



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

OFFICE OF
CHIEF COUNSEL

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Dear _____ :

This responds to your request for general information regarding the federal tax treatment of travel and subsistence allowances paid to grand and petit jurors of the federal district courts.

The Jury Selection and Service Act of 1968, as amended, requires the Director of the Administrative Office of the United States Courts (Office) to pay certain fees and allowances to grand and petit jurors of the federal district courts. 28 U.S.C. § 1871(a). Section 1871(b) requires that an attendance fee for services be paid to jurors. Section 1871(c) requires that a travel allowance be paid to jurors. Section 1871(d) requires that a subsistence allowance covering meals and lodging be paid to a juror when overnight stay is required at the place of holding court. Section 1871(e) provides that the court must pay the actual costs of meals and lodging when jurors are sequestered. We understand that, in fulfilling these statutory obligations, the Office issues a separate check for attendance fees for services and a separate check for travel and subsistence allowances.

Section 61(a) of the Internal Revenue Code (Code) provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Accordingly, a taxpayer must include in gross income all accessions to wealth, including jury fees received as compensation for services. See § 1.61-2(a) of the Income Tax Regulations (regulations).

Section 6041 of the Code requires all persons engaged in a trade or business that makes payment in the course of the trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, and income of \$600 or more in any taxable year, to file an information returns with the Service and to furnish an information statement to

the payee. The requirements of § 6041 also apply to certain payments made by the United States, its agencies, and instrumentalities. See § 1.6041-1(i) of the regulations.

In *Jernigan v. Commissioner*, T.C. Memo. 1968-18, the taxpayer included in gross income the statutory daily jury fee received as compensation for services but did not include a mileage allowance. The Tax Court rejected the Service's argument that the travel expenses were personal commuting expenses and reasoned that the payment was reimbursement for costs of the taxpayer's performance of a non-personal legal obligation as a citizen. The Tax Court stated, "In a sense, it can be said that the reimbursement was for expenses incurred to facilitate the proper functioning of the judiciary and to enable the government to discharge its responsibilities." The Tax Court concluded that, as such, they were not commuting expenses and are excludable from gross income. The Service acquiesced in the *Jernigan* decision.

In light of the Service's acquiescence in *Jernigan*, a juror is not required to include in gross income the travel and subsistence allowances paid pursuant to 28 U.S.C. § 1871. Because these allowances are not gross income, the Office is not required to file information returns for these payments. However, a juror is required to include the attendance fee as compensation for services, and the Office may be required to file information returns for these payments under § 6041 of the Code.

We hope this information is helpful. If you have any additional questions, please contact _____ at _____.

Sincerely,

Donna J. Welsh
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