



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Stevan Pearce
Member, U.S. House of Representatives
1717 W. 2nd St., Suite 110
Roswell, New Mexico 88201

Dear Congressman Pearce:

I am responding to your inquiry dated June 8, 2012, on behalf of your constituent, . asked why the optional substantiation rule under Rev. Proc. 2002-41, 2002-2 C.B. 1098, cannot be used for amounts paid to employees in the oil and gas industry for expenses incurred in using their personal vehicles.

The optional substantiation rule under Rev. Proc. 2002-41 is available to certain employers in the pipeline construction industry and applies only to reimbursements of expenses related to the use of welding rigs and mechanics rigs under an accountable plan. The requirements of an accountable plan (that is, business connection, substantiation, and return of excess) must all be met in order for reimbursements to be nontaxable.

Employees in the pipeline construction industry are generally required to provide welding and/or mechanics rigs as a condition of employment. Employers in the pipeline construction industry encounter several challenges to reimbursing under an accountable plan the costs relating to employee-provided welding and mechanics rigs. In particular, employers in the pipeline construction industry encounter challenges in determining the proper amount of expenses incurred. In light of these challenges, as part of the Industry Issue Resolution Program, we issued Rev. Proc. 2002-41, which permits certain employers in the pipeline construction industry to use deemed substantiation in reimbursing rig-related expenses under an accountable plan.

Under Rev. Proc. 2002-41, businesses in the pipeline construction industry can provide reimbursements under an accountable plan to employees who are required, as a condition of employment, to provide welding or mechanics rigs for use in performing services as employees. Use of this optional expense substantiation rule is limited to eligible employers. An “eligible employer” is any employer that hires employee rig welders or heavy equipment mechanics and requires, as a condition of employment, that they provide a welding or a mechanics rig and use the rig performing services as an employee employed in the construction, repair, or maintenance of transportation mainline pipeline.

An eligible employer may use the deemed substantiation rule under Rev. Proc. 2002-41 only to reimburse employees for expenses related to using welding rigs and mechanics rigs. Welding rigs are defined as ¾ ton or heavier trucks equipped with a welding machine or other necessary equipment, such as tanks and generators. Mechanics rigs are defined as heavy trucks equipped with a permanently installed mechanics bed and other necessary equipment that is used to repair and maintain heavy machinery on a job site. The optional expense substantiation rule is not available for any other vehicles.

Another optional expense substantiation rule is available to employers for use in substantiating the amount of an employee’s vehicle expenses when performing services for the employer (Rev. Proc. 2010-51, 2010-2 C.B. 883, and Notice 2012-1). We explain this optional substantiation method, and other accountable plan rules, in *Publication 15 (Circular E), Employer’s Tax Guide*, available on www.irs.gov. This method provides a deemed substantiated amount of expenses, but still requires the employee to substantiate the time, purpose, and number of actual miles driven.

I hope this information is helpful. If you have any questions, please call me or
at

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
(Exempt Organizations/Employment
Tax/Government Entities)
(Tax Exempt & Government Entities)

Enclosure