

### Reg. Section 1.162-32(b)(4)

Expenses paid or incurred for lodging when not traveling away from home.

(a) In general. Expenses paid or incurred for lodging of an individual who is not traveling away from home (local lodging) generally are personal, living, or family expenses that are nondeductible by the individual under section 262(a). Under certain circumstances, however, local lodging expenses may be deductible under section 162(a) as ordinary and necessary expenses paid or incurred in connection with carrying on a taxpayer's trade or business, including a trade or business as an employee. Whether local lodging expenses are paid or incurred in carrying on a taxpayer's trade or business is determined under all the facts and circumstances. One factor is whether the taxpayer incurs an expense because of a bona fide condition or requirement of employment imposed by the taxpayer's employer. Expenses paid or incurred for local lodging that is lavish or extravagant under the circumstances or that primarily provides an individual with a social or personal benefit are not incurred in carrying on a taxpayer's trade or business.

(b) Safe harbor for local lodging at business meetings and conferences. An individual's local lodging expenses will be treated as ordinary and necessary business expenses if--

(1) The lodging is necessary for the individual to participate fully in or be available for a bona fide business meeting, conference, training activity, or other business function;

(2) The lodging is for a period that does not exceed five calendar days and does not recur more frequently than once per calendar quarter;

(3) If the individual is an employee, the employee's employer requires the employee to remain at the activity or function overnight; and

 (4) The lodging is not lavish or extravagant under the circumstances and does not provide any significant element of personal pleasure, recreation, or benefit.

(c) Examples. The provisions of the facts and circumstances test of paragraph (a) of this section are illustrated by the following examples. In each example the employer and the employees meet all other requirements (such as substantiation) for deductibility of the expense and for exclusion from income of the value of the lodging as a working condition fringe or of reimbursements under an accountable plan.

Example 1. (i) Employer conducts a seven-day training session for its employees at a hotel near Employer's main office. The training is directly connected with Employer's trade or business. Some employees attending the training are traveling away from home and some employees are not traveling away from home. Employer requires all employees attending the training to remain at the hotel overnight for the bona fide purpose of facilitating the training. Employer pays the costs of the lodging at the hotel directly to the hotel and does not treat the value as compensation to the employees.

(ii) Because the training is longer than five calendar days, the safe harbor in paragraph (b) of this section does not apply. However, the value of the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The training is a bona fide condition or requirement of employment and Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not paying the expenses primarily to provide a social or personal benefit to the employees, and the lodging Employer provides is not lavish or extravagant. If the employees who are not traveling away from home had paid for their own lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe under section 132(a) and (d).

(iv) Employer may deduct the lodging expenses, including lodging for employees who are not traveling away from home, as ordinary and necessary business expenses under section 162(a).

Example 2. (i) The facts are the same as in Example 1, except that the employees pay the cost of their lodging at the hotel directly to the hotel, Employer reimburses the employees for the cost of the lodging, and Employer does not treat the reimbursement as compensation to the employees.

(ii) Because the training is longer than five calendar days, the safe harbor in paragraph (b) of this section does not apply. However, the reimbursement of the expenses for the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The training is a bona fide condition or requirement of employment and Employer is reimbursing the lodging expenses for a noncompensatory business purpose and not primarily to provide a social or personal benefit to the employees and the lodging Employer provides is not lavish or extravagant. The employees incur the expenses in performing services for the employer. If Employer had not reimbursed the employees who are not traveling away from home for the cost of the lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the reimbursements to the employees are made under an accountable plan and are excluded from the employees' gross income.

(iv) Employer may deduct the lodging expense reimbursements, including reimbursements for employees who are not traveling away from home, as ordinary and necessary business expenses under section 162(a).

Example 3. (i) Employer is a professional sports team. Employer requires its employees (for example, players and coaches) to stay at a local hotel the night before a home game to conduct last minute training and ensure the physical preparedness of the players. Employer pays the lodging expenses directly to the hotel and does not treat the value as compensation to the employees.

(ii) Because the overnight stays occur more than once per calendar quarter, the safe harbor in paragraph (b) of this section does not apply. However, the value of the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The overnight stays are a bona fide condition or requirement of employment and Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not paying the lodging expenses primarily to provide a social or personal benefit to the

employees and the lodging Employer provides is not lavish or extravagant. If the employees had paid for their own lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iv) Employer may deduct the expenses for lodging the employees at the hotel as ordinary and necessary business expenses under section 162(a).

Example 4. (i) Employer hires Employee, who currently resides 500 miles from Employer's business premises. Employer pays for temporary lodging for Employee near Employer's business premises while Employee searches for a residence.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by providing housing while Employee searches for a residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary employee business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and § 1.162-25T.

Example 5. (i) Employee normally travels two hours each way between her home and her office. Employee is working on a project that requires Employee to work late hours. Employer provides Employee with lodging at a hotel near the office.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by relieving her of the daily commute to her residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and § 1.162-25T.

Example 6. (i) Employer requires an employee to be "on duty" each night to respond quickly to emergencies that may occur outside of normal working hours. Employees who work daytime hours each serve a "duty shift" once each month in addition to their normal work schedule. Emergencies that require the duty shift employee to respond occur regularly. Employer has no sleeping facilities on its business premises and pays for a hotel room nearby where the duty shift employee stays until called to respond to an emergency.

(ii) Because an employee's expenses for lodging while on the duty shift occur more frequently than once per calendar quarter, the safe harbor in paragraph (b) of this section does not apply. However, the value of the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The duty shift is a bona fide condition or requirement of employment and Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not providing the lodging to duty shift employees primarily to provide a social or personal benefit to the employees and the lodging Employer provides is not lavish or extravagant. If the employees had paid for their lodging, the expenses would have been deductible by the employees under section

162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iv) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a).

(d) Effective/applicability date. This section applies to expenses paid or incurred on or after October 1, 2014. However, taxpayers may apply these regulations to local lodging expenses that are paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired.