

REVENUE RULE 94-47

1994-2 C.B. 18, 1994-29 I.R.B. 6.

Internal Revenue Service
Revenue Ruling

REV. RUL. 190 AND REV. RUL. 90-23 AMPLIFIED AND CLARIFIED

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Section 162. - Trade or Business Expenses, 26 CFR 1.162-2: Traveling Expenses.

(See Also Sections 262, 280A; 1.262-1, 1.280A-2.)

Rev. Rul. 190 and Rev. Rul. 90-23 amplified and clarified. This ruling sets forth the principles the Service will apply to determine the deductibility of daily transportation expenses incurred by a taxpayer in going between the taxpayer's residence and any work location. Rev. Ruls. 190 and 90-23 amplified and clarified.

ISSUE

Under what circumstances are daily transportation expenses incurred by a taxpayer in going between the taxpayer's residence and a work location deductible under s 162(a) of the Internal Revenue Code?

LAW AND ANALYSIS

Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Section 262, however, provides that no deduction is allowed for personal, living, or family expenses.

A taxpayer's costs of commuting from the taxpayer's home to the taxpayer's place of business or employment are nondeductible personal expenses under §§ 1.162-2(e) and 1.262-1(b)(5) of the Income Tax Regulations. However, the costs of going from one business location to another business location generally are deductible under s 162(a). Rev. Rul. 55-109, 1955-1 C.B. 261.

Section 280A(c)(1)(A) provides, in part, that a taxpayer may deduct expenses for the business use of the portion of the taxpayer's personal residence that is exclusively used on a regular basis as the principal place of business for any trade or business of the taxpayer. In *Curphey v. Commissioner*, 73 T.C. 766 (1980), the Tax Court held that daily transportation expenses incurred in going between an office in a taxpayer's residence and other work locations were deductible where the home office was the taxpayer's principal place of business within the meaning of s 280A(c)(1)(A) for the trade or business conducted by the taxpayer at those other work locations. The court stated that "[w]e see no reason why the rule that local transportation expenses incurred in travel between one business location and another are deductible should not

be equally applicable where the taxpayer's principal place of business with respect to the activities involved is his residence." 73 T.C. at 777-78 (emphasis in original). Implicit in the court's analysis in *Curphey* is that the deductibility of daily transportation expenses is determined on a business by business basis.

Rev. Rul. 190, 1953-2 C.B. 303, provides a limited exception to the general rule that the expenses of going between a taxpayer's residence and work are nondeductible commuting expenses. Rev. Rul. 190 deals with a taxpayer who lives and ordinarily works in a particular metropolitan area but who is not regularly employed at any specific work location. In such a case, the general rule is that daily transportation expenses are not deductible when paid or incurred by the taxpayer in going between the taxpayer's residence and a temporary work site inside that metropolitan area because that area is considered the taxpayer's regular place of business. However, Rev. Rul. 190 holds that daily transportation expenses are deductible business expenses when paid or incurred in going between the taxpayer's residence and a temporary work site, outside that metropolitan area.

Rev. Rul. 90-23, 1990-1 C.B. 28, expands the holding of Rev. Rul. 190 and holds that, for a taxpayer who has one or more regular places of business, daily transportation expenses paid or incurred in going between the taxpayer's residence and temporary work locations are deductible business expenses under s 162(a) regardless of the distance. Rev. Rul. 90-23 defines a temporary work location as any location at which the taxpayer performs services on an irregular or short-term (i.e., generally a matter of days or weeks) basis.

Taken together, the holdings in Rev. Rul. 190 and Rev. Rul. 90-23 are designed to provide a reasonable and administrable set of rules to address the variety of situations in which taxpayers incur daily transportation expenses in going between their residences and their places of work.

In *Walker v. Commissioner*, 101 T.C. 537 (1993), the Tax Court applied Rev. Rul. 90-23 to permit a taxpayer to deduct daily transportation expenses incurred in going between the taxpayer's residence and numerous temporary work sites. The court allowed a deduction for these expenses based on its interpretation of Rev. Rul. 90-23, notwithstanding that the taxpayer's recurring work at the residence, while sufficient in the court's view to make that location a regular place of business, was not sufficient to qualify the residence as a principal place of business within the meaning of s 280A(c)(1)(A). The court indicated, however, that absent Rev. Rul. 90-23, the taxpayer's inability to establish that the residence was the taxpayer's principal place of business would have rendered nondeductible the taxpayer's daily transportation expenses incurred in going between the taxpayer's residence and other work locations.

The Service will not follow the Tax Court's decision in *Walker* allowing a deduction for these daily transportation expenses based on Rev. Rul. 90-23. In particular, the Service disagrees both with (1) the court's interpretation in *Walker* that Rev. Rul. 90-23 applies to a situation where the taxpayer's only regular place of business is located at the taxpayer's residence, and (2) the court's treatment of Rev. Rul. 90-23 as a concession to the taxpayer by the Service. Rev. Rul. 90-23 neither involves nor contemplates a situation such as that presented in *Walker*. Rather, Rev. Rul. 90-23 only provides a deduction for daily transportation expenses incurred in going between a

taxpayer's residence and a temporary place of business where the taxpayer also has a regular place of business that is not located at the taxpayer's residence.

In determining whether daily transportation expenses incurred in going to and from a place of business located at the taxpayer's residence are more properly treated as personal commuting expenses (nondeductible under §§ 1.162-2(e) and 1.262-1(b)(5)) or as ordinary and necessary business expenses (deductible under s 162(a)), great weight must be given to the inherently personal character of a taxpayer's residence and trips to and from that residence. See *Mazzotta v. Commissioner*, 57 T.C. 427 (1971). If an office in the taxpayer's residence satisfies the principal place of business requirements of s 280A(c)(1)(A), then the business activity there is so central to the taxpayer's business as to overcome the inherently personal nature of the residence and the daily transportation expenses incurred in going between the residence and other work locations in the same trade or business. See *Curphey*; see also *Wisconsin Psychiatric Services v. Commissioner*, 76 T.C. 839 (1981). In these circumstances, the residence is considered a business location for purposes of Rev. Rul. 90-23. If an office in the taxpayer's residence does not satisfy the principal place of business requirements of s 280A(c)(1)(A), then the business activity there (if any) is not sufficient to overcome the inherently personal nature of the residence and the daily transportation expenses incurred in going between the residence and other regular work locations. See *Green v. Commissioner*, 59 T.C. 456 (1972); *Fryer v. Commissioner*, T.C. Memo. 1974-77. In these circumstances, the residence is not considered a business location for purposes of Rev. Rul. 90-23.

HOLDING

In general, daily transportation expenses incurred in going between a taxpayer's residence and a work location are nondeductible commuting expenses. However, such expenses are deductible under the circumstances described in paragraph (1), (2), or (3) below.

- (1) A taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location outside the metropolitan area where the taxpayer lives and normally works. However, unless paragraph (2) or (3) below applies, daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location within that metropolitan area are nondeductible commuting expenses.
- (2) If a taxpayer has one or more regular work locations away from the taxpayer's residence, the taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location in the same trade or business, regardless of the distance.
- (3) If a taxpayer's residence is the taxpayer's principal place of business within the meaning of s 280A(c)(1)(A), the taxpayer may deduct daily transportation expenses incurred in going between the residence and another work location in the same trade or business, regardless of whether the other work location is regular or temporary and regardless of the distance.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 190, 1953-2 C.B. 303, and Rev. Rul. 90-23, 1990-1 C.B. 28, are amplified and clarified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Leonard H. Friedman of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Friedman on (202) 622- 4920 (not a toll-free call).

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