June 2019

Q&A: The IRS Audit Is Wrong on First-and-Last-Stop Rule

Question

I'm a CPA in private practice, and I have a client who is a sports trainer and psychologist. He maintains a home office for which we have included a deduction on the tax return.

The IRS audited the tax return and disallowed the business mileage.

Our client taxpayer submitted to the IRS a calendar showing his client business stops and the number of miles from the taxpayer's home office to and from his clients' locations. On some days our client taxpayer visited only one of his clients, and on other days he visited multiple clients.

The IRS took the position that the miles our client traveled to the initial first client and returning back to taxpayer's office are commuting miles, and it disallowed the deduction of those miles.

The IRS allowed only those miles between clients as business miles.

Please find attached my response to the IRS and the response from the IRS stating that it is not changing its position. The response referred me to IRS Publication 463.

Is there any other substantive information I can submit to the IRS to satisfy the mileage deduction from the home office to the initial client?

Answer

Yes. Get ready to smile. You are about to crush this audit.

Revenue Ruling 99-7, conclusion paragraph 3, reads as follows:[1]

If a taxpayer's residence is the taxpayer's principal place of business within the meaning of Section 280A(c)(1)(A), the taxpayer may deduct daily transportation expenses incurred in going between the residence and another work location in the same trade or business, regardless of whether the other work location is regular or temporary and regardless of the distance.

Your client has a principal office in his home that meets the Section 280(a)(c)(1)(A) principal office requirements.[2] Accordingly, the paragraph above destroys the IRS's first-and-last stop disallowance, and it comes from high authority: a revenue ruling.

You can also use, as part of your crush strategy, the wording directly from IRS Publication 463, which follows Revenue Ruling 99-7 and states the following on page 13:[3]

… daily transportation expenses can be deducted if … (2) your residence is your principal place of business and you incur expenses going between the residence and another work location in the same trade or business, regardless of whether the work is temporary or permanent and regardless of the distance.

Takeaways

IRS examiners are human, and they can make mistakes—as did the examiner in the case of this audit.

The taxpayer described above has his principal office in his home. With the principal office in the home, the taxpayer's trips from home to his first stop, and from his last stop to home, create deductible business mileage.

Revenue rulings overrule IRS publications and are high on the authority scale. But in the case above, the IRS publication follows the revenue ruling, albeit no one latched on to the winning paragraph.

Client Letter on This Article for Use by Tax Pros. Click Here.

1 Rev. Rul. 99-7.
2 IRC Section 280A(c)(1).
3 IRS Pub. 463, Travel, Gift, and Car Expenses (2018), Dated Feb. 22, 2019, p. 13.