

Part I

Section 274.—Disallowance of Certain Entertainment, Etc., Expenses

26 CFR 1.274-1: Disallowance of Certain Entertainment, Etc., Expenses

Rev. Rul. 2007-28

ISSUE

Section 274(h) of the Internal Revenue Code (the “Code”) limits deductions for expenses incurred in connection with a convention, seminar, or similar meeting held outside the “North American area.” This revenue ruling contains an updated list of all geographical areas currently included in the North American area for purposes of section 274(h).

LAW AND ANALYSIS

Section 274(h) disallows deductions under section 162 for expenses allocable to attendance of an individual at a convention, seminar, or similar meeting (collectively, a “convention”) held outside the “North American area” unless the taxpayer demonstrates that the location of the convention satisfies specified standards of reasonableness.

A geographical area may be included in the “North American area” for purposes of section 274(h) under one of the four provisions described below.

Section 274(h)(3)(A)

Section 274(h)(3)(A) defines the term “North American area” as the United States, its possessions, the Trust Territory of the Pacific Islands, Canada, and Mexico. Under section 7701(a)(9), the United States consists of the fifty states and the District of Columbia. The Internal Revenue Service treats the following as the possessions of the United States for this purpose: American Samoa, Baker Island, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, Howland Island, Jarvis Island, Johnston Island, Kingman Reef, the Midway Islands, Palmyra Atoll, the United States Virgin Islands, Wake Island, and other United States islands, cays, and reefs not part of the fifty states or the District of Columbia. The jurisdictions that formerly constituted the Trust Territory of the Pacific Islands -- the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau -- are now covered by the compacts with the United States described below.

The Compact of Free Association Act of 1985

The Compact of Free Association Act of 1985, Pub. L. No. 99-239, 99 Stat. 1770 (1986), went into effect on October 21, 1986, with respect to the Republic of the Marshall Islands, and on November 3, 1986, with respect to the Federated States of Micronesia. Section 405 of Title IV of the Compact provides that, for purposes of section 274(h)(3)(A) of the Code, the Republic of the Marshall Islands and the Federated States of Micronesia are included in the North American area.

The Compact of Free Association Between the United States and the Republic of Palau

The Compact of Free Association between the United States and the Republic of Palau, Pub. L. No. 99-658, 100 Stat. 3672 (1986), went into effect on October 1, 1994.

Section 225(d) of Title II of the Compact with Palau provides that, for purposes of section 274(h)(3)(A) of the Code, Palau is included in the North American area.

Section 274(h)(6)

Section 274(h)(6)(A) provides that the term “North American area” includes any “beneficiary country” if, as of the time a convention begins: (i) there is in effect an agreement described in section 274(h)(6)(C) providing for the exchange of information between the United States and the beneficiary country; and (ii) there is not in effect a finding by the Secretary of the Treasury that the tax laws of the beneficiary country discriminate against conventions held in the United States.

Section 274(h)(6)(B) defines the term “beneficiary country” as a beneficiary country as defined in section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983), and Bermuda. Under section 274(h)(6)(C)(i), to constitute an agreement that provides for the exchange of information between the United States and a beneficiary country, an agreement generally must provide:

for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil

proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares.

Where an exchange of information agreement between a beneficiary country and the United States does not qualify as an agreement described in section 274(h)(6)(C)(i) or is not in effect within the meaning of section 274(h)(6)(A)(i), the beneficiary country is not included as part of the North American area under section 274(h)(6) for purposes of determining whether deductions are allowed for expenses incurred in connection with a convention.

Rev. Rul. 2003-109, 2003-2 C.B. 839, identified each of the following jurisdictions as a beneficiary country for which there was in effect an agreement with the United States as described in section 274(h)(6)(C)(i) and for which there was not in effect a finding by the Secretary of the Treasury that the tax laws of the beneficiary country discriminate against conventions held in the United States: Antigua and Barbuda, Barbados, Bermuda, Costa Rica, Dominica, Dominican Republic, Grenada, Guyana, Honduras, Jamaica, Saint Lucia, and Trinidad and Tobago

It has come to the attention of the Internal Revenue Service that the tax information exchange agreement signed by the United States and Saint Lucia on January 30, 1987, is not in effect within the meaning of section 274(h)(6)(A)(i) because the government of Saint Lucia has not enacted legislation to implement the agreement. Accordingly, Saint Lucia is not included in the North American area under section 274(h)(6), subject to the transition relief provided in the Holding below.

Since publication of Rev. Rul. 2003-109, three new qualifying agreements have entered into force. First, the “Agreement Between the Government of the United States of America and the Government of the Commonwealth of the Bahamas for the Provision of Information with Respect to Taxes and for Other Matters” entered into force on December 31, 2003. See Treas. News Release JS-1075 (December 31, 2003). However, under the agreement with the Bahamas, Article 2 (“Provision of Information with Respect to United States Taxes”) did not take effect with respect to requests for information made by the United States in connection with a civil matter until January 1, 2006, and Article 5 (“Convention Tax Treatment”) similarly did not take effect until January 1, 2006. Consequently, the Bahamas is included within the North American area under section 274(h)(6) as of January 1, 2006.

Second, the “Agreement Between the United States of America and the Kingdom of the Netherlands in Respect of Aruba for the Exchange of Information With Respect to Taxes” entered into force on September 13, 2004. See Treas. News Release JS-1914 (September 14, 2004). Therefore, Aruba is included within the North American area under section 274(h)(6) as of September 13, 2004.

Third, the “Agreement Between the Government of the United States of America and the Government of the Kingdom of the Netherlands in Respect of the Netherlands Antilles for the Exchange of Information With Respect to Taxes” entered into force on March 22, 2007. Therefore, the Netherlands Antilles is included within the North American area under section 274(h)(6) as of March 22, 2007.

Two other beneficiary countries -- the Cayman Islands and the British Virgin Islands -- have entered into tax information exchange agreements with the United States that are not of the type described in section 274(h)(6)(C)(i) because of certain limitations in the scope of those agreements. Accordingly, the Cayman Islands and the British Virgin Islands are not included as part of the North American area under section 274(h)(6).

HOLDING

For purposes of determining whether deductions are allowed for expenses incurred in connection with a convention, seminar, or similar meeting, the following areas are included in the "North American area" as of the effective date of section 274(h) except as otherwise indicated:

1. The fifty states of the United States and the District of Columbia;
2. The possessions of the United States, which for this purpose are American Samoa, Baker Island, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, Howland Island, Jarvis Island, Johnston Island, Kingman Reef, the Midway Islands, Palmyra Atoll, the United States Virgin Islands, Wake Island, and other United States islands, cays, and reefs not part of the fifty states or the District of Columbia;
3. Canada;
4. Mexico;
5. The Republic of the Marshall Islands;

6. The Federated States of Micronesia;
7. The Republic of Palau;

For expenses incurred in attending a
convention that began after:

- | | |
|--------------------------|--------------------|
| 8. Antigua and Barbuda | February 9, 2003 |
| 9. Aruba | September 12, 2004 |
| 10. Bahamas | December 31, 2005 |
| 11. Barbados | November 2, 1984 |
| 12. Bermuda | December 1, 1988 |
| 13. Costa Rica | February 11, 1991 |
| 14. Dominica | May 8, 1988 |
| 15. Dominican Republic | October 11, 1989 |
| 16. Grenada | July 12, 1987 |
| 17. Guyana | August 26, 1992 |
| 18. Honduras | October 9, 1991 |
| 19. Jamaica | December 17, 1986 |
| 20. Netherlands Antilles | March 21, 2007 |
| 21. Trinidad and Tobago | February 8, 1990 |

The Internal Revenue Service will treat Saint Lucia as not included in the North American area under section 274(h)(6) with respect to conventions that begin after April 4, 2007, except with respect to expenses for which the taxpayer demonstrates a nonrefundable contractual obligation existing as of April 4, 2007.

This revenue ruling will be updated as future developments result in the inclusion of other areas in, or the exclusion of areas from, the North American area.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2003-109 is superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is Denen Norfleet Boyce of the Office of Associate Chief Counsel (International), Branch 7. For further information regarding this revenue ruling, contact the principal author at (202) 435-5262 (not a toll-free call).