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Revenue Ruling 76-453

Transportation expenses. Examples illustrate that certain transportation expenses incurred after 1976 in traveling between a taxpayer's residence and place of work, even though temporary, will be nondeductible commuting expenses, regardless of the nature of the work performed, the distance traveled, the mode of transport, or the degree of necessity. Reimbursement received after 1976 for such expense will be considered "wages" for purposes of the FICA, FUTA, and income tax withholding. Rev. Ruls. 190 and 59-371 revoked; Rev. Ruls. 54-497, 55- 109, 61-67, and 63-82 modified.

In view of recent court decisions regarding expenses incurred by an individual (who is not traveling away from home) for daily transportation between the individual's residence and place of work, the Internal Revenue Service has reconsidered the positions in Rev. Rul. 190, 1953- 2 C.B. 303, and Rev. Rul. 59-371, 1959-2 C.B. 236.

Rev. Rul. 190 holds that (1) daily transportation expenses incurred by construction workers, in going between a metropolitan area (in which they live and ordinarily work at various temporary jobs) and a temporary work location outside such area, are deductible business expenses; and (2) allowances paid by an employer as reimbursement for such expenses are not "wages" for Federal employment tax purposes including income tax withholding.

Rev. Rul. 59-371 sets forth rules concerning what is "temporary" employment for the purposes of Rev. Rul. 190 and for the purposes of withholding income tax on amounts paid to and received by employees as daily transportation allowances and per diem allowances while working on construction and other projects.

Section 162(a) of the Internal Revenue Code of 1954 in general provides that a deduction will be allowed for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Section 162(a)(2) specifically provides that the section 162(a) deduction shall include traveling expenses incurred while away from home in the pursuit of a trade or business.

In defining the term "adjusted gross income" section 62 of the Code provides, in part, that allowable transportation expenses paid or incurred by a taxpayer in connection with the performance of services as a self-employed individual or as an employee are deductible from gross income as trade or business expenses.

Section 262 of the Code provides that, except as otherwise expressly provided, no deduction shall be allowed for personal, living, or family expenses.

Sections 1.62-1(g), 1.162-2(e), and 1.262-1(b)(5) of the Income Tax Regulations provide that deductible business expenses do not include the cost of commuting to and from a place of work since this cost is personal in nature and, thus, nondeductible.

When transportation expenses are incurred by a taxpayer in making daily round trips requiring no sleep or rest between the taxpayer's residence and place of work, the travel expense deduction in section 162(a)(2) of the Code is inapplicable. *United States v. Correll*, 389 U.S. 299 (1967). If the taxpayer is allowed to deduct such expenses, it will be under the general expense provisions of section 162(a).

In *William B. Turner*, 56 T.C. 27 (1971), the United States Tax Court in a reviewed opinion held that the transportation expenses incurred by the taxpayer in going between the taxpayer's residence and temporary place of business were not deductible business expenses under section 162(a) of the Code, but rather were nondeductible commuting expenses. The court, at 33, went on to state that:

Commuting is commuting, regardless of the nature of the work engaged in, the distance traveled or the mode of transportation used. Our path herein was carefully charted in *United States v. Tauferner*, [407 F. 2d 243 (10th Cir. 1969), cert. denied, 396 U.S. 824 (1969)] at 246, where the Court of Appeals said:

The basic and unmodified fact of whether the taxpayer is going to the place where he begins work or is returning from the place where he ceases work should be determinative. Such travels are expenses within section 262 as "personal, living or family expenses" whether in an urban, suburban, or rural setting. They are not ordinary business expenses under section 162(a).

See also the recent decision in *Sanders v. Commissioner*, [439 F. 2d 296 (9th Cir. 1971), cert. denied, 404 U.S. 964 (1971)].

The decision in *Turner* is premised on the court's conclusion that the "temporary" nature of a taxpayer's work does not convert commuting expenses into ordinary and necessary business expenses.

The *Turner* decision has subsequently been followed in *Crowson v. Commissioner*, T.C. Memo. 1971-223; *Gurney v. Commissioner*, T.C. Memo. 1971-329; *Hill v. Commissioner*, T.C. Memo. 1972-7; *Smith v. Commissioner*, T.C. Memo. 1972- 148.

Upon reconsideration of the issue, the Service will follow the *Turner*, *Crowson*, *Gurney*, *Hill* and *Smith* decisions.

Accordingly, where a taxpayer incurs transportation expenses in going between the taxpayer's residence and place of work even though temporary, such expenses are nondeductible commuting expenses, regardless of the nature of the work engaged in, the distance traveled, the mode of transportation used, or the degree of necessity.

In addition, where the taxpayer who incurs such daily transportation expenses is an employee and is reimbursed for such expenses by the employer, such payments are includible in gross income and are "wages" for purposes of the provisions of Chapters 21, 23, and 24 of the Code.

The application of this Revenue Ruling is illustrated by the following examples:

Example (1). The distance between an individual's residence and regular and only place of work is 70 miles each way. The individual makes this trip daily by automobile. No deduction is allowable for such daily transportation expenses.

Example (2). Each day, for a two-week period, an individual having no principal or regular place of business drives 70 miles each way between the individual's residence and a temporary work assignment. No deduction is allowable for such daily transportation expenses.

Example (3). A, a self-employed individual, maintains a principal place of work in a downtown office building. In order to attend a business meeting in a distant city, A drives directly from A's residence to an airport, flies to the distant city, and later that same day returns directly to A's residence. Due to the length of time required to make the trip and attend the meeting, it is not reasonable to expect A to stop at the office on the way out of town and on the way back. However, in effect, A is traveling between one work location and another. Transportation costs incurred between work locations are deductible business expenses. See Rev. Rul. 55-109, 1955-1 C.B. 261. Therefore, A should be entitled to deduct the lesser of (1) the expenses incurred in traveling between A's residence and the business meeting and (2) the expenses that would have been incurred if A had traveled between A's office and the business meeting by the same mode or modes of transportation.

However, because the difference between (1) and (2) is generally de minimis compared with the total transportation expenses incurred for the trip, the Service will allow A to deduct the expenses incurred in traveling between A's home and the business meeting.

Example (4). Assume the same facts as in example (3) except that B is an employee and is reimbursed by B's employer, under an expense allowance arrangement, for the expenses of transportation incurred on the trip. Under such arrangement B is required to and does account to the employer for such expenses. B is allowed the same transportation expenses as taxpayer A may deduct in example (3). B does not need to report the amount of the reimbursement on B's Federal income tax return since B is required to and does account to the employer for the expenses for which reimbursement is made and the reimbursement does not exceed the deductible expenses.

Example (5). During an entire taxable year, employee C works at various temporary locations for periods of not more than one month at any one location. C drives varying distances each way between C's residence and each such temporary work location. C, pursuant to a union agreement, received a flat \$7 daily amount as reimbursement for the transportation costs incurred. C is not required to account to the employer for such expenses.

C has not incurred any deductible transportation expenses in going between the residence and each such work location. Further, the daily reimbursements are includible in C's gross income and must be reported on the income tax return filed. In addition, withholding of income tax by the employer is required with respect to such transportation reimbursements.

Example (6). D, an individual, who regularly works and resides at home, makes daily round trips to and from another work location, which is D's principal place of work. No portion of the transportation expenses incurred for the daily round trips is deductible.

In addition, with regard to D's work at home (which is considered D's minor place of work), if D, after returning home from the principal place of work, goes to one or more other work locations, the transportation expenses incurred in going from D's home to the first work location and in returning home from the last such location are not deductible.

Example (7). E, who has several regular places of work, may drive from home to one or more than one place of work on any given workday. On the days that E drives to only one place of work and then returns home, no deduction is allowable for the cost of such transportation, including any parking costs incurred. On the days that involve stops at more than one place of work, no deduction is allowed for the cost of transportation from E's home to the first work location and from the last work location back home. Transportation costs incurred between work locations are deductible business expenses. See Rev. Rul. 55-109.

Example (8). F, who regularly works in an office located other than at F's residence, has duties that require activities in that office and at various other locations with clients. On any given day F may (1) go directly from home to the office and return home from the office; (2) go from home to the office, later go to see a client during the day, and then return home; or (3) go from home directly to see a client, later go to the office, and then return home. In each situation, F has not incurred any deductible transportation expenses for any of the costs incurred in going from home to the first work location and in returning home from the last work location.

Example (9). Assume the same facts as in example (8) except that on a day spent entirely in the office, F, after returning to the residence for dinner, goes back to the office in the evening to meet with a client. No deduction is allowable for the transportation expenses incurred for either the daytime round trip or the evening round trip.

Example (10). Assume the same facts as in example (9) except that the evening meeting with the client is at a location other than F's office. No deduction is allowable for the transportation expenses incurred for either the daytime round trip or the evening round trip.

Example (11). Assume the same facts as in example (8) except that F's principal place of work is located at the individual's residence. On days that F drives to one or more other places of work, the entire amount of the transportation expenses is deductible.

Under authority provided by section 7805(b) of the Code, this Revenue Ruling will not be applied to transportation costs paid or incurred prior to July 1, 1977.

Rev. Rul. 190 and Rev. Rul. 59-371 are revoked. The following revenue rulings are modified to accord with the position set forth herein: Rev. Rul. 54-497, 1954-2 C.B. 75; Rev. Rul. 55-109; Rev. Rul. 61-67, 1961-1 C.B. 25; and Rev. Rul. 63-82, 1963-1 C.B. 33.