



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR WILLIE F. CHIN, REVENUE AGENT
BOSTON/NEW ENGLAND DISTRICT

FROM: George Baker
Assistant to Branch Chief
Branch 2

SUBJECT: Limitation on meal expenses under § 274(n)

This Chief Counsel Advice is in response to your memorandum dated June 15, 1999, concerning the application of the limitation on meal expenses under § 274(n). Chief Counsel Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be relied upon or otherwise cited as precedent.

ISSUE:

How should the limitations under § 274(n) be applied under the circumstances described in the facts below.

FACTS:

A general contractor performs services for a variety of clients or customers. In bidding on contracts, the contractor submits bids that include estimates of the amount of travel expenses it anticipates its employees will incur under the contract. If the contractor wins the bid, it reimburses its employees for travel expenses they incur in performing the contract. The contractor's employees submit substantiation to the contractor for these expenses. (The contractor treats the reimbursements as paid pursuant to the accountable plan rules set out in § 1.62-2 of the Income Tax Regulations).

In order to receive its payments under the contract, the contractor submits invoices to clients or customers with a brief description of work performed and costs incurred. The invoices provide a general statement of travel expenses incurred, but specific expenditures (such as meal expenses or the meal portion of per diem expenses) are not stated. The contractor does not otherwise substantiate the travel expenses to clients or customers. In computing its federal taxes, the contractor deducts 100 percent of the travel expense reimbursements.

APPLICABLE LAW:

FREV-110623-99

Section 162(a)(2) of the Internal Revenue Code allows a deduction for ordinary and necessary business expenses paid or incurred in carrying on a trade or business, including traveling 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. The flush language of § 162(a) provides a “1-year limitation” on the deductibility of travel expenses under § 162(a)(2) for most taxpayers. The deductibility of these expenses is also subject to specific substantiation rules under § 274(d)(1).

Section 274(n)(1)(A) limits the deduction under § 162(a)(2) for any expense for food or beverages to 50 percent of the amount of the expense. Section 274(n)(2)(A) provides an exception to the limitation, relevant to the fact pattern set forth above, for meal expenses that are described in § 274(e)(3)(A):

Expenses paid or incurred by the taxpayer, in connection with the performance of services for another person ... , under a reimbursement or other expense allowance arrangement with such other person, but this paragraph shall apply ... , where the services are performed for a person other than an employer, only if the taxpayer accounts (to the extent provided in subsection (d)), to such person.

Section 1.274-5T(h)(3) of the Income Tax Regulations provides rules regarding the accounting to the service recipient under this provision:

[A]n independent contractor shall be considered to account to his client or customer for an expense paid or incurred under a reimbursement or other expense allowance arrangement with his client or customer if, with respect to such expense ... , he submits to his client or customer adequate records or other sufficient evidence conforming to paragraph (c) of this section.

“Adequate records” are described in § 1.274-5T(c)(2) as an account book, diary, log, statement of expense, trip sheets, or similar record, and documentary evidence which, in combination, are sufficient to establish each element of an expenditure. “Other sufficient evidence” is described in § 1.274-5T(c)(3) as the taxpayer’s own statement, whether written or oral, containing specific information in detail as to such element; and other corroborative evidence sufficient to establish such element. This corroborative evidence must be direct evidence, such as a statement in writing or oral testimony of witnesses setting forth detailed information about the element, or the documentary evidence described in § 1.274-5T(c)(2).

ANALYSIS:

It is clear, under the general fact pattern described above, that the contractor’s business deduction under § 162(a)(2) for food and beverages is limited to 50 percent of the expenditure under § 274(n)(1) unless an exception applies.

FREV-110623-99

The exception provided by § 274(n)(2)(A) and (e)(3) is available to the contractor only if the contractor submits to his client or customer adequate records or other sufficient evidence within the meaning of § 1.274-5T(c). It does not appear that the contractor described in the fact pattern has satisfied these requirements.

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This memorandum is for your general information and is advisory only. It is not intended to be conclusive as to the tax consequences for any specific taxpayer. If we can be of further assistance, please contact CC:DOM:IT&A:2 at (202) 622-4920.