
From: Cashman Marie
Sent: Friday, July 27, 2007 1:45 PM
To: Julianelle Michael D
Cc: Cook Janine; Livingston Catherine E; Boominathan Selvan V
Subject: Juror fees

Michael,

We coordinated the question of reimbursement for juror's travel expenses with CC:ITA as that issue is within their jurisdiction. We asked whether reimbursements for commuting and lodging (when the jurors were not sequestered) were includible in income. We note that the Service's longstanding position, notwithstanding a Tax Court Memorandum opinion to the contrary, is that commuting for jury duty is a personal expense and payments therefore are included in income. That position is posted on the FSLG web page. With respect to the lodging, however, that is a new question and the Service has not previously taken a position on that issue.

IT&A concluded that when there is no legal obligation for the court to pay a juror's travel or lodging expenses, reimbursements for those expenses are includible in a juror's gross income. Conversely, when there is a legal obligation, the expenses should be excludable from income. We note that the latter conclusion has not been issued by the Service in any publicly available document, thus, a the taxpayer has nothing official to rely on rely to take that position.

For **travel expenses**, the Tax court decided Jernigan v. CIR in a memo opinion and held that reimbursements of \$7.50 for juror expenses were excludable from the juror's gross income. There is an AOD acquiescing with the decision. However, GCM 35175, states that the Jernigan case was decided incorrectly and advised revoking the AOD. IT&A thinks that the Jernigan decision mistakenly relied on 2 revenue rulings where the taxpayer had a non-tax legal obligation to provide the reimbursements; in Jernigan, there was no such obligation to provide reimbursements for juror expenses. IT&A also states that the acquiescence in the decision is based upon the de minimus amount, however, in our view that reads too much into the AOD. Although the AOD has not been revoked, IT&A views its impact as very limited

For the **lodging expenses**, the issue reduces to whether the court has a legal obligation to provide for the lodging of jurors. If there is such an obligation, then the court is discharging its own obligation by making reimbursements to the juror, so there should be no tax consequences to the juror. Outside of juror expenses, there are several Rev. Rulings which held that when the taxpayer discharges the obligation of another, and is reimbursed for such expenses, the taxpayer excludes the amount of the reimbursement from gross income. IT&A advises that a legal obligation could arise from local law or by court rules. Hence, if court rules impose on the court the obligation to provide the reimbursement of lodging expenses, the reimbursement should be excludable from a juror's gross income.

IT&A confirms that this reasoning also extends to the **travel expenses**. So a legal obligation to pay

for the travel expenses should make the expenses the court's and thus should make the reimbursements excludable from income. Again, that conclusion is also not in a public document.

In sum, following IT&A's theory the treatment of reimbursements of both lodging and travel expenses would vary between jurisdictions, depending on local law or court rules.

As we see it, FSLG can advise [REDACTED] via telephone of IT&A's opinion and if she wants a written response she would need to seek a PLR from IT&A's. Most PLR requests begin before the actual request with a presubmission conference – and sometimes – the taxpayer will get an indication of the Service's view on an issue. Alternatively, FSLG could also approach IT&A about published guidance, but before doing that it might be useful to do some additional fact gathering to determine whether this is a common practice.

Please let us know if we can provide any further assistance. I will be out of the office next week, but if you have any questions Janine Cook and Selvan Boominathan worked on this in TEGE and they can be reached at 202-622-6040 and Keith Aqui in ITA at 202-622-4920.

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CC:TEGE