

INTERNAL REVENUE SERVICE

Number: **INFO 2000-0262**

Release Date: 12/29/2000

UIL: 162.08-06

September 15, 2000

Dear [REDACTED]:

This letter is in response to your inquiry dated June 29, 2000, on behalf of your constituent [REDACTED]. He believes his employer is incorrectly treating automobile expense reimbursements as taxable wages, and he would like to argue his position to the U.S. Tax Court.

[REDACTED] has no recourse to the U.S. Tax Court or any other federal tax administrative authority if he disagrees with his employer's reporting of the automobile expense reimbursements as taxable wages. This is the case regardless of whether the employer is a federal agency or a private enterprise because the rule is that an employer must treat payments to employees as taxable wages unless an exception clearly applies. His recourse is to claim a miscellaneous itemized deduction for expenses that are deductible under Rev. Rul. 99-7, 1999-1 C.B. 361 (enclosed), which is discussed below.

I hope the following information helps explain our answer. An employer's payments to employees generally are included in the employee's gross income and are treated as taxable wages subject to tax withholding and information reporting. However, if an employer establishes an accountable plan (as defined in § 1.62-2 of the Income Tax Regulations) and reimburses deductible business expenses, the reimbursements are not taxable wages and are not subject to tax withholding or information reporting. Thus, in complying with its withholding and reporting obligations, the employer must correctly determine that the expenses are deductible business expenses.

In general, daily transportation expenses incurred in going between an employee's residence and a work location are nondeductible commuting expenses, and an employer's reimbursement of these expenses would be taxable wages. This general rule is not limited to work locations maintained by the employer. However, Rev. Rul. 99-7 provides an exception to this general rule for an employee with one or more regular work locations away from the residence: daily transportation expenses incurred in going between the employee's residence and a temporary work location are deductible business expenses. An employer's reimbursement of these expenses under an accountable plan would not be taxable wages.

A “temporary work location” is a work location where employment is realistically expected to last (and does in fact last) for 1 year or less. Deciding whether employment at a particular work location is temporary depends on applying the rules to the facts and circumstances of the employment. When reimbursing these expenses, an employer must be certain that an employee’s employment at a particular work location is temporary; otherwise, the employer must treat the reimbursements as taxable wages.

Although an employer may be able to identify with certainty whether some reimbursements meet the requirements of Rev. Rul. 99-7, other reimbursements may require a closer look. If analyzing each trip taken by each employee is difficult, the employer may decide, in properly complying with its tax withholding and reporting obligations, to adopt a bright-line rule that treats automobile expense reimbursements as taxable wages unless the expenses, without question, fall under Rev. Rul. 99-7. Of course, this action may result in reimbursements paid as taxable wages when the underlying expenses are, in light of the facts and circumstances, deductible business expenses under Rev. Rul. 99-7. In this case, the employee can claim a miscellaneous itemized deduction for the expenses on his or her federal income tax return.

Again, I hope this information is helpful. Please call Edwin B. Cleverdon, Identification Number 50-01366, at (202) 622-4920, if you have any questions.

Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

By: _____
Robert A. Berkovsky
Chief, Branch 2

Enclosure