

INTERNAL REVENUE SERVICE

Date: 3/30/01

Number: **INFO 2001-0103**

Release Date: 6/29/2001

UIL: 274.08-00

The Honorable Tom Latham
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Latham:

This letter is in response to your inquiry dated February 15, 2001, on behalf of your constituent, [REDACTED]. [REDACTED] owns a trucking company, and she has questions about reimbursing her employees' travel expenses using per diem allowances. She pays her employees a cents-per-mile travel expense allowance, and she is concerned the per diem rules do not allow a cents-per-mile allowance to cover lodging or truckstop shower expenses. She is also concerned the per diem rules for the trucking industry are more strict than rules for other industries.

In actuality the trucking industry is one of the few allowed to account for employees' travel expenses using a cents-per-mile allowance. However, because of limitations in the rules the allowance is treated as a reimbursement of meals and incidental expenses. [REDACTED], however, can separately reimburse the actual expenses of lodging or showers, if the employee properly substantiates them.

An employer's reimbursement or other expense allowance payments to an employee are considered wages unless three requirements are met:

- (1) the payments reimburse a deductible expense,
- (2) the employee substantiates the expense, and
- (3) the employee is obliged to return any excess amount.

Reimbursed travel expenses are substantiated if the employee adequately accounts to the employer the amount, time, place, and business purpose of the expenses. The regulations generally require the employee to maintain an account book or similar record as well as documentary evidence; however, the per diem allowance rules provide a simple way to substantiate the amount of the travel expenses.

I have enclosed a copy of the current per diem revenue procedure, Rev. Proc. 2000-39, 2000-41 I.R.B. 340. The revenue procedure provides two types of per diem allowances

an employer can pay employees: (1) a lodging, meal, and incidental expense per diem allowance, and (2) a meals only per diem allowance.

An employer who pays one of these allowances for an employee's travel does so in lieu of reimbursing the employee's actual travel expenses for the day. The amount of the employee's expenses is considered substantiated up to the limits described in the revenue procedure, if time, place, and business purpose are substantiated.

The regulations governing per diem allowances generally do not allow payments "computed on a basis similar to that used in computing the employee's wages or other compensation (e.g., the number of hours worked, miles traveled, or pieces produced)." The concern was that such a calculation method more closely resembles a form of compensation and is not connected to the amount of the employee's travel expenses. However, some taxpayers and industries that used this type of allowance before the regulations were finalized, including the trucking industry, were allowed to continue calculating allowances in the same manner. In 1995 the rules were restricted by limiting the use of this calculation method to the meals only per diem allowance.

When an employer pays a meals only allowance, the amount of the travel expenses is considered substantiated up to the allowable federal meals and incidental rate for the locality of travel. The revenue procedure provides a special rate (currently \$38 for a full day of travel within the continental United States) for taxpayers in the transportation industry to ease the administrative burden of determining the proper amount for the travel location. The meals only allowance is paid in lieu of reimbursements for meals and incidental traveling expenses.

The trucking industry is one of the few allowed to substantiate the amount of employee travel expenses using a per-mile per diem arrangement, and an employer paying this type of allowance must treat the payment as a meals only allowance. Lodging or shower expenses can be reimbursed if the employee adequately accounts for the expense.

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,

Heather C. Maloy
Associate Chief Counsel
(Income Tax & Accounting)

Enclosure