



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR KATHY KOZAKIEWICZ
OFFICE AUDIT GROUP MANAGER
PHOENIX DISTRICT

FROM: George Baker
Assistant to Branch Chief
Branch 2

SUBJECT: Per Diem Rates

This is in response to your request for information regarding the use of per diem rates to substantiate travel expenses, particularly with regards to the use by independent contractors of the federal lodging rate to substantiate deductions. I hope you find this information helpful. Please be aware that this Chief Counsel Advice is for your general information and is advisory only. It is not intended to be conclusive as to the tax consequences of this matter to any specific taxpayer.

Section 274(d)(1) of the Internal Revenue Code provides, in part, that no deduction shall be allowed under § 162 for any traveling expense (including meals and lodging while away from home) unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement the amount of the expense, the time and place of the travel, and the business purpose of the expense. Section 274(d) further provides that regulations may prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed an amount prescribed by such regulations.

Section 1.274-5T(c) of the Income Tax Regulations provides the rules of substantiation by adequate records. To meet the "adequate records" requirement, taxpayers must maintain a contemporaneous account book, diary, log, statement of expense, trip sheets, or certain similar record, and documentary evidence that, in combination, are sufficient to establish each element of a travel expenditure. Section 1.274-5T(c)(2)(iii)(A) provides that, in the case of expenditures for lodging while traveling away from home, taxpayers must provide documentary evidence, such as receipts, paid bills, or similar evidence sufficient to support the expenditure.

Section 1.274(d)-1T(a), in part, grants the Commissioner the authority to prescribe rules relating to substantiating the amount of expenses reimbursed under reimbursement arrangements (including per diem allowances) for ordinary and necessary expenses paid or incurred while traveling away from home. For meals while traveling away from home, § 1.274-5T(j) grants the Commissioner the authority to establish a method under which a taxpayer may elect to use a specified amount in lieu of substantiating the actual cost of meals.

Pursuant to these two separate sources of authority, the Internal Revenue Service provides a revenue procedure for the use of per diem rates to substantiate traveling expenses, most recently published as Rev. Proc. 98-64, 1998-52 I.R.B. 32. Sections 4.01 and 4.02 of the revenue procedure implement § 1.274(d)-1T(a) by allowing employers to treat as substantiated certain traveling expenses incurred by employees that are reimbursed under an accountable plan. Section 4.03 of the revenue procedure implements § 1.274-5T(j) by allowing employees and self-employed individuals to use the federal M&IE rate to substantiate meal expense deductions.

However, the revenue procedure does not provide a method whereby the federal lodging rate may be used to substantiate deductions for lodging expenses. In fact, the regulations do not authorize the Service to provide such a substantiation method. Rather, as noted, § 1.274-5T(c)(2)(iii)(A) requires that taxpayers provide documentary evidence, such as receipts, paid bills, or similar evidence sufficient to support an expenditure for lodging while traveling away from home.

Accordingly, if a taxpayer wishes to deduct unreimbursed lodging expenses, the taxpayer must substantiate the expenses as required under § 1.274-5T. The taxpayer may not treat the expenses as substantiated by relying on the federal lodging rate.

If you need further assistance in this matter, please contact my office at (202) 622-4920.