

Section 274.—Disallowance of Certain Entertainment, etc., Expenses

26 CFR 1.274–5: Substantiation requirements.

T.D. 9064

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Substantiation of Incidental Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains amendments to regulations relating to the requirement under section 274 of the Internal Revenue Code to substantiate business expenses for traveling while away from home. The regulations affect taxpayers who deduct expenditures for incidental expenses while traveling away from home. This document also contains amendments to regulations under section 62 to conform cross-references.

DATES: *Effective Date:* These regulations are effective July 1, 2003.

Applicability Date: For dates of applicability, see §1.274–5(m).

FOR FURTHER INFORMATION CONTACT: Sameera Hasan (202) 622–4930 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR Part 1. On November 12,

2002, the IRS and Treasury published in the **Federal Register** a temporary regulation (T.D. 9020, 2002–2 C.B. 907 [67 FR 68512]) relating to the substantiation under section 274(d) of the Internal Revenue Code of incidental expenses incurred while traveling away from home. On the same day, the IRS and Treasury published a notice of proposed rulemaking (REG–141832–02, 2002–2 C.B. 921 [67 FR 68539]) cross-referencing the temporary regulations.

Written comments from two commentators were received. A commentator initially requested a public hearing but subsequently withdrew the request. No public hearing was held. The comments generally related to implementation of these regulations in future guidance and will be further considered in connection with that guidance. After consideration of the comments, the proposed regulations are adopted by this Treasury decision.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not require a collection of information and do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is Sameera Hasan, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in the development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.62–2 is amended by removing the last three sentences of paragraph (e)(2) and adding two sentences in their place to read as follows:

§1.62–2 Reimbursements and other expense allowance arrangements.

* * * * *

(e) * * *

(2) * * * See §1.274–5(g) and (j), which grant the Commissioner the authority to establish optional methods of substantiating certain expenses. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by §1.274–5(g) or (j) will be treated as substantiation of the amount of such expense for purposes of this section.

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Par. 3. Section 1.274–5 is amended by:

1. Revising paragraph (j)(3).
2. Adding a new sentence at the end of paragraph (m).

The revision and addition read as follows:

§1.274–5 Substantiation requirements.

* * * * *

(j) * * *

(3) *Incidental expenses while traveling away from home.* The Commissioner may establish a method under which a taxpayer may use a specified amount or amounts for incidental expenses paid or incurred while traveling away from home in lieu of substantiating the actual cost of incidental expenses. The taxpayer will not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place, and business purpose of the travel.

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(m) * * * However, paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002.

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Par. 4. Section 1.274–5T is amended by revising paragraph (j) to read as follows:

§1.274–5T Substantiation requirements.

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(j) [Reserved]. For further guidance, see §1.274–5(j).

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Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved June 20, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on June 20, 2003, 8:45 a.m., and published in the issue of the Federal Register for July 1, 2003, 68 F.R. 39011)
