

TRAVEL AND TRANSPORTATION EXPENSES

AWAY FROM HOME - THE OVERNIGHT RULE

In order for a reimbursement of an expense for business travel to be excludable from income, including meals and lodging, a taxpayer must travel "away from home" in the pursuit of business on a temporary basis.

The statutory phrase "away from home" has been interpreted by the U.S. Supreme Court* to require a taxpayer to travel overnight, or long enough to require substantial "sleep or rest". Thus, merely working overtime or at a great distance from the taxpayer's residence does not create excludable reimbursements for travel expenses if the taxpayer returns home without spending the night or stopping for substantial "sleep or rest". Rev. Rul. 75-170; Rev. Rul. 75-432

See the discussion on Meal Allowances for further discussion of the "sleep or rest rule."

*Supreme Court Case - U.S. v Correll, 389 U.S. 299, 302-303 (1967)

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COURT CASES/RULINGS- SLEEP OR REST RULE

Sleep/Rest Not Met - Reimbursements Taxable

- U.S. v Correll, 389 U.S. 299, 302-303(1967)
- Barry v. Commissioner, 27 AFTR 2d 71-334, 435 F2d 1290(CA1 1970)
- Coombs v. Commissioner, 608 F2d 1269, 1276(1979)
- Fife v. Commissioner, 73 T.C. 621(1980)
- Rev.Rul. 68-663, 1968-2 C.B. 71
- Matteson v. Commissioner, T.C. Memo. 1974-96
- Unger v. Commissioner, T.C. Memo 1986-64, 51 TCM 455

Sleep/Rest Met - Reimbursements Not Taxable

- Williams v. Patterson, 286 F.2d 333 (5th Cir. 1961)
- Rev. Rul. 75-170, 1975-1 CB 60
- Anderson, David, (1952) 18 TC 649
- Weaver, Don, (1953) PH TCM 54001, 12 CCH TCM 1421
- Rev. Rul. 75-168, 1975-1 CB 58
- Johnson, Mose, (1982) TC Memo 1982-2
- Rev. Rul. 75-432, 1975-2 CB 60
- L-1711 - Fed Tax Coord.
- Siragusa v. Commissioner, T.C. Memo 1980-68

Court Case 1: Williams v. Patterson

A railroad conductor regularly rents a hotel room near railroad station where he sleeps and eats during a 5-hour layover during an 18-hour workday. He may deduct his meal

TRAVEL AND TRANSPORTATION EXPENSES

and lodging costs because his layover is long enough to obtain sleep or rest and is required by his job to do so.

Court Case 2: Barry v. Commissioner

A consulting engineer works with clients in a three-state area by making one-day trips to each client. She frequently leaves home at 6:30 a.m. and does not return until midnight. During the day, she stops in a rest area and closes her eyes for 20 minutes to refresh herself for the drive. She cannot deduct the cost of her meals on these trips because she is not away from home long enough to obtain substantial sleep or rest.

Court Case 3: Unger v. Commissioner

A truck driver's "safety breaks" which consisted of resting or sleeping at the wheel of the truck for periods ranging from 45 minutes to three and one-half hours, were considered by the courts to be a mere pause from his daily work routine and consequently did not constitute a substantial amount of sleep or rest. So the truck driver was not considered to be away from home.

Examples:

- 1) An employee is required to travel from Salem to Portland to work on a project. She leaves home at 11:00 a.m. on Monday, with plans to return home the same day. She is unable to complete the project on Monday, so she spends the night in Portland. After completing the project the next day, she returns to Salem by 10:30 a.m.

Even though the employee had not planned to spend the night and is gone for less than 24 hours she has met the "Away From Home" rule because she spent the night away from her tax home on business.

- 2) An employee is required to travel from Dallas to Houston to work for the day. The employee leaves home at 6:30 A.M. and returns that night at 10:00 P.M. On the trip home the employee stops for dinner and rests in the car for two hours. Does this stop meet the substantial "sleep or rest" requirement?

Even though the employee has been away from home for substantially longer than his/her normal work day, the employee is not considered to be in travel status. Courts have ruled that stopping for a meal or a rest in a car does not meet the substantial "sleep or rest" rule.

- 3) A government agency supplies office equipment to all agencies within the state. An employee drives a tractor-trailer with equipment from the warehouse in Davenport to an agency in Council Bluffs. After 10 hours the driver stops and rents a room at a rest stop for a 4 hour nap before completing the round trip.

MEALS AND LODGING

the convenience of the employer, the FMV of the meal less any amount charged by the employer is included in the employee's wages. *IRC §119(b)(3)*

Background

Employers often reimburse employees for meals while traveling away from home overnight or while attending meetings or entertaining customers. The taxability of these reimbursements or allowances depends on whether there is a valid business reason for the meals and whether the expenses are substantiated. Reimbursements or allowances must first meet the accountable plan rules in order to be excludable.

This chapter will cover:

- Meals while traveling away from the tax home overnight
- Meals while not away from home, including meals with meetings, entertainment meals, de minimis fringe benefit meals
- Substantiation of employee meal reimbursements and allowances

Meal Reimbursement While Traveling Away From Home on Business

Meals Away From Home Overnight

In order for travel meal reimbursements to be excludable from wages, employees must be traveling away from their tax home on their employer's business. Where employees live has no bearing on where their tax homes are.

Traveling "away from home" means:

1. Employee must be traveling away from the general tax home area substantially longer than an ordinary day's work, and
2. Employee needs to obtain substantial sleep or rest to meet the demands of the work while away from home. *IRC §162(a)(2) Rev. Rul. 75-170 Rev. Rul. 75-432*

Meals Away From Tax Home But *Not* Overnight

Generally, these meals are taxable as wages to the employee because travel must be away from home overnight to be excludable.

Courts have set very strict rules on what constitutes substantial sleep or rest. See **Travel Expense Reimbursements for additional discussion and court cases regarding the "Sleep or Rest" rule.**

Example: An employee is required to travel from Topeka to Wichita to work for the day. The employer agrees to pay for the employee's meals while in Wichita. The employee leaves home at

MEALS AND LODGING

7:00 a.m. and returns home at 9:00 p.m. Before the employee returns in the evening, the employee takes a nap in his car for an hour.

Even though the employee is away from his tax home for substantially longer than a normal work day and even stops for rest, the employee is not considered to be away from home overnight. The rest would not be considered substantial. Any meal money that the employee receives would be taxable as wages.

Meal Reimbursement While NOT Traveling Away From Home

Entertainment Meals

Reimbursements or allowances provided to employees for meals while entertaining customers may be excludable if the expenses are ordinary and necessary, and meet one of the following tests:

Directly-Related or Associated Entertainment

Directly-Related Test - Meal reimbursements meet the directly-related test and may be excludable from wages if:

1. The main purpose of the combined business and meal is the active conduct of business,
2. Business is actually conducted during the meal period, and
3. There is more than a general expectation of deriving income or some other specific business benefit at some future time.

All of the facts must be considered, including the nature of the business transacted and the reasons for conducting business during the meal. If the meal takes place in a clear business setting and is for your business or work, the expenses are considered directly related to your business or work. *Reg. §1.274-2(c) and (d)*

Examples of Directly-Related Entertainment/Meals

- Meals at a hospitality room sponsored by an employer at a convention.
- Entertainment of civic leaders at the opening of a new city hall.

Associated Test - Entertainment-related meal reimbursements meet the associated test and are excludable if the entertainment is:

1. Associated with the active conduct of the employer's business, and
2. Directly before or after a substantial business discussion.

Generally, an expense is associated with the active conduct of a business, if there is a clear business reason for incurring the expense. The purpose may be to get new business or to

MEALS AND LODGING

encourage the continuation of an existing relationship. These activities need not occur in a clear business setting.

Whether a business discussion is substantial depends on the facts of each case. A business discussion will not be considered substantial unless you can show that you actively engaged in the discussion, meeting, negotiation, or other business transaction to get income or some other specific business benefit. You must show that the business discussion was substantial in relation to the meal. *Reg. §1.274-2(c) and (d)*

Example of Associated Entertainment/Meal

- Meals officially scheduled as part of a business conference or convention

Trade or Professional Association Meetings

Reimbursements for meal expenses directly related to and necessary for attending business meetings or conventions of certain exempt organizations are excludable from wages if the expenses of your attendance are related to your trade or business. These organizations include chambers of commerce, business leagues and trade or professional associations. *Reg. §1.274-2(d)(3)*

Examples:

- (1) Manager regularly buys lunch for all of the employees in her group after monthly group meetings in an effort to boost morale. The manager and the employees are reimbursed by the employer.

This does not meet either the directly-related test or the associated test and is not a qualified business meal. The value of the meals is considered taxable to the manager and to the employees.

- (2) A government official attends a Rotary Club meeting as a representative of his agency. The meeting is followed by a dinner for which the official is reimbursed by his agency. Is the meal reimbursement taxable?

The meal reimbursement meets the associated business test, and, therefore, qualifies as an excludable business meal.

Regularly provided meal money does not qualify for the exclusion for de minimis fringes provided by an employer. Three conditions must be met for treatment of occasional meal money as an excludable de minimis fringe benefit:

MEALS AND LODGING

- **Occasional Basis** - Meal is reasonable in value, and is not provided regularly or frequently, and
- **Provided for Overtime Work** - Overtime work necessitates an extension of the employee's normal work schedule, and
- **Enables Overtime Work** - Provided to enable the employee to work overtime. Meals provided on the employer's premises that are consumed during the overtime period, or meal money expended for meals consumed during that period, satisfy this condition. *Reg. §1.132-6(d)(2)*

Meal reimbursements as part of a company policy or union contract may not qualify as an excludable de minimis benefit because the benefit is required and may not be considered occasional. In this case, the employer would have the opportunity to set up the administrative procedures for reporting the benefit.

Meal money calculated on the basis of number of hours worked (for example, \$5.00 per hour for each hour worked over 8 hours) is never excludable as a de minimis fringe benefit. *Reg. §1.132-6(d)(2)*

Example: Nontaxable de minimis meal benefit

A commuter ferry breaks down and engineers are required to work overtime to make repairs. After working 8 hours, the engineers break for dinner because they will be working for an additional 3 hours. The supervisor gives each employee \$5.00 for a meal. The meal is not taxable to the engineers because it was provided to permit them to work overtime in a situation that is not routine.

Example: Taxable de minimis meal benefits

An employer has a policy of reimbursing employees for breakfast or dinner when they are required to work an extra hour before or after their normal work schedule. The reimbursements are taxable because the employer has a policy which indicates payments are routinely made. In addition, the meal reimbursement doesn't enable the employee to work overtime, but is an incentive to do so.

Substantiating Employee Meal Expense Reimbursements

Meal expense reimbursement/allowance must meet the accountable plan rules in order to be excludable from wages. An employer may reimburse employees using an Actual Expense or Per Diem method.

Reimbursements for allowable business travel meals while traveling away from home overnight may be substantiated using either an actual expense method or a per diem method.

MEALS AND LODGING

Meals while not traveling, such as meals with meetings or overtime meals, are substantiated using the actual expense method.

See Per Diem and Actual Expense Reimbursements, earlier, for additional information on substantiation rules.

If an employee chooses not to be reimbursed for expenses, the employee cannot claim the expenses on his/her personal tax return. *P.W. Havener, 23 TCM 539.*