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Person to Contact:

Telephone Number:

Refer Reply To:

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Date: January 8, 2002

Dear [REDACTED]:

This letter responds to your request for information regarding the deductibility of expenses for employee business meals. You inquired whether the costs of 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 have also enclosed an article by Martin A. Kapp, C.P.A., *Tax Advice for Controllers*, The Air Traffic Controller, Jan./Feb. 1998, at 9, which relates to your inquiry. I am pleased to provide the following general information regarding the deductibility of business meal expenses.

Section 162(a) 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. Meal expenses incurred while not traveling away from home might also be deductible as entertainment expenses if they relate closely enough to business activities 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 of 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 1.274-5(c)(2)(iii) of the Income Tax Regulations provides in part, that documentary evidence, such as receipts, paid bills, or similar evidence sufficient to support an expenditure, is required for: (1) any expenditure for lodging while traveling away from home, and (2) any other expenditure of \$75 or more.

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Section 262 provides that personal, living, or family expenses are not deductible. Section 1.262-1(b)(5) provides that the costs of a taxpayer's meals 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, the costs of meals at the taxpayer's regular work location are not deductible under § 162. The courts have held that daily meals are an inherently personal expense. See, eg., *Moss v. Commissioner*, 80 T.C. 1073 (1983), *aff'd* 758 F.2d 211 (7th Cir. 1985) (deductions for frequent lunch meetings taken by a law firm disallowed). An expense for meals is allowable only if it meets the requirements of § 162 described above. Thus, the costs of meals can be deductible as a traveling expense while away from home, or, subject to the requirements of § 274(a), the costs of meals may be deductible as an entertainment expense.

I do not believe Mr. Kapp's article conflicts with this information. However, confusion may arise from the assertion that The Taxpayer Relief Act of 1997, Pub. L. 105-34, "greatly expanded travel tax deductions to include all individuals 'subject to Department of Transportation hours of service limitations.'" Martin A. Kapp, C.P.A., *Tax Advice for Controllers*, The Air Traffic Controller, Jan./Feb. 1998, at 9.

An employee may deduct expenses paid or incurred while traveling away from home in pursuit of any trade or business, as provided by § 162(a)(2). The Taxpayer Relief Act of 1997 added § 274(n)(3) to the Code,¹ which allows a deduction for a greater percentage of expenses for food or beverages, consumed while away from home by an individual during, or incident to, the period of duty subject to the Department of Transportation hours of service limitations, than is allowed generally.

¹P.L. 105-34, § 969(a).

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I hope this information is helpful. For your convenience I have enclosed Publication 463 *Travel, Entertainment, Gift, and Car Expenses*. If you have any questions, please call [REDACTED] at the number above.

Sincerely yours,

KIMBERLY L. KOCH
Assistant to Branch Chief, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure