



COMMUTING OR AWAY FROM HOME

BACKGROUND

Generally, an employer cannot provide for an employee's transportation cost tax-free when the employee's tax home is within commuting distance of the worksite. Similarly, the payment of any transportation benefits, meal & incidental per diem, or housing allowance or cost must be treated as taxable compensation when the work assignment is within "commuting" distance of the tax home. For travel costs to be nontaxable, the employee must be "traveling away from home" as loosely defined in IRS Publication 463 and elsewhere. This discussion presumes the traveler has a permanent tax home and the assignment(s) at a given location does not exceed one year.

DISTANCE

The tax rules do not provide a precise time or distance criteria for what is considered "commuting" vs. "traveling away from home." Commuting is generally referred to as within the worker's metropolitan area, but also means a broader geographical area in a rural setting. A guideline of 50 miles is commonly used, but is not an IRS commuting guideline and can be too short a distance in a rural interstate setting where 50 miles could be traveled in 45 minutes. A precise minimum 50-mile limit does apply in the moving expense rules, but it should not be considered a precise limit for the commuting determination. We believe the 50-mile limit might be a reasonable cut-off in an urban/suburban area and the limit could be as high as 100 miles in a rural interstate access area. Mapping sites on the Internet can readily quantify the tax home to worksite distance.

TIME

Consistent with the discussions in IRS Publication 463, "time" may be a more appropriate criteria than "distance" in determining whether an employee is commuting or traveling away from home. In the Publication, the IRS defines travel away from home as resulting from work duties away from the employee's "general area of their tax home" and where "sleep or rest" is necessary to meet the work demands while away from home. Other rulings suggest that the workday and travel time must last substantially longer than an ordinary day's work and for which an overnight stay is necessary. Again, no clear guidance is provided and it becomes a subjective facts and circumstances decision based upon common practices in the area. However, the one-way travel minimum could approach 2 hours in an urban/suburban setting and 1½ hours in a rural setting. Routinely returning home after the work shift would be clear evidence that the traveler is commuting.

CONCLUSION

A conservative cut-off for the one-way commuting determination might be the lesser of 50 miles or 2 hours in an urban/suburban area and 100 miles or 1½ hours in a rural area. This time and distance guideline could be reduced depending on the typical common practice of the assignment area. The traveler and/or recruiter might consult with the client to determine the typical commuting time and distance for the area. If the assignment is deemed to be within commuting distance of the tax home, all travel costs and benefits (transportation benefits, meal & incidental per diem, or housing allowance or cost) will be reported as taxable compensation subject to applicable payroll tax withholding.

The information contained herein is general in nature and based on authorities that are subject to change.

Tax information contained in this document is not intended to be used, and cannot be used, by any person as a basis for avoiding tax penalties that may be imposed by the IRS or any state. We recommend each taxpayer seek advice based on their circumstances from an independent tax advisor.