

INTERNAL REVENUE SERVICE
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May 1, 2000

The Honorable Edward A. Pease
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Pease:

Commissioner Rossotti requested I respond to your inquiry dated March 27, 2000, on behalf of your constituent, Mr. [REDACTED].

Mr. [REDACTED] indicates he is a transportation worker who is being unfairly denied ordinary and necessary business expense deductions under § 162 of the Internal Revenue Code because the Internal Revenue Service (IRS) does not follow the "Cohan rule." Cohan v. Commissioner, 39 F.2d 540 (2d Cir. 1930), held that where the evidence indicated a taxpayer incurred deductible travel or entertainment expenses but the exact amount could not be determined, the court should make a close approximation and not disallow the deduction entirely. Mr. [REDACTED] also indicates that IRS agents are not properly applying the substantiation rules relating to business travel expenses of \$75.

Section 162(a)(2) allows a deduction for ordinary and necessary business expenses paid or incurred in carrying on a trade or business, including traveling expenses (including amounts expended for meals and lodging other than amounts that are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business.

Section 274(d)(1) provides, in part, that no deduction shall be allowed under § 162 for any traveling expense (including meals and lodging while away from home) unless the taxpayer substantiates by *adequate records* or by sufficient evidence corroborating the taxpayer's own statement the (A) amount of the expense, (B) time and place of the travel, and (C) business purpose of the expense. Section 274(d) further provides that regulations may prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed an amount prescribed by such regulations.

Section 1.274-5T(a) of the temporary Income Tax Regulations states that the limitation of § 274(d) supersedes the close approximation doctrine founded in Cohan, and that no deduction or credit shall be allowed a taxpayer on the basis of such approximations or unsupported testimony of the taxpayer. To meet the "adequate records" requirement of

§ 274(d)(1), § 1.274-5T(c) provides that taxpayers must maintain a contemporaneous account book, diary, log, statement of expense, trip sheets, or certain similar record, and documentary evidence that, in combination, are sufficient to establish each element (e.g., amount, time, place, and business purpose) of a travel expenditure.

Section 1.274-5T(c)(2)(iii)(A) provides that, in the case of expenditures for *lodging* while traveling away from home, taxpayers must provide documentary evidence, such as receipts, paid bills, or similar evidence sufficient to support the expenditure.

Under § 1.274-5T(c)(2)(iii)(B), however, documentary evidence is not required for any other expenditure (except lodging) that is *less* than \$75.

I hope this information is helpful. Please contact Channing Horton, Identification Number 50-03418, at (202) 622-4920 if we may be of further assistance.

Sincerely,

Deputy Assistant Chief Counsel
(Income Tax & Accounting)

By _____
Robert A. Berkovsky
Chief, Branch 2