Revenue Ruling 55-109

Members of reserve components of the Armed Forces attending training drills under competent orders, with or without compensation, are regarded as engaged in a trade or business. Certain nonreimbursed transportation expenses incurred on trips (not extending overnight) made by reservists to attend such drills constitute ordinary and necessary business expenses under section 23 (a) (1) (A) of the Internal Revenue Code of 1939 and may be deducted in computing net income, provided the optional standard deduction is not elected. Amounts expended by a reservist for the purchase and maintenance of uniforms, which he may wear only while performing duties as a reservist, are deductible for Federal income tax purposes as ordinary and necessary business expenses, except to the extent that nontaxable allowances are received for these costs.

Advice has been requested concerning the treatment, for Federal income tax purposes, of expenses incurred by a member of a reserve component of the Armed Forces for transportation in attending authorized training drills and for the purchase and maintenance of necessary uniforms.

In the instant case, the taxpayer, a member of a reserve unit of the Armed Forces, is required to attend authorized training drills under competent orders at a location which enables him to return to his residence each night after participating in such drills. The taxpayer receives basic pay for only one-half of the total number of drills prescribed for the taxable year, but does not receive any allowance or reimbursement for transportation expenses incurred in attending such drills. He is also required to purchase, maintain, and wear to such drills the uniforms designated by the particular branch of the Armed Forces to which he belongs.

Section 23 (a) (1) (A) of the Internal Revenue Code of 1939 provides in part that an computing net income there shall be allowed as deductions "All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business."

Section 48 (d) of such Code provides that the term "trade or business" includes the performance of the functions of a public office. The Senate and Conference Committee Reports on the Revenue Bill of 1934, C. B. 1939-1 (Part 2), 586 at 608, and 627 at 630, respectively, stated that section 48 (d) was declaratory of existing law. That provision has, therefore, been construed, not as automatically converting into a trade or business the functions of every so-called "public office" performed by a volunteer, but as recognizing that the functions of a public office which are in the nature of a trade or business should be treated as such, even though the incumbent thereof may serve without compensation, a factor which is ordinarily regarded as a prerequisite to the pursuit of a trade or business. Thus, full-time and many part-time military and civilian officers and employees of the Government are regarded as engaged in a trade or business, even though they are not compensated for their services. See D. C. Jackling v.

Commissioner, 9 B. T. A. 312, acquiescence, C. B. VII-1, 16 (1928); I. T. 2721. C. B. XII-2, 38 (1933); G. C. M 23672, C. B. 1943, 66; and I. T. 4012, C. B. 1950-1, 33. Compare I. T. 3752, C. B. 1945, 81. Since it appears that a member of a reserve unit of the Armed Forces attending prescribed drills performs services which are ordinarily compensated and has rights, duties, and obligations which are in the nature of a trade or business, it is held that a reservist who attends drills under competent orders, with or without compensation, is engaged in a trade or business and may incur ordinary and necessary expenses within the scope of section 23 (a) (1) (A) of the Code, even though he is not reimbursed therefor.

It is clear that a taxpayer may deduct his overnight traveling expenses (including the cost of meals and lodging) necessarily incurred while carrying on a trade or business at a minor or temporary post of duty situated at a distance from the general location of his principal or regular post of duty. Walter F. Brown v. Commissioner, 13 B. T. A. 832, acquiescence, C. B. VIII-1, 6 (1929); Joseph W. Powell v. Commissioner, 34 B. T. A. 655, acquiescence, C. B. XV-2, 19 (1936); Joseph H. Sherman, Jr., et ux. v. Commissioner, 16 T. C. 332, acquiescence, C. B. 1951-2, 4; and Harry F. Schurer v. Commissioner, 3 T. C. 544, acquiescence, C. B. 1944, 24. That principle was extended in Revenue Ruling 190, C. B. 1953-2, 303, to permit taxpayers to deduct their transportation expenses (excluding the cost of meals and lodging) incurred on daily round trips to a minor or temporary post of duty situated beyond the metropolitan area which constitutes their principal or regular post of duty, even though such trips do not require them to be away over-night. Accordingly, it is held that where a member of a reserve unit of the Armed Forces is required to make trips (not extending overnight) between the city or general area which constitutes his principal or regular post of duty and the location of drills conducted away from such area, he may deduct his round-trip transportation expenses so incurred as ordinary and necessary business expenses under section 23 (a) (1) (A) of the Code, provided free transportation between such locations is not furnished by the Armed Forces. This conclusion is applicable regardless of whether the taxpayer attends such, drills in the evening after his regular working hours or on an otherwise nonworking day.

The rules stated in the preceding paragraph (allowing deductions for overnight traveling expenses and daily transportation expenses while away from principal or regular post of duty) are not applicable to the daily commuting expenses of a taxpayer who is employed on different days at different locations within the same city or general area, because such a taxpayer is not away from his principal or regular post of duty, since that term is not limited to a particular office or building, but includes the entire city or general locality in which he is customarily employed. See Willard I. Thompson v. Commissioner, 15 T. C. 609; Raymond E. Kershner v. Commissioner, 14 T. C. 168; and Rev. Rul. 190, supra. Thus, it is held that a reservist may not deduct any part of his transportation expenses incurred in attending drills which are conducted within the city or general locality which constitutes his principal or regular post of duty unless he is also working at some other business location during that same day.
Where an employee having only one employer is required to work part of the same day at each of two different locations within the same city, it is clear that he must make a business trip which is directly attributable to the actual performance of his duties, and that his necessary transportation expenses in going from his first to his second place of employment would generally be deductible. If he has to return to his first place of employment during that same day, his return trip would also be directly connected with the business and his return transportation expenses would likewise be deductible. However, if at the end of his workday he goes home directly from his second place of employment, his trip would ordinarily be regarded as commuting and his transportation expenses would be nondeductible, at least an those situations

where Ms transportation expenses in going from that location to his home do not exceed those from his headquarters office to his home.

Where an employee having two separate employers is required to work on the same day at a different location with-in the same city for each of his employers, it is recognized that his transportation expenses in going from his first to his second place of employment are not incurred in discharging the duties of either job or in carrying on the business of either employer. Compare Commissioner v. J. N. Flowers, 326 U.S. 465, 90 L. Ed. 203, 66 S. Ct. 250, Ct. D. 1659, C. B. 1946-1, 57. However, since both such positions constitute part of the employee's trade or business, local transportation expenses in getting from one place of employment to another constitute ordinary and necessary expenses incurred in carrying on his combined trade or business and in discharging his duties at both locations during that same day. This reasoning is in accord with the Brown, Powell, and Sherman cases, supra, to the extent they allow taxpayers who are carrying on two unrelated occupations at widely separated locations to deduct their overnight traveling expenses incurred in getting from one business location to the other, and with I. T. 3842, C. B. 1947-1, 11, to the extent it holds that a State legislator who is also engaged in some other trade or business at a distance from the State capital may deduct his transportation expenses incurred in making daily round trips between his two places of business, provided such daily round trips are necessary for the purpose of discharging his duties at both locations. However, the deduction of local transportation expenses, especially in a dual-employer situation, would usually be limited to a one-way trip be-tween his two local places of employment on the same day because the employee ordinarily would not have to report back to his first place of employment on that day.

Accordingly, it is held that when a reservist attends prescribed drills within the city or general locality which constitutes his principal or regular post of duty, and on that same day is working at some other business location therein, he may deduct his one-way transportation expenses in getting from one such business location to the other. Of course, if the taxpayer returns to his residence for dinner after his regular working hours and before attending the drill, he can deduct his actual transportation expenses only to the extent they do not exceed the transportation expenses he would have incurred had he gone directly from one such business location to the other.

The transportation expenses held to be deductible herein constitute ordinary and necessary business expenses, rather than traveling expenses "while away from home." Under the Internal Revenue Code of 1939, as amended, unreimbursed transportation expenses may be deducted by an employee only in computing net income and then only on condition that the taxpayer itemizes his deductions instead of electing the optional standard deduction.
With respect to the deductibility of the cost and maintenance of reservists' uniforms, such question is governed by section 39.24 (a)-1 of Regulations 118, which provides in pertinent part as follows:

The cost of equipment of an Army officer to the extent only that it is especially required by his profession and does not merely take the place of articles required in civilian life is deductible. Accordingly, the cost of a sword is an allowable deduction, but the cost of a uniform is not.

The second sentence of the above-quoted regulation is intended to be explanatory of the tests for deductibility pre-scribed in the first sentence thereof, rather than to establish an inflexible rule that the cost of any military uniform is a nondeductible personal expense. In any case, therefore, where a uniform "does not merely take the place of articles required in civilian life," deduction of amounts expended in the purchase and maintenance of such a uniform would not be precluded by such regulation. In the case of a reservist who is required to wear his uniform when on active duty for training for temporary periods, when attending service school courses, or when attending training assemblies, and who is prohibited by military regulations from wearing his uniform except on such occasions, it is believed the uniform does not merely take the place of articles required in civilian life.

It is held, therefore, that amounts expended by reservists for the purchase and maintenance of uniforms required for such infrequent occasions as those set forth above, and allowed to be worn only on such occasions, are deductible for Federal income tax purposes as ordinary and necessary business expenses, except to the extent that nontaxable allowances are received for these costs. Such position does not represent any change in the views of the Internal Revenue Service with respect to the nondeductibility of the costs related to uniforms worn without restriction as to the occasion for such wear by members of the Armed Forces on full-time active duty. In such cases, the uniform is considered to replace ordinary civilian clothing and does not meet the test of the above-quoted provision of the regulations.