

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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to: Deborah C. Stanley
Associate Area Counsel (Richmond)
(Small Business/Self-Employed)

from: Donna M. Crisalli
Senior Technician Reviewer, Branch 2
(Income Tax & Accounting)

subject: Applicability of Rev. Rul. 67-438 to enlisted personnel

This chief counsel advice responds to your request for assistance dated October 26, 2007. This advice may not be used or cited as precedent.

ISSUE

Does Rev. Rul. 67-438, 1967-2 C.B. 82, apply to Navy enlisted personnel as well as officers?

CONCLUSION

Rev. Rul. 67-438 applies to Navy enlisted personnel in the same manner as officers.

LAW AND ANALYSIS

Section 162(a)(2) of the Internal Revenue Code allows a deduction for ordinary and necessary business expenses when traveling away from home.

Rev. Rul. 67-438 holds that, for purposes of § 162(a)(2), the home of a naval officer who is assigned to permanent duty aboard a ship that has regular eating and living facilities, such as an aircraft carrier, battleship, cruiser, destroyer, submarine, or supply ship, is aboard the ship.

We conclude that the taxpayer's status as an officer is not relevant to the legal analysis or holding of the revenue ruling, and that the ruling applies equally to Navy enlisted personnel who are on permanent duty aboard a ship that has regular eating and living facilities. A naval officer or enlisted member whose home for purposes of § 162(a)(2) is a naval vessel may deduct unreimbursed expenses for travel away from home that are properly substantiated and deductible under § 162(a)(2). We note however, that a naval vessel in dry dock is not the home of its crew (officer or enlisted) for these purposes. *Griffin v. Commissioner*, T.C. Memo 1992-186.

Please call _____ at _____ if you have any further questions.