

Internal Revenue Service

Department of the Treasury

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CC:ITA:2 – COR-114022-01

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Dear [REDACTED]:

This letter responds to your telephone conversation with George Baker on March 8, 2001, during which you requested a letter providing general information regarding the deductibility of employee business meals. You inquired whether meals consumed by air traffic controllers during their shift at their regular post of duty are deductible under § 162 of the Internal Revenue Code. You also referred to the instructions for Form 2106 which you found did not definitely resolve your question. I am pleased to provide the following general information regarding the deductibility of business meals which you have requested.

Section 162(a) of the Code allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under § 162(a)(2), an employee may deduct expenses paid or incurred while traveling away from home in pursuit of a trade or business. Meals while not traveling away from home might also be deductible as an entertainment expense if they relate closely enough to business to escape the disallowance under § 274(a).

Section 274(a) provides that no deduction shall be allowed for entertainment expenses unless the taxpayer establishes that the item was directly related to a substantial and bona fide business discussion, or that such item was associated with the active conduct to the taxpayer's trade or business.

Section 274(n) generally limits the amount allowable as a deduction under § 162 for any expense for food, beverages, or entertainment to 50 percent of the amount that otherwise would be allowable as a deduction. Under § 274(n)(3), the limit is higher in the case of any expense for food or beverages consumed while away from home by an individual during or incident to, the period of duty subject to the hours of service limitations of the Department of Transportation, such as a control tower operator. Section 274(n)(3) gradually increases the deductible percentage to 80 percent for taxable years beginning in 2008. For taxable years beginning in 2001 the deductible percentage for these expenses is 60 percent. Section 274(n), however, provides no authority for deducting any meal expense not otherwise deductible under § 162.

Section 262, provides that personal, living, or family expenses are not deductible. Section 1.262-1(b)(5) of the regulations provides that the costs of a taxpayer's meals

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not incurred while traveling away from home are personal expenses, except as provided by § 162, § 212 (expenses to produce income) and § 217 (moving expenses).

Generally, meals at the taxpayer's regular work location are not allowable under § 162. The courts have held that daily meals are an inherently personal expense. See Moss v. Commissioner, 80 T.C. 1073 (1983), *aff'd* 758 F.2d 211 (7th Cir. 1985), *cert. denied* 474 U.S. 979 (1985), (deductions for frequent lunch meetings taken by a law firm disallowed).

You drew our attention to the instructions for Form 2106, specifically the instructions for Line 5 and Line 9. These instructions use the terms "allowable meals" or "business meals." An expense for meals is allowable only if it meets the requirements of § 162 described above. Meals can be deductible as a traveling expense while away from home. They can also be deductible as an entertainment expense under § 162 subject to the requirements of § 274(a).

The instructions for Line 9 refer to the 50 percent limitation described by § 274(n), and the 60 percent limitation described by § 274(n)(3). Although the instructions do not emphasize that § 274(n)(3) applies only to expenses for food and beverages consumed while traveling away from home, the operation of Form 2106 makes it clear that Line 9 only modifies what has already been entered on Line 5 as an allowable business meal expense.

I hope this information is helpful. For your convenience I have enclosed Publication 463 *Travel, Entertainment, Gift, and Car Expenses*. Please call Sean Dwyer at the number above, if you have any questions.

Enclosure

Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

By: _____
George Baker
Assistant to Branch Chief, Branch 2