



## Tax Reduction Letter

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### Revenue Ruling 75-168

Traveling expenses; meals and lodging; layover period. A truck driver employed to haul loads on round trips of several hundred miles may deduct as traveling expenses nonreimbursed costs incurred for meals and lodging during layovers of approximately eight hours for which period his employer tacitly agreed to release him from his duties to obtain necessary sleep or rest. However, the costs incurred for meals during layovers of approximately one-half hour are not deductible. Rev. Rul. 63-239, C.B. 87 superseded.

Advice has been requested whether, under the circumstances described below, the costs of meals and lodging (and expenses incident thereto, such as tips) incurred by a taxpayer in the performance of his duties as a truck driver are deductible as traveling expenses while "away from home" pursuant to the provisions of section 162 (a) (2) of the Internal Revenue Code of 1954.

The taxpayer is employed by a trucking company to haul loads on round trips of several hundred miles. On some of these trips, the taxpayer takes a load to a destination, switches his tractor to a different trailer, which has previously been loaded, and immediately returns to his home city. The "layover" time on such trips is usually one-half hour. As a result of these trips, the taxpayer incurs and pays expenses for meals (and expenses incident thereto, such as tips) before starting the return trips.

On some of the taxpayer's trips, either because a different loaded trailer is not available, or because he is to return with the same trailer, but with a different load, he does not immediately return to his home city, but is required to "layover" approximately 8 hours. On these trips the taxpayer incurs and pays expenses for meals and lodging (and expenses incident thereto, such as tips) before starting the return trips.

The taxpayer is not reimbursed by his employer for any of the expenses incurred on the trips. Although the employer tacitly agrees, he does not "officially" or "formally" release the taxpayer from his duties to secure lodging to enable him to obtain necessary sleep or rest.

Section 162 (a) of the Code provides for the deduction of all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including travel expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business. Section 1.162-2 of the Income Tax Regulations provides that traveling expenses, including travel fares, meals and lodging, and expenses incident to travel, are business expenses.

In order for the cost of meals and lodging to be deductible as traveling expenses while away from home on business trips of less than 24 hours' duration, the employee must satisfy the "overnight" condition (which the Supreme Court of the United States upheld as the "sleep or rest" rule in *United States v. Correll*, 389 U.S. 299, 19 L. Ed. 2d 537, 88 S. Ct. 445, (1967),

1968-1 C.B. 64) by showing that the nature of his employment is such that it was reasonable for him to need and to obtain sleep or rest during release time on such trips in order to meet the demands of his job. An employee's absence on business from his principal or regular post of duty cannot be considered "overnight" unless it is of such duration or nature that the taxpayer cannot reasonably be expected to complete the round-trip without being released from duty for sufficient time to obtain substantial sleep or rest. Also, see *Williams v. Patterson*, 286 F. 2d 333 (5th Cir. 1961), and Rev. Rul. 68-663, 1968-2 C.B. 71, relating to the deductibility of traveling expenses while away from home on business trips of less than 24 hours' duration.

In determining whether it is reasonable to need and to obtain sleep or rest, consideration is given to all the circumstances of the taxpayer's particular job, including any pertinent regulations of a governmental agency regulating the activity involved. It is not essential that the employee's employer officially or formally release him from duty. Nevertheless, the employer must tacitly or expressly agree to the employee's absence from his regular duties. Furthermore, as the employee must stop performing his regular duties for a substantial time if he is to get necessary sleep or rest, the nature, duration, and use of the period of such release from work are important factors in determining whether the employee had an adequate rest period.

Hence, an official release from duty by the employer is not necessarily a prerequisite to the employee incurring deductible expenses for meals and lodging on business trips of less than 24 hours' duration, if the employee can satisfy the "overnight" requirement by otherwise showing that it was reasonable (considering the nature of his duties and duration of his trip) for him to need, and (considering the nature and duration of the release period) for him to obtain substantial sleep or rest in order to meet the demands of his job.

Accordingly, in those situations in the instant case where the layover was for a short period of time that was not sufficient to obtain substantial sleep or rest, the amounts incurred and paid by the taxpayer for meals (and expenses incident thereto, such as tips) are not deductible as traveling "away from home" or "overnight" expenses pursuant to the provisions of section 162 (a) of the Code.

However, in those situations in the instant case where the layover was for a substantial period of time that enabled the taxpayer to obtain substantial sleep or rest, the amounts incurred by the taxpayer for meals and lodging (and expenses incident thereto, such as tips) are deductible as traveling "away from home" or "overnight" expenses pursuant to the provisions of section 162 (a) of the Code, and subject to the limitations and substantiation requirements of section 274.

Rev. Rul. 63-239, 1963-2 C.B. 87, announced that the Internal Revenue Service will not follow *Hanson v. Commissioner*, 298 F. 2d 391 (8th Cir. 1962), which had rejected the "overnight" rule. This announcement is no longer necessary, since the decision in *Hanson* was overruled by the Supreme Court in the *Correll* case.

Rev. Rul. 63-239, C.B. 87 is superseded.