

## Revenue Ruling 63-144

### Section 274. – Disallowance of Certain Entertainment, etc., Expenses

July 1963

Answers to a series of specific questions concerning the deductibility of business expenditures for entertainment, travel and gifts in accordance with sections 1.274-1 through 1.274-8 (except for *section 1.274-5*) of the Income Tax Regulations promulgated under *section 274* (except for subsection (d) thereof) of the Internal Revenue Code of 1954.

#### **SECTION 1. PURPOSE.**

The purpose of this Revenue Ruling is to answer a series of questions relating to the provisions of the income tax regulations promulgated under *section 274* (except for subsection (d) thereof) of the Internal Revenue Code of 1954, added by the Revenue Act of 1962, C.B. 1962-3, 111. Each question is designed to present, in relatively simple terms, a point of law of general interest to taxpayers, and individual questions should be read in the context of other questions and answers which follow or precede.

#### Introductory

1. *Question:* How does the new law affect the old law ?

*Answer:* The new rules are in addition to the requirements of the old law which are still in effect. Therefore, before an expense for entertainment, travel or gifts will be deductible it must (1) be "ordinary and necessary" in carrying on your trade or business within the meaning of prior law, and (2) meet the requirements of the new rules under *section 274 of the Code*.

2. *Question:* Do the new record keeping requirements that were published in December 1962 apply in this area ?

*Answer:* Yes. An explanation of these record keeping rules was provided in *Revenue Procedure 63-4, C.B. 1963-1, 474*.

3. *Question:* When are these new rules effective?

*Answer:* These new rules became effective on January 1, 1963. However, the Internal Revenue Service (1) has extended the original 90-day transitional period (announced in *Revenue Procedure 63-3, C.B. 1963-1, 473*), for conforming accounting systems and procedures to the new requirements to July 31, 1963, and (2) will resolve reasonable doubts in favor of taxpayers when there has been a good faith effort to apply the new substantive requirements with respect to travel and entertainment expenses incurred from January 1, to July 31, 1963.

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#### **DETERMINATION OF PRIMARY USE**

60. *Question:* How can I show that more than 50 percent of the use of a facility during the year was for business purposes?

*Answer:* All the facts and circumstances will be considered, including the frequency and duration of use for business purposes as compared with personal purposes, the amount of

expenditures for each use, the nature of each use, and other pertinent facts. However, certain specific tests which taxpayers may use in establishing primary use are discussed at questions 62 to 66.

61. *Question:* Can use of a facility for business entertainment or any other business purposes which are ordinary and necessary, although not constituting "directly related" entertainment, be used in determining whether the 50-percent test is satisfied?

*Answer:* Yes. All ordinary and necessary business use will be considered in showing that the facility was used more than 50 percent for business purposes.

62. *Question:* How would I determine primary use in the case of a country club or a yacht?

*Answer:* One permissible method is to establish that more than 50 percent of the total calendar days of use during the year were days of business use.

63. *Question:* What is a day of business use of a facility?

*Answer:* If the primary use of the facility during a day is an ordinary and necessary business use, as under prior law, it is a day of business use.

64. *Question:* If I have a substantial business discussion (see questions 22 and 23) at the facility, is it a day of business use?

*Answer:* Yes, even though most of the day the facility was used by you or your family for personal use not involving entertainment of others.

65. *Question:* Are days when the facility is not used to be counted in determining whether the facility was used more than 50 percent for business purposes?

*Answer:* No. For example, if a facility was used only 60 days during a year, the 50-percent test would be met where 31 days were days of business use.

66. *Question:* Are there any other specific tests which I might apply in determining whether the 50-percent test is met?

*Answer:* Yes. The 50-percent test is satisfied in the case of an automobile if more than 50 percent of mileage driven during the taxable year is for ordinary and necessary business travel. In the case of an airplane, the test is satisfied if more than 50 percent of hours flown during the year was for such business travel.

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