Revenue Ruling 99-7

Trade or Business Expenses

Deductibility of daily transportation expenses. This ruling provides the rules for determining whether daily transportation expenses incurred by a taxpayer in going between the taxpayer's residence and a work location are deductible business expenses under section 162 (a) of the Code.

ISSUE

Under what circumstances are daily transportation expenses incurred by a taxpayer in going between the taxpayer's residence and a work location deductible under § 162 (a) of the Internal Revenue Code?

LAW AND ANALYSIS

Section 162 (a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Section 262, however, provides that no deduction is allowed for personal, living, or family expenses.

A taxpayer's costs of commuting between the taxpayer's residence and the taxpayer's place of business or employment generally are nondeductible personal expenses under §§ 1.162-2 (e) and 1.262-1 (b) (5) of the Income Tax Regulations. However, the costs of going between one business location and another business location generally are deductible under § 162 (a). Rev. Rul. 55-109, 1955-1 C.B. 261.

Section 280A (c) (1) (A) (as amended by § 932 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Slat. 881, effective for taxable years beginning after December 31, 1998) provides, in part, that a taxpayer may deduct expenses for the business use of the portion of the taxpayer's personal residence that is exclusively used on a regular basis as the principal place of business for any trade or business of the taxpayer. (In the case of an employee, however, such expenses are deductible only if the exclusive and regular use of the portion of the residence is for the convenience of the employer.) In Curphey v. Commissioner, 73 T.C. 766 (1980), the Tax Court held that daily transportation expenses incurred in going between an office in a taxpayer's residence and other work locations were deductible where the home office was the taxpayer's principal place of business within the meaning of § 280A (c) (1) (A) for the trade or business conducted by the taxpayer at those other work locations. The court stated that "[w]e see no reason why the rule that local transportation expenses incurred in travel between one business location and another are deductible should not be equally applicable where the taxpayer's principal place of business with respect to the activities involved is his residence." 73 T.C. at 777-778 (emphasis in original). Implicit in the court's analysis in Curphey is that the deductibility of daily transportation expenses is determined on a business-by-business basis.

Rev. Rul. 190, 1953-2 C.B. 303, provides a limited exception to the general rule that the expenses of going between a taxpayer's residence and a work location are nondeductible commuting expenses. Rev. Rul. 190 deals with a taxpayer who lives and ordinarily works in a particular metropolitan area but who is not regularly employed at any specific work location. In such a case, the general rule is that daily transportation expenses are not deductible when paid or incurred by the taxpayer in going between the taxpayer's residence and a temporary work site inside that metropolitan area because that area is considered the taxpayer's regular place of business. However, Rev. Rul. 190 holds that daily transportation expenses are deductible business expenses when paid or incurred in going between the taxpayer's residence and a temporary work site outside that metropolitan area.

Rev. Rul. 90-23, 1990-1 C.B. 28, distinguishes Rev. Rul. 190 and holds, in part, that, for a taxpayer who has one or more regular places of business, daily transportation expenses paid or incurred in going between the taxpayer's residence and temporary work locations are deductible business expenses under § 162 (a), regardless of the distance.

Rev. Rul. 94-47, 1994-2 C.B. 18, amplifies and clarifies Rev. Rul. 190 and Rev. Rul. 90-23, and provides several rules for determining whether daily transportation expenses are deductible business expenses under § 162 (a). Under Rev. Rul. 94-47, a taxpayer generally may not deduct daily transportation expenses incurred in going between the taxpayer's residence and a work location. A taxpayer, however, may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location outside the metropolitan area where the taxpayer lives and normally works. In addition, Rev. Rul. 94-47 clarifies Rev. Rul. 90-23 to provide that a taxpayer must have at least one regular place of business located "away from the taxpayer's residence" in order to deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location in the same trade or business, regardless of the distance. In this regard. Rev. Rul. 94-47 also states that the Service will not follow the decision in Walker v. Commissioner, 101 T.C. 537 (1993). Finally, Rev. Rul. 94-47 amplifies Rev. Rul. 190 and Rev. Rul. 90-23 to provide that, if the taxpayer's residence is the taxpayer's principal place of business within the meaning of § 280A (c) (1) (A), the taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and another work location in the same trade or business, regardless of whether the other work location is regular or temporary and regardless of the distance.

For purposes of both Rev. Rul. 90-23 and Rev. Rul. 94-47, a temporary work location is defined as any location at which the taxpayer performs services on an irregular or short-term (i.e., generally a matter of days or weeks) basis. However, for purposes of determining whether daily transportation expense allowances and per diem travel allowances for meal and lodging expenses are subject to income tax withholding under § 3402, Rev. Rul. 59-371, 1959-2 C.B. 236, provides a I-year standard to determine whether a work location is temporary Similarly, for purposes of determining the deductibility of travel away-from-home expenses under § 162 (a) (2), Rev. Rul. 93-86, 1993-2 C.B. 71, generally provides a 1-year standard to determine whether a work location will be treated as temporary

The Service has reconsidered the definition of a temporary work location in Rev. Rul. 90-23 and Rev. Rul. 94-47, and will replace the "irregular or short-term (i.e., generally a matter of days or weeks) basis" standard in those rulings with a 1-year standard similar to the rules set forth in Rev. Rul. 59-371 and Rev. Rul. 93-86.

If an office in the taxpayer's residence satisfies the principal place of business requirements of § 280A (c) (1) (A), then the residence is considered a business location for purposes of Rev. Rul. 90-23 or Rev. Rul. 94-47. In these circumstances, the daily transportation expenses incurred in going between the residence and other work locations in the same trade or business are ordinary and necessary business expenses (deductible under § 162 (a)). See Curphey; see also Wisconsin Psychiatric Services v. Commissioner, 76 T.C. 839 (1981). In contrast, if an office in the taxpayer's residence does not satisfy the principal place of business requirements of § 280A (c) (1) (A), then the business activity there (if any) is not sufficient to overcome the inherently personal nature of the residence and the daily transportation expenses incurred in going between the residence and regular work locations. In these circumstances, the residence is not considered a business location for purposes of Rev. Rul. 90-23 or Rev. Rul. 94-47, and the daily transportation expenses incurred in going between the residence and regular work locations are personal expenses (nondeductible under §§ 1.162-2 (e) and 1.262-1 (b) (5)). See Green v. Commissioner, 59 T.C. 456 (1972); Fryer v. Commissioner, T.C. M. 1974-77.

For purposes of determining the deductibility of travel-away-from-home expenses under §162 (a) (2), Rev. Rul. 93-86 defines "home" as the "taxpayer's regular or principal (if more than one regular) place of business." See Daly v. Commissioner, 72 T.C. 190 (1979), aff'd, 662 F.2d 253 (4th Cir. 1981); Flowers v. Commissioner, 326 U.S. 465, 90 L. Ed. 203, 66 S. Ct. 250 (1946), 1946-1 C.B. 57.

HOLDING

In general, daily transportation expenses incurred in going between a taxpayer's residence and a work location are nondeductible commuting expenses. However, such expenses are deductible under the circumstances described in paragraph (1), (2), or (3) below.

(1) A taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location outside the metropolitan area where the taxpayer lives and normally works. However, unless paragraph (2) or (3) below applies, daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location within that metropolitan area are nondeductible commuting expenses.

(2) If a taxpayer has one or more regular work locations away from the taxpayer's residence, the taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location in the same trade or business, regardless of the distance. (The Service will continue not to follow the Walker decision.)

(3) If a taxpayer's residence is the taxpayer's principal place of business within the meaning of § 280A (c) (1) (A), the taxpayer may deduct daily transportation expenses incurred in going between the residence and another work location in the same trade or business, regardless of whether the other work location is regular or temporary and regardless of the distance.

For purposes of paragraphs (1), (2), and (3), the following rules apply in determining whether a work location is temporary If employment at a work location is realistically expected to last (and does in fact last) for 1 year or less, the employment is temporary in the absence of facts and

circumstances indicating otherwise. If employment at a work location is realistically expected to last for more than 1 year or there is no realistic expectation that the employment will last for 1 year or less, the employment is not temporary, regardless of whether it actually exceeds 1 year. If employment at a work location initially is realistically expected to last for 1 year or less, but at some later date the employment is realistically expected to exceed 1

year, that employment will be treated as temporary (in the absence of facts and circumstances indicating otherwise) until the date that the taxpayer's realistic expectation changes, and will be treated as not temporary after that date.

The determination that a taxpayer's residence is the taxpayer's principal place of business within the meaning of § 280A (c) (1) (A) is not necessarily determinative of whether the residence is the taxpayer's tax home for other purposes, including the travel-away-from-home deduction under § 162 (a) (2).

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 190 and Rev. Rul. 59-371 are obsoleted. Rev. Rul. 90-23 and Rev. Rul 94-47 are modified (regarding the definition of temporary work location) and superseded. With respect to issues (2) and (3) in Rev. Rul. 90-23 (regarding the gross income and employment tax treatment of reimbursements for employee daily transportation expenses), see § 1.62-2 regarding reimbursements in general, and Rev. Proc. 97-58 (particularly sections 3, 9, and 10), 1997-2 C.B. 587 (or any successor), regarding reimbursements using the optional business standard mileage rate. Rev. Rul. 93-86 is distinguished.

DRAFTING INFORMATION

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