence will not prevent the taxpayer from qualifying as the head of a household if (i) it is reasonable to assume that such person will return to the household, and (ii) the taxpayer continues to maintain such household or a substantially equivalent household in anticipation of such return. However, the fact that the father or mother of the taxpayer dies within the year will not prevent the taxpayer from qualifying as a head of a household if the household constitutes the principal place of abode of the father or mother for the preceding part of such taxable year.

(d) *Cost of maintaining a household.* A taxpayer shall be considered as maintaining a household only if he pays more than one-half the cost thereof for his taxable year. The cost of maintaining a household shall be the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of such occupants for such taxable year. The cost of maintaining a household shall not include expenses otherwise incurred. The expenses of maintaining a household include property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance, and food consumed on the premises. Such expenses do not include the cost of clothing, education, medical treatment, vacations, life insurance, and transportation. In addition, the cost of maintaining a household shall not include any amount which represents the value of services rendered in the household by the taxpayer or by a person qualifying the taxpayer as a head of a household or as a surviving spouse.

(e) *Certain married individuals living apart.* For taxable years beginning after December 31, 1969, an individual who is considered as not married under section 143(b) shall be considered as not married for purposes of determining whether he or she qualifies as a single individual, a married individual, a head

of household or a surviving spouse under sections 1 and 2 of the Code.

[T.D. 7117, 36 FR 9398, May 25, 1971]

### § 1.3-1 Application of optional tax.

(a) *General rules.* (1) For taxable years ending before January 1, 1970, an individual whose adjusted gross income is less than \$5,000 (or a husband and wife filing a joint return whose combined adjusted gross income is less than \$5,000) may elect to pay the tax imposed by section 3 in place of the tax imposed by section 1 (a) or (b). For taxable years beginning after December 31, 1969 and before January 1, 1971 an individual whose adjusted gross income is less than \$10,000 (or a husband and wife filing a joint return whose combined adjusted gross income is less than \$10,000) may elect to pay the tax imposed by section 3 as amended by the Tax Reform Act of 1969 in place of the tax imposed by section 1 (a) or (b). For taxable years beginning after December 31, 1970 an individual whose adjusted gross income is less than \$10,000 (or a husband and wife filing a joint return whose combined adjusted gross income is less than \$10,000) may elect to pay the tax imposed by section 3 as amended in place of the tax imposed by section 1 as amended. See § 1.4-2 for the manner of making such election. A taxpayer may make such election regardless of the sources from which his income is derived and regardless of whether his income is computed by the cash method or the accrual method. See section 62 and the regulations thereunder for the determination of adjusted gross income. For the purpose of determining whether a taxpayer may elect to pay the tax under section 3, the amount of the adjusted gross income is controlling, without reference to the number of exemptions to which the taxpayer may be entitled. See section 4 and the regulations thereunder for additional rules applicable to section 3.

(2) The following examples illustrate the rule that section 3 applies only if the adjusted gross income is less than \$10,000 (\$5,000 for taxable years ending before January 1, 1970).

*Example 1.* A is employed at a salary of \$9,200 for the calendar year 1970. In the

course of such employment, he incurred travel expenses of \$1,500 for which he was reimbursed during the year. Such items constitute his sole income for 1970. In such case the gross income is \$10,700 but the amount of \$1,500 is deducted from gross income in the determination of adjusted gross income and thus A's adjusted gross income for 1970 is \$9,200. Hence, the adjusted gross income being less than \$10,000, he may elect to pay his tax for 1970 under section 3. Similarly, in the case of an individual engaged in trade or business (excluding from the term "engaged in trade or business" the performance of personal services as an employee), there may be deducted from gross income in ascertaining adjusted gross income those expenses directly relating to the carrying on of such trade or business.

*Example 2.* If B has, as his only income for 1970, a salary of \$11,600 and his spouse has no gross income, then B's adjusted gross income is \$11,600 (not \$11,600 reduced by exemptions of \$1,250) and he is not for such year, entitled to pay his tax under section 3. If, however, B has for 1970 a salary of \$13,000 and incident to his employment he incurs expenses in the amount of \$3,400 for travel, meals, and lodging while away from home, for which he is not reimbursed, the adjusted gross income is \$13,000 minus \$3,400 or \$9,600. In such case his adjusted gross income being less than \$10,000, B may elect to pay the tax under section 3. However, if B's wife has adjusted gross income of \$400, the total adjusted gross income is \$10,000. In such case, if B and his wife file a joint return, they may not elect to pay the optional tax since the combined adjusted gross income is not less than \$10,000. B may nevertheless elect to pay the optional tax, but if he makes this election he must file a separate return and, since his wife has gross income, he may not claim an exemption for her in computing the optional tax.

(b) *Surviving spouse.* The return of a surviving spouse is treated as a joint return for purposes of section 3. See section 2, and the regulations thereunder, with respect to the qualifications of a taxpayer as a surviving spouse. Accordingly, if the taxpayer qualifies as a surviving spouse and elects to pay the optional tax, he shall use the column in the tax table, appropriate to his number of exemptions, provided for cases in which a joint return is filed.

(c) *Use of tax table.* (1) To determine the amount of the tax, the individual ascertains the amount of his adjusted gross income, refers to the appropriate table set forth in section 3 or the regulations thereunder, ascertains the income bracket into which such income

falls, and, using the number of exemptions applicable to his case, finds the tax in the vertical column having at the top thereof a number corresponding to the number of exemptions to which the taxpayer is entitled.

(2) Section 3(b) (relating to taxable years beginning after Dec. 31, 1964 and ending before Jan. 1, 1970) contains 5 tables for use in computing the tax. Table I is to be used by a single person who is not a head of household. Table II is to be used by a head of household. Table III is to be used by married persons filing joint returns and by a surviving spouse. Table IV is to be used by married persons filing separate returns using the 10 percent standard deduction. Table V is to be used by married persons filing separate returns using the minimum standard deduction. For an explanation of the standard deduction see section 141 and the regulations thereunder.

(3) 30 tables are provided for use in computing the tax under the Tax Reform Act of 1969. Tables I through XV apply for taxable years beginning after December 31, 1969 and ending before January 1, 1971. Tables XVI through XXX apply for taxable years beginning after December 31, 1970. The standard deduction for Tables I through XV, applicable to taxable years beginning in 1970, is 10 percent. The standard deduction for Tables XVI through XXX, applicable to taxable years beginning in 1971, is 13 percent. For an explanation of the standard deduction and the low income allowance see section 141 as amended by the Tax Reform Act of 1969.

(4) In the case of married persons filing separate returns who qualify to use the optional tax imposed by section 3, such persons shall use the tax imposed by the table for the applicable year in accordance with the rules prescribed by sections 4(c) and 141 and the regulations thereunder governing the use and application of the standard deduction and the low income allowance.

(5) The tax shown in the tax tables set forth in section 3 or the regulations thereunder reflects full income splitting in the case of a joint return (including the return of a surviving spouse) and lesser income splitting in

the case of a head of household. Therefore, it is possible for the tax shown in the tables relating to joint returns, or relating to a return of a head of a household, to be lower than that shown in the table for separate returns even though the amounts of adjusted gross income and the number of exemptions are the same.

[T.D. 7117, 36 FR 9420, May 25, 1971]

#### § 1.4-1 Number of exemptions.

(a) For the purpose of determining the optional tax imposed under section 3, the taxpayer shall use the number of exemptions allowable to him as deductions under section 151. See sections 151, 152, and 153, and the regulations thereunder. In general, one exemption is allowed for the taxpayer; one exemption for his spouse if a joint return is made, or if a separate return is made by the taxpayer and his spouse has no gross income for the calendar year in which the taxable year of the taxpayer begins and is not the dependent of another taxpayer for such calendar year; and one exemption for each dependent whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than the applicable amount determined pursuant to § 1.151-2. No exemption is allowed for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins. The taxpayer may, in certain cases, be allowed an exemption for a dependent child of the taxpayer notwithstanding the fact that such child has gross income equal to or in excess of the amount determined pursuant to § 1.151-2 applicable to the calendar year in which the taxable year of the taxpayer begins. The requirements for the allowance of such an exemption are set forth in paragraph (c) of § 1.152-1. See paragraphs (c) and (d) of § 1.151-1 with respect to additional exemptions for a taxpayer or spouse who has attained the age 65 years and for a blind taxpayer or blind spouse.

(b) The application of this section may be illustrated by the following examples:

*Example 1.* A, a married man whose duties as an employee require traveling away from

his home, has as his sole gross income a salary of \$5,600 for the calendar year 1954. His traveling expenses, including cost of meals and lodging, amount in such year to \$750, and hence, his adjusted gross income is \$4,850. His wife, B, has as her sole income interest in the amount of \$85, and thus the aggregate adjusted gross income of A and B is \$4,935. A has two dependent children neither of whom has any income. A and B file a joint return for 1954 on Form 1040. In such case four exemptions are allowable. The adjusted gross income falls within the tax bracket \$4,900-4,950. By referring to such tax bracket in the tax table in section 3 and to the column headed "4" therein, the tax is found to be \$407.

*Example 2.* C, a married man, has as his sole income in 1954 wages of \$4,600, and has two dependent children neither of whom has any income. His wife, D, has adjusted gross income of \$400. C files a separate return for 1954 and is entitled to claim three exemptions. C's income falls within the tax bracket \$4,600-4,650 and hence, with three exemptions his tax is \$480. No exemption is allowed with respect to since D has gross income and a joint return was not filed.

*Example 3.* D, a married man with no dependents, attains the age of 65 on September 1, 1954. The aggregate adjusted gross income of D and his wife for 1954 is \$4,840. D and his wife file a joint return for 1954 and are entitled to three exemptions, one for each taxpayer and one additional exemption for D because of his age. Since the adjusted gross income of D and his wife falls within the tax bracket \$4,800-4,850, the tax on a joint return is \$509.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 7114, 36 FR 9018, May 18, 1971]

#### § 1.4-2 Elections.

(a) *Making of election.* The election to pay the optional tax imposed under section 3 shall be made by (1) filing a return on Form 1040A, or (2) filing a return on Form 1040 and electing in such return, in accordance with the provisions of section 144 and the regulations thereunder, to take the standard deduction provided by section 141.

(b) *Election under section 3 and election of standard deduction.* Section 144 (a) and the regulations thereunder provide rules for treating an election to pay the tax under section 3 as an election to take the standard deduction, and for treating an election to take the standard deduction as an election to pay the tax under section 3. For example, if the taxpayer's return shows \$5,000 or more