

# JOURNAL OF ACCOUNTANCY

TAX PRACTICE CORNER

## Displaced Workers and Deduction for Travel Expenses

BY TOM PRIETO, CPA, MBT  
DECEMBER 2010



In today's economy, employees may be displaced from long-held jobs. They travel to new assignments and locations as businesses cut costs. Sometimes, employees may have to choose between being laid off or reassigned. In these situations, workers have often tried to deduct business or employment travel under IRC § 162(a)(2). Usually, CPAs must tell them their travel expenses are more likely considered personal rather than business-related and therefore not deductible.

### RULES FOR DEDUCTIBLE TRAVEL

Section 162(a)(2) allows a deduction for "ordinary and necessary expenses ... in carrying on any trade or business, including ... traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business." Congress later added that, for purposes of this provision, "the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year." In other words, even though a worker might consider a job to be temporary, unless it

clearly can be expected to last a year or less, related travel expenses usually are not deductible. In *Durance v. Commissioner* (TC Summary Opinion 2010-12), facts the Tax Court considered indicating a reasonable expectation that the taxpayer's job would last at least a year, preventing deduction of travel expenses, included that the taxpayer signed a one-year lease for an apartment in the new location and the position paid an annual salary. See also Revenue Ruling 93-86.

There is no definite distance one must travel to be "away from home," but courts have generally held it to consist of at least an overnight trip, a period requiring sleep or rest. That's one reason daily commuting expenses generally are not deductible.

### IN PURSUIT OF BUSINESS

The other reason commuting expenses generally are not deductible is that they are usually considered personal expenses rather than undertaken for a business purpose and therefore are not in pursuit of a trade or business within the meaning of section 162(a)(2). A worker's choice of where to live—including whether to move closer to a new job site—is generally considered a personal one. Therefore, the expenses arising from that choice are usually considered personal rather than business-related. See *Commissioner v. Flowers* (326 U.S. 465 (1946)), also Treas. Reg. §§ 1.162-2(e) and 1.262-1(b)(5).

The distinction between personal convenience and business necessity may seem less clear to a laid-off worker in search of employment. Maintaining a home in the place where the worker was laid off may seem more like a practical necessity, especially where a new job in another city might be short term or unclear in how long it will last. But since long-distance commuting is not usually required by the new employer, courts have generally held it to be nondeductible, either because of the business purpose requirement, the away-from-home requirement or both. They have sometimes used the concept of a "tax home" to mean the location where a taxpayer works, even if different from where the taxpayer maintains a principal residence. See, for example, *Hantzis v. Commissioner*, TC Memo 1979-299 (rev'd, 1st Cir. 1981), and *David A. Wilbert v. Commissioner*, TC Memo 2007-152 (aff'd, 7th Cir. 2009). In *Wilbert*, the taxpayer and other laid-off Northwest Airlines mechanics were allowed to "bump" other mechanics with less seniority in other cities. Wilbert's postings lasted only weeks or days in Chicago, New York

and Anchorage, Alaska. The Tax Court and Seventh Circuit both held he was never “away from home” because his place of residence was no longer his tax home. He had no business reason for maintaining his home there.

### REGULAR PLACE OF ABODE

Itinerant workers likewise are generally considered to be without a tax home to be away from. However, a taxpayer without a clear-cut tax home because of the nature of the taxpayer’s business (such as a traveling sales representative) may be able to establish a “regular place of abode” that can substitute as one. The taxpayer must meet the three criteria of Revenue Ruling 73- 529: First, the taxpayer performs all or a portion of the business “in the vicinity of the claimed abode” while using the abode. Second, the taxpayer incurs expenses at the abode that are duplicated due to travel. Third, one of the following conditions is also met: (a) The taxpayer has not abandoned the vicinity of either “his historical place of lodging” or the claimed abode, (b) one or more members of the taxpayer’s family currently reside at the claimed abode, or (c) the taxpayer frequently uses the abode for lodging.

### COMMUTING SOMETIMES DEDUCTIBLE

In some instances, the IRS will allow an exception to the general rule that commuting expenses are not deductible. Revenue Ruling 94-47 provides that expenses may be deductible when a taxpayer is traveling to a temporary work location outside the metropolitan area where the taxpayer lives and normally works. “Temporary” here means the same as in section 162(a)(2): realistically expected to last a year or less. The revenue ruling also allows a deduction for travel from the taxpayer’s residence to a temporary work location within the same metropolitan area if the taxpayer has one or more regular work locations away from the residence in the same trade or business. If the residence is the taxpayer’s principal place of business (as defined in IRC § 280A), the taxpayer can deduct expenses of travel to another work location within the same metropolitan area, whether or not that location is temporary, as long as it is in the same trade or business. See *Diaz v. Commissioner* (TC Memo 2002-192) for an example.

### ADVISING CLIENTS

CPAs’ clients will benefit from some advice beforehand. CPAs can inform clients of the circumstances in which work-related travel is deductible. Clients can act accordingly, such as by keeping adequate records for substantiating those expenses.

What other steps are available for workers who must travel for work? They should first establish a clear understanding with their employer about the duration of the assignment. Preferably, this should be in writing. The taxpayer needs to meet the requirement that a work assignment can reasonably be expected to last a year or less. If that hurdle is met, then there may be ways for the taxpayer to establish a business connection.

As with most life changes, changing jobs can be chaotic. When it happens to their tax clients, CPAs are in a position to give those clients a little assurance about one aspect of their financial future.

By **Tom Prieto**, CPA, MBT, ([tomprieto@gmail.com](mailto:tomprieto@gmail.com)) an adjunct professor at American Jewish University in Los Angeles.

To comment on this article or to suggest an idea for another article, contact Paul Bonner, senior editor, at [pbonner@aipca.org](mailto:pbonner@aipca.org) or 919-402-4434.

More from the *JofA*:

 Find us on Facebook |  Follow us on Twitter