

Tax Matters:

When can I deduct business travel not involving an overnight stay?

When can a taxpayer deduct business travel not involving an overnight stay?

Deductions are permitted under the Internal Revenue Code for expenses that are ordinary and necessary in carrying on a trade or business. However, travel costs between home and work are generally deemed nondeductible personal expenses. In this regard, taxpayers hoping to deduct their business mileage that does not involve an overnight stay must navigate past two imposing obstacles:

I. Taxpayers must satisfy the strict substantiation requirements for “listed property.”

Taxpayers who want to deduct business mileage need stronger evidence than with most other types of deductions because “listed property” is involved. Listed property includes passenger automobiles and other property used for transportation.¹ At a minimum, a taxpayer should record business trips in a log as the trips are made. It may be too late to create a log after the IRS asks for business records. A log should include the times, dates, and the business purpose(s) of each trip, as well as any detours taken for personal reasons. Consider the following from two recent Tax Court opinions:

Mr. Bogarin did not maintain a contemporaneous mileage log during 2009, and the log that he re-created before trial is insufficient to satisfy the heightened substantiation requirements In short, it lacks individual dates of travel and petitioners failed to offer additional documentation to corroborate that Mr. Bogarin made each of the trips listed in the log.²

Longino did not maintain any contemporaneous record of the miles he traveled for business during 2006. Instead, he offered into evidence a calendar of his business appointments for each day. Using the calendar as a reference . . . [h]e attempted to explain how he traveled to each appointment None of these reconstructed routes include the locations of any personal errands and appointments because, according to Longino, no personal trips took place along these routes.³

¹ 26 U.S.C. § 280F(d)(4)(A)(i) and (ii).

² Bogarin v. Commissioner, T.C. Summ.Op. 2013-67, 2013 WL 4253684, *5, (U.S. Tax Ct. August 15, 2013). Note that “Summary” opinions are not binding but may be instructive.

³ Longino v. Commissioner, T.C. Memo. 2013-80, 2013 WL 1104430, *14, 105 T.C.M. (CCH) 1491 (2013).

The Tax Court went on to describe why Mr. Longino’s testimony lacked credibility: Mr. Longino’s credit card statement showed he had made personal purchases during his business trips. Additionally, Mr. Longino made stops to visit his family and friends.⁴

II. Even where a taxpayer’s business travel is adequately documented, the business travel must fit within at least one of the three categories below.

A. The temporary work location exception.

Travel between a taxpayer’s residence and a temporary work location is deductible where the *temporary* work location is outside the *metro area* where the taxpayer normally lives and works. The term “temporary” refers to whether work at one location is realistically expected to last one year or less and does last one year or less.⁵ The term “metro area” is not well defined but a court may look to see whether the business travel was unusually distant. In one case, the Tax Court found that a construction worker’s travel to work sites between 74 and 96 miles away was not unusually distant.⁶ However, courts will consider the facts and circumstances of each case and they probably do not have a particular number of travel miles in mind.

B. The regular work location exception.

Travel between a taxpayer’s residence and a temporary work location (regardless of the distance) is deductible where a taxpayer has one or more “regular work locations” away from home. The temporary work location must be involved in the same trade or business as the regular work location(s).

Exception to the exception: Although there is authority to support characterizing a taxpayer’s home or residence as a *regular work location*, the IRS will challenge taxpayers who

⁴ Longino, T.C. Memo. 2013-80, 2013 WL 1104430, at *15.

⁵ Rev. Rul. 99-7, 1999-1 C.B. 361.

⁶ Saunders v. Commissioner, T.C. Memo. 2012-200, 2012 WL 2912756, 104 T.C.M. (CCH) 74 (2012).

adopt this position. More recent authority suggests that taking this position is risky and that, if challenged by the IRS, it is unlikely to be successful.

C. The home office exception.

If a taxpayer's home is the taxpayer's *principal place of business*, the taxpayer may deduct the expenses incurred in traveling between home and any other work location involved in the same trade or business.⁷ A court will consider the facts and circumstances of a case to determine whether a taxpayer's home is the taxpayer's *principal place of business*. Relevant facts include the type of furnishings in a room dedicated to the taxpayer's business (is there a bed or television or is there a closet filled with non-business gear?), the nature and extent of work performed in the home, or any other facts that bear on the issue of business use.

Conclusion

In conclusion, taxpayers with substantial business-related travel that does not involve an overnight stay should keep in mind that higher record-keeping requirements apply where passenger cars and trucks are involved. Also, it is not enough to have evidence to prove that the business travel took place. Taxpayers also must show that their travel fits into one of the three exceptions to the general rule that commuting-type expenses are not deductible.

Note: This communication is provided to raise awareness but does not and cannot take into account any one taxpayer's facts and circumstances. Taxpayers who desire individualized legal advice should contact the tax clinic at (859)624-1394 or 1-800-477-1394.

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⁷ Gorokhovskiy v. Commissioner, T.C. Memo. 2013-65, 2013 WL 776312, *6, 105 T.C.M. (CCH) 1419 (2013).