



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

OFFICE OF THE CHIEF COUNSEL

June 3, 2009

Number: **INFO 2009-0108**
Release Date: 6/26/2009

CC:ITA:B04
CONEX-121917-09

UIL: 62.00-00, 63.00-00

Dear _____ :

I am responding to your letter to Senator Martinez. You requested that the law should permit employees to deduct business-related expenses in full. You also requested that individuals should be permitted to take both the standard deduction and a deduction for charitable contributions. Senator Martinez wrote to us on your behalf and asked us to respond directly to you.

For an individual, adjusted gross income (AGI) means gross income minus certain deductions listed in sections 62(a)(1) – (17) of the Internal Revenue Code (Code). The law allows an individual taxpayer, other than an employee, to deduct business-related expenses in full (section 62(a)(1) of the Code). Consequently, unlike an independent contractor or a sole proprietor, an employee cannot deduct business-related expenses in full in arriving at AGI. However, an employee can deduct unreimbursed employee business-related expenses only as an itemized deduction and only if the expenses exceed 2 percent of AGI (section 67 of the Code).

The underlying reason that Congress permitted business-related expenses to be deductible in full only by independent contractors or sole proprietors was to make AGI nearly equivalent between different taxpayers with different sources of income. Congress viewed this equivalency as necessary for the equitable application of the uniform tax tables and the standard deduction that do not depend on the taxpayer's source of income. For example, Congress considered that in determining AGI, in the case of an individual merchant or store proprietor, it was necessary to reduce gross income by the amount of business-related expenses before AGI would be comparable to the salary or wages of an employee for purposes of the uniform tax tables and the standard deduction. See Senate Report Number 885, 78th Cong., 2d Sess. 24 (1944), 1944 C.B. 858, 877-879.

You also requested information on the standard deduction. You stated that if you had mortgage interest expense, along with your actual charitable contributions, your total deductions would have exceeded the standard deduction and that you could have

deducted these amounts. You correctly point out that a taxpayer who chooses to take the standard deduction cannot deduct charitable contributions or job-related expenses.

By law, an individual who does not elect to itemize deductions can subtract only the standard deduction and allowable personal exemptions from AGI in calculating taxable income. However, a taxpayer can choose to itemize actual deductions (section 63(e) of the Code). Congress enacted the standard deduction in 1944 to reduce the burden on taxpayers of keeping records of actual expenses and provided a standard amount that taxpayers could deduct instead of actual expenses. See House of Representatives Report Number 655, 78th Cong., 2d Sess. 8 (1944).

Any change to the deductions for business-related expenses or the standard deduction would require legislative action by the Congress. The IRS does not have the authority to change these statutory requirements.

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

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

CC: The Honorable Mel Martinez