

ORDER

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
Western-Pacific Region

WP 1500.17
NM 1500.10

10/21/94

**SUBJ: ENERGY POLICY ACT OF 1992 - TAXABILITY OF LONG-TERM TEMPORARY
DUTY TRAVEL REIMBURSEMENTS**

1. **PURPOSE.** This order provides guidelines for the identification and treatment of taxable long-term temporary duty travel reimbursements.
2. **DISTRIBUTION.** This order is distributed to section level in the regional headquarters and standard distribution to all field offices and facilities in the Western-Pacific and Northwest Mountain Regions.
3. **EFFECTIVE DATE.** The act states that this rule applies "to costs paid or incurred after December 31, 1992."
4. **POLICY.** Rev. Rul. 93-86 implements the Energy Policy Act of 1992 (Appendix 1) by establishing a new test for determining whether an assignment is temporary or indefinite. An assignment is temporary only if an employee has a realistic expectation that travel will last less than one year. An assignment is indefinite when an employee does not have an expectation concerning the assignment duration or has a realistic expectation that the assignment will last longer than one year. The travel reimbursements for indefinite travel are reportable as taxable income on the employee's IRS Wage and Tax Statement (W-2). The FAA will begin W-2 reporting with the 1994 tax year. For 1993, income tax reporting is the responsibility of each employee. Federal Travel Regulations make no provisions for reimbursing the traveler for any additional income taxes incurred resulting from the reporting.
5. **ACTION.**
 - a. **Travel authorizing officials** have the responsibility to review the ruling and determine whether an employee's assignment meets the ruling guidelines for taxation purposes. Further, travel authorizing officials shall:
 - (1) Inform employees of the impact on their taxable income from such travel.
 - (2) Insert a statement on the employee's temporary duty (TDY) travel authorization and subsequent travel vouchers indicating that the travel is for more than one year and therefore the reimbursements are subject to taxation.

Distribution: WP: A-X-4; A-FOF-O (STD)
NM: A-X-4; A-FOF-O (STD)

Initiated By: AWP-20

(3) Rev. Rul. 93-86 does not address the issue of how long a break in assignment must be in order to consider an assignment temporary when an employee returns to the same temporary duty location. Additionally, it should be noted that Rev. Rul. 93-86 applies only to assignments at a single location away from home and does not address the issue of multiple duty locations. In order to determine how the foregone situations should be managed, employees should consult with their private tax advisor.

b. The Travel and Transportation Branch, AWP-26, will have the responsibility of deducting appropriate taxes from voucher payments. AWP-26 will also be responsible for reporting these amounts to Payroll, AMZ-440.

c. The Payroll Branch, AMZ-440, will be responsible for including the taxable travel reimbursement amount and applicable withholdings the employee's IRS Wage and Tax Statement (W-2).

6. COORDINATION. This order has been coordinated with the Northwest Mountain Region.



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APPENDIX 1 - Rev. Rul. 93-86**Section 162**

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

Section 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 (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, 1960-1 C.B. 60. 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 (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. In Rev. Rul. 73-578, 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 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 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 holds that such employment is indefinite, regardless of any other facts or circumstances. All the factual situations in Rev. Rul. 83-82 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

Rev. Rul. 93-86

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-*

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APPENDIX 1 - Continuation of Rev. Rul. 93-86

Section 162

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 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 is obsoleted 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.

26 CFR 1.162-17: Reporting and substantiation of certain business expenses of employees.

The rules for substantiating the amount of a deduction or expense for lodging, meal, and/or incidental expenses incurred while traveling away from home that most nearly represents current costs are set forth. See Rev. Proc. 93-50, page 586.

26 CFR 1.162-17: Reporting and substantiation of certain business expenses of employees.

The rules for substantiating the amount of a deduction or expense for business use of an automobile that most nearly represents current costs are set forth. See Rev. Proc. 93-51, page 593.

Section 163.—Interest

26 CFR 1.163-1 Interest deduction in general.
(Also Section 469; 1.469-2T.)

Interest properly allocable to the purchase of stock. Interest incurred by an individual in connection with the purchase of stock in a C corporation is investment interest for purposes of the section 163(d) of the Code investment interest deduction limitation, unless the individual is a dealer or a trader in stock or securities.