



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Steven M. Palazzo
Member, U.S. House of Representatives
3118 Pascagoula Street, Suite 181
Pascagoula, MS 39567

Attention:

Dear Representative Palazzo:

I am responding to your inquiry dated November 6, 2018, on behalf of your constituent . Your constituent asked us to consider a waiver or other action on the taxation of per diem reimbursements for employees and contractors .

For reimbursements to be non-taxable, a taxpayer may only be "away from home" on a temporary work assignment. The law states a taxpayer is not considered temporarily away from home during any period of employment that exceeds one year (Section 162(a) of the Internal Revenue Code). We don't have the authority to waive this rule; Congress would need to take legislative action to change it.

Whether per diems or other reimbursements are taxable depends, in part, on whether the employer is reimbursing expenses that could be deductible business expenses of the recipient. Section 162(a)(2) allows a deduction for ordinary and necessary business expenses, which include traveling expenses incurred while away from home in the pursuit of a trade or business.

For purposes of Section 162(a)(2), a taxpayer's home is generally considered to be located at

- The taxpayer's regular or principal (if more than one regular) place of business, or

- The taxpayer's abode in a real and substantial sense, if the taxpayer has no regular or principal place of business.

If neither category applies to the taxpayer, then the taxpayer is considered to be an itinerant whose home is wherever the taxpayer happens to work. See Rev. Rul. 73-529, 1973-1 C.B. 2; Rev. Rul. 60-189, 1960-1 C.B. 60.

How temporary versus permanent or indefinite assignments affect deductibility

Generally, an employee's regular work location is a location at which the employee regularly works or performs services. An employee may be considered as working or performing services on a regular basis whether or not the employee works or performs services at that location every week or on a set schedule. See Rev. Rul. 90-23, 1990-1 C.B. 28 (obsoleted on other grounds by Rev. Rul. 99-7, 1999-1 C.B. 361).

For reimbursements to be deductible, a taxpayer may only be "away from home" on a temporary, as opposed to an indefinite or permanent, work assignment. See *Peurifoy v. Commissioner*, 358 U.S. 59 (1958), 1958-2 C.B. 916. Section 162(a) provides that a taxpayer is not considered temporarily away from home during any period of employment that exceeds one year.

If an employee is assigned to a single location that is not the employee's regular location, and the assignment is realistically expected to last (and does in fact last) for one year or less, the assignment is temporary.

If an assignment away from home in a single location is expected to last for more than one year, the assignment is indefinite and not temporary, regardless of whether it exceeds one year. If an assignment away from home in a single location initially is expected to last for one year or less, but at some later date the assignment is expected to exceed one year, that assignment will be treated as temporary until the date the taxpayer's expectation changes. Once an assignment is no longer temporary and the taxpayer's tax home has switched to the new location, then the taxpayer's expenses are no longer deductible under Section 162(a)(2). See Rev. Rul. 93-86, 1993-40 I.R.B. 4.

Therefore, if an employee is expected to work for 52 weeks or less upon the initial assignment, the assignment away from home is temporary. If at some point the assignment to work at the new location is expected to last or does last more than one year, the assignment is no longer temporary and the employee's tax home will switch to the new location.

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

Sincerely,

Bridget E. Tombul
Branch Chief, Branch 2
Office of Associate Chief Counsel
(Income Tax & Accounting)