810-3-17-.01 Items Not Deductible.

(1) Costs and expenses which are not deductible for income tax purposes include, but are not limited to:

(a) Personal, living, and family expenses such as:

1. Premiums paid for life insurance by the insured.

2. Cost of insuring a dwelling owned and occupied by the taxpayer as a personal residence.

3. Expenses of maintaining a household, including amounts paid for rent, water, utilities, domestic services, home repairs or improvements, etc.

4. Expenses incurred for care of dependent children including child support, even if both spouses work.

5. Losses sustained by the taxpayer upon the sale or other disposition of property held for personal, living, and family purposes.

6. Travel expenses or automobile expenses not deductible under Section 40-18-15.

7. Cost of wearing apparel unless such wearing apparel is required as a condition of employment and is not suitable for street wear.

8. Amounts paid as damages, attorneys' fees and other costs of suit to recover such damages. However, damages in settlement of a suit, claim or judgement arising out of a trade or business or transactions entered into for profit are deductible.

9. Attorneys' fees paid in a suit for separation or divorce.

10. Losses sustained and expenses incurred in illegal transactions.

11. Dues to fraternal and social organizations, etc.

12. Gambling losses in excess of gains.

13. Adoption expenses - for tax years prior to January 1, 1991 are not deductible. For tax years subsequent to December 31, 1990, see Rule 810-3-15-.24.

(b) Capital expenditures. No deduction shall be allowed for:

1. Any amount paid for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, or

2. Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made in the form of a deduction for depreciation, amortization, or depletion.

(c) Premiums paid on life insurance. Premiums paid on a life insurance policy covering the life of any officer or employee of the taxpayer, or any person (including the taxpayer) who is financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary of the policy.

(d) Organization and financing expenses.

1. For tax years beginning before January 1, 1985, expenses in connection with the organization or reorganization of a business enterprise, such as fees for incorporating, attorneys, accountants, appraisers, and commissions or other expenses in the issuance or sale of capital stock are properly capitalized when incurred or paid. Such expenses are not deductible from gross income until the business for which the expenses were incurred is abandoned and the business organization itself, or, in the case of a reorganization, the successor to the business organization, has been dissolved, or has completely wound up its affairs, whichever is later.

2. For tax years beginning after December 31, 1984, organizational expenditures incurred by a corporation may be amortized over a period of not less than 60 months. See Rule 810-3-35-.01(7).

3. For tax years beginning after December 31, 1989, certain start-up costs may, if the taxpayer so elects, be amortized over a period of not less than 60 months even if the costs do not qualify for amortization as organization fees. See Rule 810-3-15-.23.

(e) Amortization of bond premiums. Premiums paid on bonds purchased by individuals are part of the cost of such bonds, and no portion of such premiums will be allowed as a deduction from gross income until the bonds are sold or redeemed. An exception to this general rule occurs in the case of estates and trusts where the trustee has no alternative other than to protect the corpus of the estate or the trust. In such cases the Department will permit the premium to be amortized over the life of the bond.

(f) Fines and penalties.

1. Fines imposed for violations of law, or penalties imposed for legal infractions, misconduct or failure to adequately or timely comply with laws or regulations are not deductible. Such nondeductible items include:

(i) Penalties for late payment or nonpayment of taxes.

(ii) Punitive damages imposed by a court for violations of civil or criminal laws (including overweight or speeding fines or penalties).

2. "Penalties" imposed by contract as liquidated damages are deductible. Such items include:

(i) Penalties for early withdrawal of savings certificates.

(ii) Penalties for failure to complete a construction contract within a specified time.

Author: Mary L. Gifford, Yeteva Johnson, and Kathy Alabi.
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