



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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This letter is in response to your inquiry seeking general information regarding business expenses incurred when applying the "traveling away from home" standard. You seek clarification whether taxable events occur under certain conditions regarding mileage and a substantially longer work day.

You ask whether the Internal Revenue Service has established a minimum mileage standard to meet the "away from general area of tax home" test and a minimum hour test to meet the substantially longer than an ordinary day's work" test set forth on page 3 of Publication 463, Travel, Entertainment, Gift and Car Expenses. The answer is no; and this answer precludes us from addressing the four examples you presented. Whether the business expenses incurred will be treated as deductible travel expenses under each of the examples presented will depend on the IRS's determination that (1) the "tax home" requirement is satisfied, (2) there is an accountable plan, (3) the temporary assignment of the employee is expected to last less than one year, (4) the employee has submitted information substantiating that the expenses for meals and lodging are ordinary and necessary expenses, and (5) the employee requires substantial sleep/rest to meet the demands of the job.

The facts presented in examples 1 and 3 do not clearly establish a need for substantial sleep or rest for the employee to perform the job. The facts presented in examples 2 and 4 do not clearly show that the employee is "away from the general area of the tax home." Any determination by the Service that a business expense is a deductible travel expense under Code section 162(a)(2) must be made in accordance with the general requirements in the applicable Code sections and other guidance issued by the Service. What follows is a general overview of applicable Code sections and other

relevant guidance to assist you in considering whether certain travel expenses are deductible.

Code section 162(a) (2) provides that a deduction shall be allowed for ordinary and necessary business expenses paid or incurred during the taxable year in carrying on a trade or business, including for travel expenses (which generally includes amounts for meals and lodging) while away from home in the pursuit of a trade or business.

Code section 62(a) allows a deduction from gross income for amounts deductible under certain Code provisions (including Code section 162) for expenses paid or incurred by a taxpayer, in connection with the performance of services as an employee under a reimbursement plan or other expense allowance arrangement with an employer. Income Tax Regulations section 1.62-2(c)(4) provides that amounts treated as paid under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's W-2, and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), Railroad Retirement Tax Act (RRTA), Railroad Unemployment Repayment Tax (RURT) and income tax).

Revenue Ruling 93-86, 1993-2-C.B. 71 provides the general rules for deducting travel expenses when an employee is temporarily away from home. Rev. Rul. 93-86 provides that for travel expenses to be deductible under Code section 162(a)(2) they must satisfy the following three conditions: (1) they must be ordinary and necessary, (2) they must be incurred while away from home, and (3) they must be incurred in pursuit of a trade or business. See *Commissioner v. Flowers*, 326 U.S. 465 (1946).

Generally, the "away from home" standard is construed to exclude all trips requiring neither sleep nor rest, regardless of how many cities a given trip may have touched, how many miles it may have covered or how many hours it may have consumed. See *Commissioner v. Bagley*, 374 F.2d. 204 (1st Cir. 1967). This construction of the "sleep or rest" rule allows for the ease and certainty of application and provides for substantial fairness of the sleep and rest rule by placing one-day travelers on a similar tax footing, rather than discriminating against intracity travelers and commuters. See *United States v. Correll*, 389 U.S. 299 (1967).

In *Williams v. Patterson*, 286 F. 2d 333 (5th Cir. 1961) the court found that if the nature of the employee's employment is such that when the employee is away from home, during the rest time, it is reasonable for him to need and obtain sleep or rest in order to meet the exigencies of his employment or the business demands of his employment, the employees expenditures for purposes of obtaining sleep or rest are deductible travel expenses under Code section 162(a). The court in *Williams* stated that 16 hours was in fact substantially longer than an ordinary workday and that it was reasonable for the taxpayer to sleep during a layover in order to carry out his work assignment. The Service agreed to follow the *Williams* decision. In Rev. Rul. 75-170, 1975-1 C.B. 60, in

addition to acquiescing to the *Williams* standard, the Service stated that the sleep and rest period must be of such duration or nature that the taxpayer cannot reasonably be expected to complete his round trip without being released from duty, or otherwise stopping (with their employer's tacit or expressed concurrence) the performance of their regular duties, for sufficient time to obtain substantial sleep or rest.

This letter provides general information only. It describes well-established interpretations or principles of tax law without applying them to a specific set of acts. It is advisory only and has no binding effect with the Service. This letter is intended only to provide you with general guidance for determining how to comply with applicable law.

Under the Freedom of Information Act, we will make this letter available to the public after we delete names, addresses, and other identifying information.

I hope this information is helpful. If we can be of further assistance in this matter, please call [REDACTED]

Sincerely,

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(Tax Exempt and Government Entities)