

Reg. Section 1.274-4(d)(2)

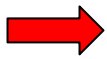
Disallowance of certain foreign travel expenses.

- (a) Introductory. Section 274(c) and this section impose certain restrictions on the deductibility of travel expenses incurred in the case of an individual who, while traveling outside the United States away from home in the pursuit of trade or business (hereinafter termed "business activity"), engages in substantial personal activity not attributable to such trade or business (hereinafter termed "nonbusiness activity"). Section 274(c) and this section are limited in their application to individuals (whether or not an employee or other person traveling under a reimbursement or other expense allowance arrangement) who engage in nonbusiness activity while traveling outside the United States away from home, and do not impose restrictions on the deductibility of travel expenses incurred by an employer or client under an advance, reimbursement, or other arrangement with the individual who engages in nonbusiness activity. For purposes of this section, the term "United States" includes only the States and the District of Columbia, and any reference to "trade or business" or "business activity" includes any activity described in section 212. For rules governing the determination of travel outside the United States away from home, see paragraph (e) of this section. For rules governing the disallowance of travel expense to which this section applies, see paragraph (f) of this section.
- (b) Limitations on application of section. The restrictions on deductibility of travel expenses contained in paragraph (f) of this section are applicable only if:
- (1) The travel expense is otherwise deductible under section 162 or 212 and the regulations thereunder,
 - (2) The travel expense is for travel outside the United States away from home which exceeds 1 week (as determined under paragraph (c) of this section), and
 - (3) The time outside the United States away from home attributable to nonbusiness activity (as determined under paragraph (d) of this section) constitutes 25 percent or more of the total time on such travel.
- (c) Travel in excess of 1 week. This section does not apply to an expense of travel unless the expense is for travel outside the United States away from home which exceeds 1 week. For purposes of this section, 1 week means 7 consecutive days. The day in which travel outside the United States away from home begins shall not be considered, but the day in which such travel ends shall be considered, in determining whether a taxpayer is outside the United States away from home for more than 7 consecutive days. For example, if a taxpayer departs on travel outside the United States away from home on a Wednesday morning and ends such travel the following Wednesday evening, he shall be considered as being outside the United States away from home only 7 consecutive days. In such a case, this section would not apply

because the taxpayer was not outside the United States away from home for more than 7 consecutive days. However, if the taxpayer travels outside the United States away from home for more than 7 consecutive days, both the day such travel begins and the day such travel ends shall be considered a "business day" or a "nonbusiness day", as the case may be, for purposes of determining whether nonbusiness activity constituted 25 percent or more of travel time under paragraph (d) of this section and for purposes of allocating expenses under paragraph (f) of this section. For purposes of determining whether travel is outside the United States away from home, see paragraph (e) of this section.

(d) Nonbusiness activity constituting 25 percent or more of travel time—

(1) In general. This section does not apply to any expense of travel outside the United States away from home unless the portion of time outside the United States away from home attributable to nonbusiness activity constitutes 25 percent or more of the total time on such travel.



(2) Allocation on per day basis. The total time traveling outside the United States away from home will be allocated on a day-by-day basis to (i) days of business activity or (ii) days of nonbusiness activity (hereinafter termed "business days" or "nonbusiness days" respectively) unless the taxpayer establishes that a different method of allocation more clearly reflects the portion of time outside the United States away from home which is attributable to nonbusiness activity. For purposes of this section, a day spent outside the United States away from home shall be deemed entirely a business day even though spent only in part on business activity if the taxpayer establishes:

(i) Transportation days. That on such day the taxpayer was traveling to or returning from a destination outside the United States away from home in the pursuit of trade or business. However, if for purposes of engaging in nonbusiness activity, the taxpayer while traveling outside the United States away from home does not travel by a reasonably direct route, only that number of days shall be considered business days as would be required for the taxpayer, using the same mode of transportation, to travel to or return from the same destination by a reasonably direct route. Also, if, while so traveling, the taxpayer interrupts the normal course of travel by engaging in substantial diversions for nonbusiness reasons of his own choosing, only that number of days shall be considered business days as equals the number of days required for the taxpayer, using the same mode of transportation, to travel to or return from the same destination without engaging in such diversion. For example, if a taxpayer residing in New York departs on an evening on a direct flight to Quebec for a business meeting to be held in Quebec the next morning, for purposes of determining whether nonbusiness activity constituted 25 percent or more of his travel time, the entire day of his departure shall be considered a business day. On the other hand, if a taxpayer travels by automobile from New York to Quebec to attend a business meeting and while en route spends 2 days in Ottawa and 1 day in Montreal on nonbusiness activities of his personal choice, only that number of days outside the United States shall be considered business days as would have been required for the taxpayer to drive by a reasonably direct route to Quebec, taking into account normal periods for rest and meals.

- (ii) Presence required. That on such day his presence outside the United States away from home was required at a particular place for a specific and bona fide business purpose. For example, if a taxpayer is instructed by his employer to attend a specific business meeting, the day of the meeting shall be considered a business day even though, because of the scheduled length of the meeting, the taxpayer spends more time during normal working hours of the day on nonbusiness activity than on business activity.

- (iii) Days primarily business. That during hours normally considered to be appropriate for business activity, his principal activity on such day was the pursuit of trade or business.

- (iv) Circumstances beyond control. That on such day he was prevented from engaging in the conduct of trade or business as his principal activity due to circumstances beyond his control.

- (v) Weekends, holidays, etc. That such day was a Saturday, Sunday, legal holiday, or other reasonably necessary standby day which intervened during that course of the taxpayer's trade or business while outside the United States away from home which the taxpayer endeavored to conduct with reasonable dispatch. For example, if a taxpayer travels from New York to London to take part in business negotiations beginning on a Wednesday and concluding on the following Tuesday, the intervening Saturday and Sunday shall be considered business days whether or not business is conducted on either of such days. Similarly, if in the above case the meetings which concluded on Tuesday evening were followed by business meetings with another business group in London on the immediately succeeding Thursday and Friday, the intervening Wednesday will be deemed a business day. However, if at the conclusion of the business meetings on Friday, the taxpayer stays in London for an additional week for personal purposes, the Saturday and Sunday following the conclusion of the business meeting will not be considered business days.

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