

Revenue Ruling 93-86

July 1993

Away from home temporarily. Guidelines are provided for determining whether taxpayers are away from home temporarily for purposes of deducting travel expenses under section 162 (a) (2) of the Code as amended by the Energy Policy Act of 1992. Rev. Rul. 83-82, 1983-1 C.B. 45 obsoleted in part and Notice 93-29, 1993-23 C.B. 311 amplified.

ISSUE

What effect does the 1-year limitation on temporary travel, as added by section 1938 of the Energy Policy Act of 1992, Pub. L. No. 102-486, have on the deductibility of away from home travel expenses under section 162 (a) (2) of the Internal Revenue Code?

FACTS

Situation 1. Taxpayer A is regularly employed in city CI-1. In 1993, A accepted work in city CI-2, which is 250 miles from CI-1. A realistically expected the work in CI-2 to be completed in 6 months and planned to return to CI-1 at that time. In fact, the employment lasted 10 months, after which time A returned to CI-1.

Situation 2. The facts are the same as in Situation 1, except that Taxpayer B realistically expected the work in CI-2 to be completed in 18 months, but in fact it was completed in 10 months.

Situation 3. The facts are the same as in Situation 1, except that Taxpayer C realistically expected the work in CI-2 to be completed in 9 months. After 8 months, however, C was asked to remain for 7 more months (for a total actual stay of 15 months).

LAW AND ANALYSIS

Back to SummarySection 162 (a) (2) of the Code allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business, including travel expenses (including amounts expended for meals and lodging other than amounts that are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business. Under section 262 (a), no deduction is allowed for personal, living, or family expenses, unless expressly provided by law.

For travel expenses to be deductible under section 162 (a) (2) of the Code, they must satisfy the following three conditions: (1) they must be ordinary and necessary, (2) they must be incurred while away from home, and (3) they must be incurred in pursuit of a trade or business. See *Commissioner v. Flowers*, 326 U.S. 465, 90 L. Ed. 203, 66 S. Ct. 250 (1946), 1946-1 C.B. 57, and Rev. Rul. 60-189, 1960-1 C.B. 60.

A taxpayer's "home" for purposes of section 162 (a) (2) of the Code is generally considered to be located at (1) the taxpayer's regular or principal (if more than one regular) place of business, or (2) if the taxpayer has no regular or principal place of business, then at the taxpayer's regular place of abode in a real and substantial sense. If a taxpayer comes within neither category (1) nor category (2), the taxpayer is considered to be an itinerant whose "home" is wherever the taxpayer happens to work. Rev. Rul. 73-529, 1973-2 C.B. 37, and Rev. Rul. 60-189. Travel expenses paid or incurred in connection with an indefinite or permanent work assignment are generally nondeductible.

Travel expenses paid or incurred in connection with a temporary work assignment away from home are deductible under section 162 (a) (2) of the Code. See *Peurifoy v. Commissioner*, 358 U.S. 59, 3 L. Ed. 2d 30, 79 S. Ct. 104, 1958-2 C.B. 916 (1958), 1958-2 C.B. 916. The courts and the Service have held that employment is temporary for this purpose only if its termination can be foreseen within a reasonably short period of time. See *Albert v. Commissioner*, 13 T.C. 129 (1949), and Rev. Rul. 75-432, 1975-2 C.B. 60.

Employment that is initially temporary may become indefinite due to changed circumstances. See *Norwood v. Commissioner*, 66 T.C. 467 (1976), *Bark v. Commissioner*, 6 T.C. 851 (1946), Rev. Rul. 73-578, 1973-2 C.B. 39, and Rev. Rul. 60-189, 1960-1 C.B. 60. In Rev. Rul. 73-578, 1973-2 C.B. 39, a citizen of a foreign country comes to the U.S. under a 6-month nonimmigrant visa to work for a U.S. employer, intending to resume regular employment in the foreign country after this period. After 4 months, however, the individual agrees to continue the employment for an additional 14 months. Rev. Rul. 73-578, 1973-2 C.B. 39 holds that the individual may deduct ordinary and necessary travel expenses paid or incurred during the first 4 months of the employment. However, the individual may not deduct travel expenses paid or incurred thereafter, unless the expenses are paid or incurred in connection with temporary employment away from the location of the individual's regular employment with the U.S. employer.

Revenue Ruling 83-82, 1983-1 C.B. 45, provides that, for purposes of the deduction for travel expenses under section 162 (a) (2) of the Code, if the taxpayer anticipates employment away from home to last less than 1 year, then all the facts and circumstances are considered to determine whether such employment is temporary. If the taxpayer anticipates employment to last (and it does in fact last) between 1 and 2 years, Rev. Rul. 83-82, 1983-1 C.B. 45 provides a rebuttable presumption that the employment is indefinite. The taxpayer may rebut the presumption by demonstrating certain objective factors set forth in the revenue ruling. For employment with an anticipated or actual stay of 2 years or more. Rev. Rul. 83-82, 1983-1 C.B. 45 holds that such employment is indefinite, regardless of any other facts or circumstances. All the factual situations in Rev. Rul. 83-82, 1983-1 C.B. 45 involve employment in a single location for more than 1 year.

Section 1938 of the Energy Policy Act of 1992, Pub. L. No. 102-486, amended section 162 (a) (2) of the Code to provide that a taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year. This amendment applies

to any period of employment in a single location if such period exceeds 1 year. See H.R. Conf. Rep. No. 102-1018, 102d Cong., 2d Sess. 429, 430 (1992). Thus, section 162 (a) (2), as amended, eliminates the rebuttable presumption category under Rev. Rul. 83-82, 1983-1 C.B. 45 for employment lasting between 1 and 2 years, and shortens the 2-year limit under that ruling to 1 year. The amendment is effective for costs paid or incurred after December 31, 1992.

Accordingly, if employment away from home in a single location is realistically expected to last (and does in fact last) for 1 year or less, the employment will be treated as temporary in the absence of facts and circumstances indicating otherwise. If employment away from home in a single 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 will be treated as indefinite, regardless of whether it actually exceeds 1 year. If employment away from home in a single 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.

In Situation 1, A realistically expected that the work in CI-2 would last only 6 months, and it did in fact last less than 1 year. Because A had always intended to return to CI-1 at the end of A's employment in CI-2, the CI-2 employment is temporary. Thus, A's travel expenses paid or incurred in CI-2 are deductible.

In Situation 2, B's employment in CI-2 is indefinite because B realistically expected that the work in CI-2 would last longer than 1 year, even though it actually lasted less than 1 year. Thus, B's travel expenses paid or incurred in CI-2 are nondeductible.

In Situation 3, C at first realistically expected that the work in CI-2 would last only 9 months. However, due to changed circumstances occurring after 8 months, it was no longer realistic for C to expect that the employment in CI-2 would last for 1 year or less. Therefore, C's employment in CI-2 is temporary for 8 months, and indefinite for the remaining 7 months. Thus, C's travel expenses paid or incurred in CI-2 during the first 8 months are deductible, but C's travel expenses paid or incurred thereafter are nondeductible.

HOLDING

Under section 162 (a) (2) of the Code, as amended by the Energy Policy Act of 1992, if employment away from home in a single 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 away from home in a single 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 indefinite, regardless of whether it actually exceeds 1 year. If employment away from home in a single 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.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 83-82, 1983-1 C.B. 45 is obsolete for costs paid or incurred after December 31, 1992, because all the factual situations in that ruling involve employment in a single location for more than 1 year. Notice 93-29, 1993-1 C.B. 311, is amplified.

EFFECTIVE DATE

This revenue ruling is effective for costs paid or incurred after December 31, 1992.