



Tax Reduction Letter

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Field Service Advisory, Vaughn # 2707

February 28, 1997

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EBCleverdon - FREV-250850-96 to: Appeals Office, San Diego

Attn: Jim Rheinbold from: Assistant Chief Counsel (Income Tax & Accounting) subject: Section 280A Limitations on Business Travel Expenses

This is in response to your request for information concerning the limitations imposed by § 280A of the Internal Revenue Code on deductions for business traveling expenses. Your question concerns a married couple who reside and work in State A and own 3 cottages in a resort area of State B. The taxpayers use 1 of the cottages as a second residence and use the other 2 cottages as rental units for tourists. You have indicated, and we will assume, that the taxpayers' rental activity constitutes a trade or business within the meaning of § 162. The question you raise is whether § 280A limits any deductions available to the taxpayers under § 162(a)(2) for business traveling expenses. I hope the following information will be useful.

Traveling Expense Deductions under § 162(a)(2)

Traveling expenses are generally nondeductible personal expenses under § 262. However, § 162(a)(2) provides a deduction for traveling expenses (including amounts expended for meals and lodging other than amounts that are lavish or extravagant under the circumstances) paid or incurred while away from home 1 in the pursuit of a trade or business. See *Commissioner v. Flowers*, 326 U.S. 465 (1946), 1946-1 C.B. 57. Rev. Rul. 75-432, 1975-2 C.B. 60, 61, considers the § 162(a)(2) traveling expense deduction in a situation involving a taxpayer who occasionally travels on business to a minor post of duty where he maintains a permanent residence. The ruling indicates that the cost of meals and lodging at the minor post of duty may be deductible as "away from home" travel expenses.

Only such traveling expenses as are reasonable and necessary in the conduct of the business and directly attributable to the business may be deducted. Section 1.162-2(a), Income Tax Regulations. If a taxpayer travels to a destination and while at such destination engages in both business and personal activities, only those traveling expenses properly allocable to the trade or business are deductible. 2 Section 1.162-2(b)(1); Rev. Rul. 84-113, 1984-2 C.B. 60; see *Miller v. Commissioner*, T.C.M. 1995-518; *Rider v. Commissioner*, T.C.M. 1988-288. Also, traveling expenses are not deductible unless substantiated in accordance with § 274(d)(1), which generally requires that the elements of an expenditure (time, place, business purpose, and amount) be recorded at or near the time of the expenditure. See § 1.274-5T(b) and (c).

Disallowance of Traveling Expenses under § 280A

Deductions otherwise allowable under § 162(a) may be limited by § 280A(a), which generally disallows deductions with respect to the use of a dwelling unit used by the taxpayer as a residence. However, § 280A(a) does not disallow business traveling expense deductions otherwise allowable under § 162(a)(2) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units). Section 280A(f)(4). The term "dwelling unit" — which generally includes a house, apartment, condominium, mobile home, boat, or similar property — specifically excludes a unit used "exclusively as a hotel, motel, inn, or similar establishment." Section 280A(f)(1). Thus, as relevant to your inquiry, § 280A(a) does not disallow deductions for traveling expenses incurred in the trade or business of renting units that are used exclusively as a hotel, motel, inn, or similar establishment.

A unit is not used exclusively as a hotel, motel, inn, or similar establishment if there is any rent-free personal use of the unit during the taxable year. *Byers v. Commissioner*, 82 T.C. 919, 924-925 (1984); *Grigg v. Commissioner*, T.C.M. 1991-392, *affd.* 979 F.2d 383 (5th Cir. 1992). However, consistent with the proposed regulations, we believe that a unit regularly available for occupancy by paying customers and not used for any personal purpose during the taxable year (see § 280A(d)(2)) may be considered to be used exclusively as a hotel, motel, inn, or similar establishment. See § 1.280-1(c)(2), Proposed Income Tax Regulations. The proposed regulations suggest that the exception may also apply to a portion of a home used to furnish lodging to tourists or long-term boarders, or to a unit entered in a rental pool (within the meaning of § 1.280A-3(e)) that is not used by the owner as a residence during the taxable year.

This memorandum is for your general information and is non-binding and advisory only. It is not intended to be conclusive as to the tax consequences for any specific taxpayer, may not be furnished or cited to taxpayers, and may not be used as the basis for closing a case. We do not anticipate considering this issue for publication in light of the statutory guidance and existing precedent. If we can be of further assistance, please contact Edwin B. Cleverdon at (202) 622-4920.

By

George B. Baker

Assistant to the Chief, Branch 2

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.

1 A taxpayer's home for purposes of § 162(a)(2) is generally considered to be located at the taxpayer's regular or principal (if more than one regular) place of business. Rev. Rul. 93-86, 1993-2 C.B. 71.

2 However, traveling expenses to and from a destination are deductible only if the trip is related primarily to the taxpayer's trade or business. Section 1.162-2(b)(1); Rev. Rul. 84-113, 1984-2 C.B. 60.