

INTERNAL REVENUE SERVICE

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January 23, 2003

Dear [REDACTED]:

This letter is in response to your inquiry, on behalf of your constituent, [REDACTED]. [REDACTED] represents some employees of the [REDACTED] and believes that the [REDACTED] should treat meal allowances paid to these employees (while their assigned ship is docked in port) as tax-free travel expense reimbursements. An employer can reimburse deductible employee business expenses tax-free if the employer reimburses only bona fide expenses related to the employer's business; otherwise, the employer must treat the reimbursements as taxable wages. I hope the following general information will be helpful to you.

Whether employee expense reimbursements are excluded from wages (and, therefore, are exempt from the withholding and payment of employment taxes) depends on whether the employer maintains an "accountable plan" that meets the standards set forth in the tax regulations. If an employer maintains an accountable plan, and the employer reimburses **deductible** business expenses, the reimbursement is not taxable. If the employer also reimburses **nondeductible** business expenses, however, such reimbursements are treated as paid under a nonaccountable plan, are included in the employee's gross income, and must be reported as wages for employment tax purposes.

Meal expenses are inherently personal expenses. However, meal expenses are considered business expenses, and deductible, if paid or incurred while traveling away from home in the pursuit of a trade or business. See *Commissioner v. Flowers*, 326 U.S. 465 (1946), 1946-1 C.B. 57. Through case law and administrative practice, a concept of a "tax home" has developed that ensures only those expenses necessitated by the exigencies of the trade or business, and that require the employee to incur duplicate expenses, will be deductible:

- An employee's "tax home" is generally the vicinity of the employee's regular place of business (or, if more than one regular place, then the employee's principal place of business).
- If the employee has no regular or principal place of business, then the "tax

home” is at the employee’s “place of abode in a real and substantial sense,” defined by administrative practice to refer to the employee’s residence, but only if the employee maintains certain business-related contacts within that vicinity.

- If the employee has no regular or principal place of business, and has no “place of abode in a real and substantial sense,” the employee is considered to be an itinerant whose “tax home” is wherever the employee happens to work.

Thus, whether an employee is “traveling away from home” generally depends on the specific facts related to the specific traveler. See, for example, *Johnson v. Commissioner*, 115 T.C. 210 (2000), a case referred to by your constituent.

Because of the individual nature of this inquiry, the “tax home” determination generally cannot be applied to a class of employees without regard to each employee’s specific situation. In this sense, your constituent is correct that any past informal IRS advice that no employees were “traveling away from home” may be inaccurate. By the same token, however, it may be inaccurate to conclude that every reimbursed employee is “traveling away from home.”

If an employer wishes to reimburse its employees’ meal expenses tax-free (and the other accountable plan rules are met), the employer must determine that each reimbursed employee is “traveling away from home.” However, an employer is not required to adopt an accountable plan, and thus it may forgo making the individual “tax home” determinations. If so, the employer must treat all of the meal expense reimbursements as taxable wages in order for the employer to be in compliance with its tax obligations. We are willing to assist the employer in applying the rules described above, if requested.

If an employee receives a meal expense reimbursement that the employer has treated as wages, and if the employee was in fact “traveling away from home” under this criteria, the employee can claim a miscellaneous itemized deduction on his or her federal income tax return. In this case the employee generally can claim the standard meal allowance provided by the IRS per diem rules.

I hope this information is helpful. Please call me at [REDACTED], or [REDACTED], at [REDACTED], if you have any questions.

Sincerely,

James L. Atkinson
Associate Chief Counsel
(Income Tax & Accounting)