DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

OFFICE OF
CHIEF COUNSEL

March 10, 2000

CC:DOM:IT&A:2
WTA-N-101105-00

Number: **200018052**
Release Date: 5/5/2000

UILC: 162.08-06

MEMORANDUM FOR THOMAS W. WILSON, JR.
ASSISTANT COMMISSIONER (EXAMINATION)

FROM: Lewis J. Fernandez
Deputy Assistant Chief Counsel (Income Tax & Accounting)

SUBJECT: Taxability of Reimbursements for Local Transportation Expenses

This Chief Counsel Advice is in response to your memorandum to Judith Dunn, Associate Chief Counsel (Domestic), dated January 7, 2000, concerning daily transportation expenses, and may be shared with field offices. We have attached an outline, with an accompanying chart, that provides a general overview of the proper application of Rev. Rul. 99-7, 1999-5 I.R.B. 4, in determining whether an employer's reimbursement of certain employee transportation expenses is includible in the employee's gross income, and whether the payment is subject to employment taxes, if paid under an arrangement that otherwise meets the accountable plan requirements.

This memorandum (including the attachments) is for your general information and is advisory only. It is not intended to be conclusive as to the tax consequences for any specific taxpayer. If we can be of further assistance, please contact George Baker at (202) 622-4920.

Attachments (2)

Daily Transportation Expenses

This outline discusses the deductibility of daily transportation expenses of certain employees under Rev. Rul. 99-7 (1999-5 I.R.B. 4). It addresses situations frequently encountered by employers that reimburse travel and transportation expenses. It addresses daily transportation expenses only in situations in which the employee has a regular work location away from the residence (such as an office of the employer where the employee regularly works and not merely an assigned "post of duty"), and the employee does not use the residence as a work location. This outline does not discuss <u>overnight</u> travel expenses, which are governed by Rev. Rul. 93-86 (1993-2 C.B. 71).

This outline is for your general information and is advisory only. It is not intended to be conclusive as to the tax consequences for any specific taxpayer.

Legal Background

An employer's payments to employees generally are included in the employee's gross income and are treated as wages subject to employment taxes. However, if an employer reimburses <u>deductible</u> business expenses and meets the other requirements for an accountable plan, the reimbursement is not wages includible in income or subject to employment taxes.

Transportation expenses incurred by an employee in going directly from one work location of an employer (away from the employee's residence) to another work location of the same employer are always deductible business expenses.

In general, daily transportation expenses incurred in going between an employee's residence and a work location are nondeductible commuting expenses. However, Rev. Rul. 99-7 provides an exception to this general rule for an employee who, in working for an employer, has one or more regular work locations away from the employee's residence: Daily transportation expenses incurred in going between the employee's residence and a <u>temporary</u> work location (for the employer) are deductible business expenses.

Rev. Rul. 99-7 establishes three rules for determining whether a work location is a "temporary work location" for these purposes:

- If employment at a work location is realistically expected to last (and does in fact last) for 1 year or less, the employment is <u>temporary</u> in the absence of facts and circumstances indicating otherwise.

- If employment at a work location is realistically expected to last for more than 1 year or there is no realistic expectation that the employment will last for 1 year or less, the employment is <u>not temporary</u>, regardless of whether it actually exceeds 1 year.

- If employment at a work location initially is realistically expected to last for 1 year or less, but at some later date the employment is realistically expected to exceed 1 year, that employment will be treated as <u>temporary</u> (in the absence of facts and circumstances indicating otherwise) until the date that the realistic expectation changes, and will be treated as not temporary after that date.

Scenarios

Now we will address how Rev. Rul. 99-7 applies in some frequently encountered situations. The responses depend on our assumption that each employee has a regular work location away from the residence (i.e., a location at which the employee works or performs services on a regular basis, and which is not merely an assigned "post of duty"). These scenarios do not address whether an employer reimbursing these expenses meets the regulatory "accountable plan" requirements.

Scenario 1: Employee Brown has been assigned to perform services at the office of a client of Employer X, and the assignment is expected to be completed in approximately 36 months. Employee Brown plans to spend approximately 95 percent of his total available time on site.

Employment at the client's office is not realistically expected to last for 1 year or less, and therefore the client's office is not a temporary work location. Employee Brown's expenses incurred in going between his residence and the client's office are nondeductible commuting expenses; any reimbursements of these expenses are wages includible in income.

Scenario 2: Employee Green has been assigned to oversee 3 separate teams of employees, with each team assigned to perform services on site for a different client of Employer X. Each of the projects is planned to be completed within 9 or 10 months, and the starting date for each project will be staggered 2 or 3 months to give Employee Green time to complete the planning of each project before he begins the next. During these planning phases he will spend essentially all of his available time at the project site. After the planning phase, his time will be divided approximately equally between the 3 cases, spending 1 to 5 days at a time on site for each. The set of 3 projects will be completed within an overall time frame of 15 to 20 months.

Employment at each of the work locations is realistically expected to last for 1 year or less; therefore, the offices of Employer X's clients are temporary work locations unless and until the realistic expectation changes. Employee Green's expenses incurred in going between his residence and these clients' offices are deductible business expenses.

Scenario 3: Same facts as in Scenario 2, but Employee Green will work with smaller teams. Because he will be more involved in the day-to-day work at the site, he will divide his time approximately equally among the projects. Each of the projects is expected to take one and a half years to complete.

Employment at each of the work locations is not realistically expected to last for 1 year or less, and therefore the clients' offices are not temporary work locations. Employee Green's expenses incurred in going between his residence and these clients' offices are nondeductible commuting expenses; any reimbursements of these expenses are wages includible in income.

> **Scenario 4:** Employee White routinely carries an "inventory" of 8 projects at a time for Employer X's clients. Each project can be completed with the application of 75 to 150 staff days. Since each project is budgeted to require 18 to 24 months, Employee White will work for a few days each month on site on each project. She first performs planning activities, and she may ask the client for further information. While waiting for responses, she works on other projects. After counting additional time to develop and research complex issues with respect to the client, and to meet with the client, she is frequently assigned to each project for 2 years.

Employment at each of the work locations is not realistically expected to last for 1 year or less, and therefore the clients' offices are not temporary work locations. Employee White's expenses incurred in going between her residence and these clients' offices are nondeductible commuting expenses; any reimbursements of these expenses are wages includible in income.

> **Scenario 5:** Employee Gray is a technical specialist, and she is used on site either in a consulting role for smaller projects or as a team member for larger projects. She generally spends 100 to 120 days per year on the larger projects, with an estimated "cycle" time from beginning to end of 10 to 18 months. The balance of her available time is spent on smaller cases, and this may be spent on site or in her office.

With respect to those projects at which employment is realistically expected to last for 1 year or less, the clients' offices are temporary work locations unless and until the realistic expectation changes. Employee Gray's expenses of going between her residence and these offices are deductible business expenses.

With respect to those projects at which employment is not realistically expected to last for 1 year or less, the clients' offices are not temporary work locations. Employee Gray's expenses incurred in going between her residence and these clients' offices are nondeductible commuting expenses; any reimbursements of these expenses are wages includible in income.

> **Scenario 6:** Employee Blue is assigned to 6 projects, each of which is expected to last for more than 1 year. During the course of the year, three of the projects are unexpectedly completed.

Because employment at each of the work locations is expected to last for more than 1 year, employment at each of the locations is not temporary. This is the case **regardless of whether employment actually exceeds 1 year**. Thus, the fact that three of the assignments actually lasted for 1 year or less does not change this result. Employee Blue's expenses of going between her residence and these locations are nondeductible commuting expenses; any reimbursements of these expenses are wages includible in income.

> **Scenario 7:** Employee Orange is given a 6-month assignment on a long-term project, and, more than a year after completing the 6-month assignment, he is unexpectedly reassigned to the project for a 7-month period.

Since the initial 6-month assignment is realistically expected to last for 1 year or less, the employee's employment with respect to that phase of the project is temporary. Employee Orange's expenses of going between his residence and this location are deductible business expenses.

There is no general IRS guidance with respect to how significant a break must be, following a period of temporary employment, for a reassignment to the same work location to be considered a separate period of employment that will "restart the clock" on the 1-year limitation. However, a break exceeding 1 year is clearly significant enough to "restart the clock" when Employee Orange begins the 7-month reassignment. Employee Orange's expenses of going between his residence and this location are deductible business expenses since the reassignment is realistically expected to last for 1 year or less.

> **Scenario 8:** Employee Black is assigned to perform services at a client's office for a period exceeding 1 year, and Employer X pays a mileage allowance based on the lesser of (1) the distance from the residence to the assignment or (2) the distance from the employee's regular office to the assignment.

Employment at the client's office is not realistically expected to last for 1 year or less, and therefore the client's office is not a temporary work location. The employee's expenses incurred in going between his residence and this client's office are nondeductible commuting expenses; **any** reimbursements of these expenses are wages includible in income.

TAX TREATMENT OF REIMBURSED TRANSPORTATION EXPENSES

Use this chart to help you determine whether or not reimbursements of certain employee transportation expenses may be excluded from income and employment taxes if paid under an arrangement that otherwise meets the accountable plan requirements. Important: This chart only applies if the employee has a regular work location away from the residence (and not merely an assigned "post of duty"). Also, for purposes of this chart, the term "worksite" does not include the employee's residence. For further guidance, see Rev. Rul. 99-7.

<table>
<tr><th rowspan="2">Reimbursed Expenses</th><th colspan="2">Non-Overnight Trips to a Worksite – Rev. Rul. 99-7</th></tr>
<tr><th>≤ 1 Year</th><th>≻ 1 Year</th></tr>
<tr><td><u>Transportation</u>
• Mileage Rate or Actual Expenses
• Parking
• Tolls
• Other Transportation</td><td>Not includible in employee's income and not subject to employment taxes, because a deductible expense is paid under an accountable plan. This applies to both worksite-worksite and worksite-residence transportation expense reimbursements.</td><td>• Worksite-residence transportation expense reimbursements are fully includible in employee's income and subject to employment taxes.

• Worksite-worksite transportation expense reimbursements are not includible in employee's income and not subject to employment taxes, because a deductible expense is paid under an accountable plan.</td></tr>
<tr><td><u>Meals and Incidentals</u>
• M&IE Rate or Actual Expenses</td><td colspan="2">If reimbursed, then fully includible in employee's income and subject to employment taxes.</td></tr>
<tr><td><u>Lodging</u>
• Actual Expenses
• Lodging Taxes</td><td colspan="2">If reimbursed, then fully includible in employee's income and subject to employment taxes.</td></tr>
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