Revenue Ruling 54-497

[NOTE: This Rev. Rul. has been modified by Rev. Rul. 75-169, 1975-1 CB 59 and Rev. Rul. 76-453, 1976-2, CB 86, and superseded by Rev. Rul. 75-432, 1975-2 CB 60.]

Traveling expenses. Principles applicable in resolving problems concerning (1) the substantiation of deductions claimed by an individual for traveling expenses, (2) the determination of whether a taxpayer is in travel status, and (3) the deductibility of automobile and other transportation expenses incurred by an employee.

Advice has been requested with respect to certain problems concerning deductions, for Federal income tax purposes, claimed for traveling and transportation expenses by individual taxpayers in connection with the performance of services as employees. The problems are presented in the light of situations which have come to the attention of the Internal Revenue Service in connection with deductions claimed by railroad employees. However, the controlling principles in such cases are equally applicable to all employees similarly situated.

The courts in considering questions involving deductions for traveling expenses have frequently stated that each case must be decided on its own particular facts. Furthermore, there appears to be no single rule which will produce the correct result in all situations. It is believed, however, that an understanding of the principles outlined herein will materially facilitate the solution of many of the recurring problems concerning traveling and transportation expenses claimed by employees on a basis satisfactory to both the taxpayer and the Government.

The problem most frequently presented relates to the amount properly allowable as a deduction for the cost of meals and lodging incurred by an employee while in a travel status, particularly where he has not maintained an adequate record to substantiate his claimed deduction.

Section 23(a)(1)(A) of the Internal Revenue Code of 1939 provides for the deduction of traveling expenses (including the entire amount expended for meals

and lodging) while away from home in the pursuit of a trade or business. Although the statute allows a taxpayer to deduct the entire amount expended for his meals and lodging while in a travel status, controversies concerning the amount actually expended and allowable as a deduction for such purposes frequently arise because the deduction claimed by the taxpayer is based merely upon rough estimates which are not supported by adequate records.

The only wholly satisfactory and certainly the most desirable method of resolving controversies of this character is for taxpayers to maintain a record of such expenses in order to substantiate their claimed deductions. This is in accord with section 39.23(a)-2(h) of Regulations 118, which specifically provides that amounts claimed as deductions for traveling expenses must be substantiated, when required, by evidence showing in detail the amount and nature of the expenses incurred. If this practice is adopted such controversies will be virtually eliminated.

Despite the desirability of solving such problems in this manner, it is recognized that where an individual has evidently incurred some deductible expenses but does not possess documentary proof thereof he should be allowed a reasonable approximation of such items by resorting to reliable secondary sources of information and collateral evidence. See Rev. Rul. 54-195, C. B. 1954-1, 47. The burden of proof in all such cases necessarily falls upon the taxpayer, and doubts resulting from vague and unsatisfactory evidence may properly be resolved against him "whose inexactitude is of his own making." This is based upon the rule first expressed in George M. Cohan v. Commissioner,39 Fed. (2d) 540, and since followed by the courts and the Revenue Service in a great number of cases.

To "substantiate" his expenses, a taxpayer is not required to secure, retain, and produce receipts for each meal and for each night's lodging. See Rev. Rul. 54-195, supra. As stated in the Cohan case, supra, "absolute certainty in such matters is usually impossible and is not necessary." Accordingly, the Revenue Service allows considerable latitude with respect to recordkeeping or evidence tending to prove such expenses. An adequate record, however, should be maintained day by day and should be kept in sufficient detail to determine the taxpayer's correct tax liability. Ordinarily, such a record should at least indicate the dates, duration and destination of each trip during which the taxpayer was required to obtain lodging or necessary rest while "away from home"; the amounts paid for such lodging or quarters; and the actual cost of each meal consumed on such trips. Where employees have kept no such records, there must, of course, be something more than a bare lump-sum estimate or blanket assertion to support the deduction. Despite the absence of adequate records, many such employees can still

substantiate most of the deductible expenses which they incurred in past years with some degree of accuracy. Presumably, they should be able to compute such expenses, with reasonable precision, by estimating conservatively the amounts paid for lodging and the average cost of the various meals, provided they can ascertain from time sheets, assignment lists or other available data, or if they can fairly reconstruct, the number and duration of those trips during which they were required to obtain lodging or necessary rest while "away from home," and the various meals which they had to purchase on such trips.

Many of the other problems relating to allowable deductions for traveling expenses stem from the basic question: When is a taxpayer in travel status, or more specifically when can the employee deduct his expenses for meals and lodging?

As noted above, section 23(a)(1)(A) of the Code allows the deduction of expenses incurred for meals and lodging only while the taxpayer is traveling "away from home in the pursuit of a trade or business." Congress did not intend, however, "to allow as a business expense those outlays which are not caused by the exigencies of the business but by the action of the taxpayer in having his home, for his own convenience, at a distance from his business. Such expenditures are not essential to the prosecution of the business and were not within the contemplation of Congress, which proceeded on the assumption that a businessman would live within reasonable proximity to his business." See Maurice Victor Barnhill et al. v. Commissioner,148 Fed. (2d) 913, Ct. D. 1646, C. B. 1945, 96. Cf. Commissioner v. J. N. Flowers,326 U. S. 465, Ct. D. 1659, C. B. 1946-1, 57. It is fundamental, therefore, that a taxpayer cannot deduct the cost of his meals and lodging while performing his duties at his place of business, even though he maintains his permanent residence elsewhere. Accordingly, it is now well-settled law that a taxpayer's "home," for purposes of this statute, is located at the place where he conducts his trade or business; unless he is so engaged at two or more separate localities, in which event his "home" is located at his principal or regular post of duty during the taxable year.

The tax or business "home" of a railroad employee, like that of other taxpayers, is held to be at his principal or regular post of duty during the taxable year, regardless of the physical location of his residence. The principal or regular post of duty of a member of a train crew is not regarded as being aboard the train, but at the terminal where he ordinarily, or for an indefinite (as distinguished from a temporary) period, begins and ends his actual runs. Such place is referred to, for tax purposes, as the employee's "home terminal," the location of which may not coincide with the railroad's designation of the home terminal for a particular run,

such as in the case of a long run which begins and ends at a distance from the employee's principal or regular post of duty, or of a short run to which the employee is assigned on a strictly temporary basis. If the employee does not have a home terminal where he ordinarily, or for an indefinite period, begins and ends his actual runs, but receives only temporary assignments to various runs beginning and ending at a number of different terminals, his principal or regular post of duty may be regarded as his business headquarters or the center of his business activities. It should, of course, be emphasized that the location of an employee's home terminal, or his principal or regular post of duty, is necessarily a question of fact which must be determined on the basis of the particular circumstances in each case.

Expenses incurred by an employee for meals and lodging at his principal or regular post of duty are not deductible even though such place is located at a distance from his residence. This rule is generally applicable to all railroad and other employees regardless of their position on the seniority roster, and notwithstanding either the possibility of their being "bumped" from such jobs by employees having higher seniority, or the rules of the trade requiring junior employees to accept the less desirable jobs. The importance of determining the location of an employee's principal or regular post of duty is evident not only because the employee cannot deduct the cost of his meals and lodging while there, but also because that location must serve as the point of origin for computing his traveling expenses incurred while "away from home". See Harold R. Johnson v. Commissioner,17 T. C. 1261, acquiescence, C. B. 1952- 1, 2.

A taxpayer cannot deduct the cost of his meals and lodging as away-from- home expenses merely because his duties require his physical absence from his principal or regular post of duty during part or all of his actual working hours. In order to deduct such expenses, it is essential that his absence on business from his principal or regular post of duty be of such duration that he cannot leave from and return to that location at the start and finish of, or before and after, each day's work; or at least that he cannot reasonably do so without being released from duty for sufficient time to obtain necessary sleep elsewhere.

Thus, it is held that a railroad employee assigned to a "turn-around" run, or any other job requiring daily round trips, on which he is able to leave his home terminal and return to it within the same workday (and is not released from duty to obtain necessary sleep elsewhere) cannot deduct the cost of meals consumed on such trips because he is not traveling "away from home" within the meaning of section 23(a)(1)(A) of the Code. This position is in accord with numerous Tax Court decisions which have consistently denied taxpayers any deduction for the

cost of meals consumed on trips of such short duration, for the reason that they were not in travel status, even though the elapsed time of such round trips extended from 12 to even more than 16 hours. See Fred M. Osteen et al. v. Commissioner,14 T. C. 1261; Louis Drill v. Commissioner,8 T. C. 902; Alvin A. Hataway, Jr. v. Commissioner, Tax Court Memorandum Opinion entered November 14, 1944; Arthur L. Fairley v. Commissioner, Tax Court Memorandum Opinion entered August 4, 1948; R. E. Henry v. Commissioner, Tax Court Memorandum Opinion entered December 22, 1948.

On the other hand, I. T. 3395, C. B. 1940-2, 64, holds that railroad employees who are required to remain at an away-from-home terminal in order to obtain necessary rest prior to making a further run, or beginning a return run, may deduct their actual expenses for meals and lodging while away from their home terminal on such runs. The rest period contemplated by that ruling is not satisfied by the brief interval frequently scheduled on "turn- around" service between the outbound and return runs during which the employee may be released from duty for the purpose of eating rather than sleeping. The line of demarcation between the two situations is generally referred to, for Federal income tax purposes, as an "overnight" trip, that is, a trip on which the taxpayer's duties require him to obtain necessary sleep away from his home terminal. On an "overnight" trip of this nature, and particularly in view of the unusual hours worked in the railroad industry, the employee need not be away from his home terminal for an entire 24-hour day or throughout the hours from dusk until dawn, as evidenced by the recent decision in David G. Anderson v. Commissioner,18 T. C. 649, acquiesce C. B. 1952-2, 1. In that case the taxpayer, an employee of the Railway Express Agency, worked exclusively on trains and made two consecutive round trips on each tour of duty. His first-round trip began at 2 a. m. and ended at 6 p. m. on the first day, an elapsed time of 16 hours during which he was released from duty for a rest period of 2½ hours. His second-round trip began at 11:15 a. m. on the second day and ended at 5:10 a. m. on the third day, an elapsed time of about 18 hours during which he was released from duty for a rest period of 3 hours. Since the taxpayer was released from service at his away-from-home terminal after each outbound run for a rest period during which he purchased one or two meals and slept on a cot in the baggage car, the Tax Court concluded that both such trips were "overnight" trips (rather than "turn- around" runs) and involved travel on business "away from home "and, therefore, that the taxpayer could deduct his actual expenses for meals consumed while away from his home terminal on such trips. The fundamental rule followed by both the Tax Court and the Internal Revenue Service in all such cases is that a railroad employee can deduct his expenses for meals and lodging only when on a business trip necessitating his absence from his principal or regular

post of duty for a minimum period which lasts substantially longer than an ordinary day's work and during which his duties require him to obtain necessary sleep away from such post of duty.

A railroad employee may, of course, be assigned to a temporary or minor place of employment which requires a much more prolonged absence from his regular or principal post of duty than such minimum period of time. For example, if a member of a train crew receives a temporary, as distinguished from an indefinite, assignment to a run (whether or not "overnight") which begins and ends at a terminal situated at a distance from his regular post of duty, he can deduct not only his expenses for meals and lodging while making runs from and to that terminal, but all such expenses for the entire time during which his duties prevent him from returning to his regular post of duty. Likewise, any other railroad employee whose assignment away from his home terminal is strictly temporary (that is, its termination can be foreseen within a fixed or reasonably short period of time) is considered to be in travel status for the entire period during which his duties require him to remain away from his regular post of duty. Typical of temporary assignments necessitating such an absence from the employee's regular post of duty are replacement or relief jobs during sick or vacation leave of the individuals regularly performing such duties.

A seasonal job which is not ordinarily filled by the same individual year after year may also require a temporary departure from the employee's regular post of duty during the taxable year. For example, during seasonal shipping periods for the marketing of crops an employee may be assigned for several months to one or more places which are located at a distance from his regular place of employment. Such an employee is regarded as being in travel status for the duration of such temporary assignment, except for intervening nonworking days when he actually does, or reasonably could, return to his regular post of duty.

It is important to note, however, that all seasonal jobs are not necessarily temporary in nature merely because they are not year-round assignments. For example, a railroad employee might habitually work for 8 or 9 months each year transporting ore from the same terminal. During the winter, when the ore-hauling service is suspended, that same individual might also be customarily employed for 3 or 4 months each year at another seasonal post of duty. Since both of those annually recurring, seasonal assignments would usually be filled by the same employee during corresponding periods in other years, each such job would be considered indefinite rather than temporary. Ordinarily, when an employee abandons one indefinite job to accept another indefinite job at a distance from his former home terminal, his principal post of duty shifts from his old to his new

place of employment. But, the employee in the above example would not be regarded as abandoning his ore-hauling assignment during the period in which that service is suspended, if he reasonably expected to return to it during the appropriate season in the following year. Such an employee would be conducting his trade or business each year at two recurring, seasonal places of employment, and under those circumstances his business or tax "home" would not shift during alternate seasons from one business location to the other, but would remain stationary at his principal post of duty during the taxable year. In each case of this nature, a factual determination must be made (primarily on the basis of the total time which he is ordinarily required to spend at each of his seasonal headquarters) in order to establish which of those indefinite places of employment would constitute his principal post of duty, because such an employee could deduct the cost of his meals and lodging only while his duties at his minor place of employment required him to remain away from his principal post of duty.

As indicated above, the general rule is that a railroad employee, like any other taxpayer, can deduct the cost of his meals and lodging as a traveling expense incurred in carrying on his trade or business only while his duties require him to be away "overnight" from his home terminal, or his principal or regular post of duty, during the taxable year. That rule is applicable even in those unusual situations where the employee maintains his family and permanent residence at or near his away-from-home terminal, or his minor or temporary post of duty. In such cases, the deduction is limited, of course, to that portion of the family expenses for meals and lodging which is properly attributable to the taxpayer's presence there in the actual performance of his duties. (See last two sentences in Rev. Rul. 54-147, C. B. 1954-1, 51.)

Where expenses for meals and lodging are deductible under the above principles, they constitute traveling expenses "while away from home" and should be deducted by an employee, under section 22(n)(2) of the Code, in computing adjusted gross income on page 1 of his Federal income tax return, Form 1040. The deduction of such expenses does not prevent the employee from electing to compute his tax either by using the tax table or the optional standard deduction, instead of itemizing his actual deductions.

There remains to be considered the income tax treatment accorded to automobile and other transportation expenses actually incurred by taxpayers, including railroad employees.

Section 39.23(a)-2(i) of Regulations 118 provides that commuters' fares are not considered as business expenses and are not deductible. Thus, amounts paid for

transportation between the taxpayer's residence and his home terminal, or his principal or regular post of duty, regardless of the distance involved, constitute nondeductible personal expenses.

On the other hand, when the employee's duties require him to be away at least "overnight" from his principal or regular post of duty, reasonable and necessary expenses incurred for transportation between his home terminal and a minor or temporary place of employment (or from one minor or temporary post of duty to another) may be deducted as traveling expenses "while away from home" in computing adjusted gross income. However, if the employee begins and ends such a business trip at his residence and that residence is located at a distance from the city or comparable area which constitutes his principal or regular post of duty, he may deduct, in computing adjusted gross income, only his actual transportation expenses to the extent they do not exceed the reasonable and necessary transportation expenses he would have incurred had such round trips been made between his home terminal and such other place of employment. Such adjustments, of course, are necessary only when the employee does not live near his home terminal. In determining whether a railroad employee's automobile or other transportation expenses represent reasonable and necessary traveling expenses, consideration should be given to the questions whether the railroad would furnish the employee with adequate free transportation service between such places of employment to enable him to discharge his duties in a reasonable and economical manner, and whether the employee needs his automobile at his minor or temporary post of duty for business use.

An employee's expenses for transportation within the vicinity of the city or other comparable area which constitutes his minor or temporary post of duty, such as for "commuting" between his minor or temporary terminal and the place or places where he obtains his meals and lodging in that area, are held to be nondeductible personal expenses. However, when an employee's minor or temporary terminal is located in a remote area and he must travel 10 or 15 miles, for example, to the nearest town or other location where he can obtain necessary living accommodations, his transportation expenses so incurred are not regarded as being in the nature of commuting expenses, but may be deducted in computing adjusted gross income.

When an employee is assigned for several weeks or months to a minor or temporary post of duty, he will often return from that location on intervening nonworking days to his family and distant residence. Section 39.23(a)-2(f) of Regulations 118 provides that only such expenses as are reasonable and necessary in the conduct of the business and directly attributable to it may be deducted. This

principle prohibits the deduction of expenses incurred on such trips to the extent they exceed the cost of meals and lodging which otherwise would have been deductible if the employee had remained during his nonworking days at or near his minor or temporary post of duty. In order to segregate the employee's business expenses from his personal expenses in returning to his family and regular place of abode, that prohibition should be combined with the limitation applicable to the employee who lives at a distance from both his principal or regular place of employment and his minor or temporary post of duty to formulate the following general rule: Expenses incurred on such trips for transportation between the employee's temporary or minor post of duty and his distant residence (together with the cost of meals and lodging enroute) may be deducted in computing adjusted gross income as traveling expenses "while away from home" to the extent such expenses do not exceed either (1) the otherwise deductible cost of procuring meals and lodging had he remained at his temporary or minor post during such off-duty periods, or (2) the reasonable necessary expenses he would have incurred in traveling between such minor or temporary place of employment and his principal or regular post of duty.

Subject to the same limitations contained in such general rule, expenses incurred for daily, round-trip transportation between the employee's minor or temporary place of employment and his distant residence (excluding the cost of meals and lodging) may be deducted as ordinary and necessary business expenses, rather than as traveling expenses "while away from home." Under the Internal Revenue Code of 1939, such unreimbursed, daily, round-trip transportation expenses may be deducted by an employee only from adjusted gross income in computing net income and then only on condition that he does not elect to compute his tax by using the tax table or the optional standard deduction, in lieu of itemizing his actual deductions.