DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

OFFICE OF CHIEF COUNSEL

Number: **200115034**
Release Date: 4/13/2001

CC:IT&A:2:EBCleverdon
WTA-N-115006-00
UIL: 217.13-00
March 7, 2001

MEMORANDUM FOR ASSOCIATE AREA COUNSEL – PHOENIX
Attention: Erin Huss

FROM: Heather C. Maloy
Associate Chief Counsel
(Income Tax & Accounting)

SUBJECT: Tax Issues for Bosnian Refugees Immigrating to the United States

This Chief Counsel Advice responds to your memorandum dated August 3, 2000, requesting assistance on moving expense deductions for immigrants moving to the United States. This memorandum may be shared with field offices. Chief Counsel Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be relied upon or otherwise cited as precedent.

Your office is currently involved in a preparer project, and the question has arisen concerning a large number of Eastern European immigrants, mainly from Bosnia, who are claiming income tax deductions for their expenses of moving to the United States.

Under the typical fact pattern you describe, an Eastern European citizen (a nonresident alien for federal income tax purposes) purchases an airline ticket (financed by an interest-free loan from a humanitarian organization) to move to the United States. After the immigrant comes to the United States (and becomes a resident alien), he or she repays the loan and claims a moving expense deduction on their federal income tax return (which in some cases is for the year of the arrival, but in other cases is for a subsequent taxable year).

Your memorandum to us tentatively concludes that these expenses are nondeductible, and the legal analysis provided in your memorandum clearly supports this conclusion. We do, however, offer the following comments for your consideration.

It is clear that the moving expenses incurred by one of these individuals before coming to the United States, at a time he or she is considered a nonresident alien, are not deductible on the first federal income tax return the individual files as a resident alien. If the deduction is claimed for a taxable year subsequent to the year the expenses were incurred, § 217(a) of the Internal Revenue Code, which provides for moving expense

deductions, does not allow a deduction for expenses paid or incurred in a prior taxable year.[1] This is true even if, in the subsequent taxable year, the individual repays the loan that financed the moving expenses. See Rev. Rul. 78-38, 1978-1 C.B. 68 (charitable contribution by credit card is deductible in the year charged, not the year the bill is paid).

Additionally, for those individuals who claimed the deduction for the same year the expenses were paid, you have pointed out that the "dual status" rules in § 1.871-13(a) of the Income Tax Regulations apply. Under these rules, the taxable year during which a nonresident alien becomes a resident alien is treated as two separate tax periods – the period of nonresidency and the period of residency. You correctly concluded that in this case the moving expenses incurred during the period of nonresidency could not be deducted against the income reported for the period of residency.

We note that there may be rare situations in which an immigrant may have been engaged in the conduct of a U.S. trade or business before immigrating and becoming a U.S. resident. In such situations, and to the extent the moving expenses meet the requirements of § 217, the moving expense deduction could be claimed on Form 1040NR for the period of nonresidency to offset any income effectively connected with the conduct of a U.S. trade or business received during that period. See Rev. Rul. 68-308, 1968-1 C.B. 336.

I hope you find this information helpful. This matter has been informally coordinated with the Office of Associate Chief Counsel (International), and that office concurs with your proposed conclusion. Please contact Edwin B. Cleverdon, at (202) 622-4920, if you have any questions.

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[1]Section 217(a) provides that "There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work."