



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

OFFICE OF
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MEMORANDUM FOR STEVE HOLDEN
NATIONAL DIRECTOR OF ELECTRONIC TAX
ADMINISTRATION ENHANCEMENTS
OP:ETA:E
Attn: Larry Faulkner

FROM:

Jody J. Brewster
Assistant Chief Counsel
(Income Tax & Accounting)

SUBJECT:

Credit card convenience fees

This is in response to your electronic mail inquiry as to whether an individual may deduct convenience fees charged by a credit card company for using a credit card to pay the individual's personal income taxes due.

Our analysis begins with § 212(3) of the Internal Revenue Code which provides that in the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in connection with the determination, collection, or refund of any tax.

Section 1.212-1(l) of the Income Tax Regulations states that expenses paid or incurred by an individual in connection with the determination, collection, or refund of any tax, whether the taxing authority be Federal, State, or municipal, and whether the tax be income, estate, gift, property, or any other tax, are deductible. Thus, expenses paid or incurred by a taxpayer for tax counsel or expenses paid or incurred in connection with the preparation of his tax returns or in connection with any proceedings involved in determining the extent of tax liability or in contesting his tax liability are deductible.

Although the legislative history concerning § 212(3) is brief, S. Rep. No. 1622, 83rd Cong., 2^d Sess. 218 (1954) provides that paragraph 3 of Section 212 is designed to permit the deduction by an individual of legal and other expenses paid or incurred in connection with a contested tax liability whether the contest be Federal, State, or

municipal taxes, or whether the tax be income, estate, gift, property, and so forth. Any expenses incurred in contesting any liability collected as a tax or as a part of the tax will be deductible.

Based on the foregoing authority, it appears that Congress intended to allow a deduction to an individual in connection with determining the extent of the tax liability or in contesting the tax liability. That authority, however, does not support a broader interpretation of § 212 allowing a deduction to an individual who, upon making the personal choice to pay the individual's federal income taxes due by credit card, incurs the expense of a convenience fee charged by the credit card company.

Section 262 provides that except as otherwise provided for in this chapter, no deduction shall be allowed for personal, living, or family expenses. Section 1.262-1(b) further provides some examples of personal, living and family expenses such as (1) premiums paid for life insurance by the insured, (2) cost of insuring a dwelling owned and occupied by the taxpayer as a personal residence, and (3) expenses of maintaining a household.

The credit card convenience fee is charged in connection with payment of an income tax that is imposed without regard to the nature of the income giving rise to the liability. Thus, the fee appears to be more similar to the personal expenses that are not deductible by reason of §262.

In conclusion, no deduction is allowed for the credit card convenience fee under § 212(3); rather, the expense should be considered as a nondeductible personal expense under § 262.