

## Part III - Administrative, Procedural, and Miscellaneous

### Deductibility of Lodging Expenses

Notice 2007-47

#### PURPOSE

This notice advises taxpayers that the Internal Revenue Service and the Department of the Treasury intend to amend regulations under § 262 of the Internal Revenue Code relating to the deductibility of lodging expenses.

#### BACKGROUND

Section 162(a) allows as a deduction all the ordinary and necessary business expenses paid or incurred during the taxable year in carrying on any trade or business. Section 162(a)(2) provides that expenses deductible under § 162(a) include traveling expenses (including lodging expenses that are not lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business.

Section 262(a) provides generally that no deduction is allowed for personal, living, or family expenses.

Section 1.262-1(b)(5) of the Income Tax Regulations provides that the costs of a taxpayer's lodging not incurred in traveling away from home are personal expenses and are not deductible unless they qualify as deductible expenses under § 217.

Under § 1.132-5(a) of the Income Tax Regulations, the value of a working condition fringe is not included in the gross income of an employee. A "working condition fringe" is any property or service provided to an employee of an employer to

the extent that, if the employee paid for the property or service, the amount would be allowable as a deduction under § 162 or 167.

#### INTERIM GUIDANCE

The Service and the Department of the Treasury expect to amend § 1.262-1(b)(5) to provide that the costs of a taxpayer's lodging not incurred in traveling away from home are personal expenses and are not deductible unless they qualify as deductible expenses under § 162 or 217.

Pending the issuance of additional published guidance, the Service will not apply § 1.262-1(b)(5) to expenses for lodging of an employee not incurred while the employee is traveling away from home that an employer provides to the employee, or requires the employee to obtain, under the following conditions:

- (1) The lodging is on a temporary basis;
- (2) The lodging is necessary for the employee to participate in or be available for a bona fide business meeting or function of the employer; and
- (3) The expenses are otherwise deductible by the employee, or would be deductible if paid by the employee, under § 162(a).

This issue will not be raised in any taxable year ending on or before publication of the guidance and, if already raised as an issue in examination or before the Office of Appeals or the Tax Court in a taxable year ending on or before May 23, 2007, the issue will not be pursued by the Service.

#### DRAFTING INFORMATION

The principal author of this notice is R. Matthew Kelley of the Office of the Associate Chief Counsel (Income Tax & Accounting). For further information concerning this notice, contact Mr. Kelley at (202) 622-7900 (not a toll-free call).