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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9696]

RIN 1545-BH60

Local Lodging Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the deductibility of expenses for lodging when an individual is not traveling away from home (local lodging).

The regulations affect taxpayers who pay or incur local lodging expenses.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Dates: For dates of applicability, see §§1.162-32(d) and 1.262-1(b)(5).

FOR FURTHER INFORMATION CONTACT: Peter Ford, (202) 317-7011 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) under sections 162 and 262 of the Internal Revenue Code (Code) relating to the deduction of local lodging expenses. On April 25, 2012, a notice of

proposed rulemaking (REG-137589-07) was published in the **Federal Register** (77 FR 24657). One written comment responding to the notice of proposed rulemaking was received. No public hearing was requested or held. After consideration of the comment, the regulations are adopted as amended by this Treasury decision.

Summary of Comment and Explanation of Provisions

The provisions of the proposed regulations under section 162 of the Code were designated as §1.162-31, however, after the proposed regulations were published, unrelated regulations were finalized as §1.162-31. Accordingly, the final regulations in this document under section 162 are designated as §1.162-32.

Under the general rule in §1.162-31(a) of the proposed regulations, local lodging expenses for an individual are personal, living, or family expenses that are nondeductible by the individual under section 262(a). Depending on the facts and circumstances, however, local lodging expenses may be deductible under section 162 as ordinary and necessary business expenses. Section 1.162-31(b) of the proposed regulations provides a safe harbor, pursuant to which local lodging expenses that meet certain criteria are treated as ordinary and necessary business expenses of an individual. Local lodging expenses that meet either the facts and circumstances test of paragraph (a) or the safe harbor requirements of paragraph (b) are deductible by an individual if incurred directly. Alternatively, if the expenses are incurred by an employer on behalf of an employee, the value of the local lodging may be excludible from the income of the employee as a working condition fringe under section 132(a) and (d). To the extent an employer reimburses an employee for local lodging expenses, the reimbursement may be excludible from the employee's gross income if the expense

allowance arrangement satisfies the requirements of an accountable plan under section 62(c) and the applicable regulations. The expenses are also deductible by the employer as ordinary and necessary business expenses.

The commenter requested that the final regulations be revised to make it clear that a taxpayer's local lodging expenses that do not satisfy the safe harbor under §1.162-31(b) of the proposed regulations may nonetheless be deductible under §1.162-31(a) of the proposed regulations depending on the taxpayer's facts and circumstances. In response to this comment, the final regulations clarify that the examples illustrate the facts and circumstances test. Specifically, the examples illustrate situations in which certain conditions of the safe harbor are not satisfied and, therefore, the facts and circumstances test determines the appropriate treatment.

An example in the proposed regulations describes circumstances in which a professional sports team provides local lodging to players and coaches for a noncompensatory business purpose. The commenter suggested that the final regulations clarify that local lodging provided to other employees of a sports team also may be ordinary and necessary noncompensatory business expenses. In response to this comment, the final regulations revise the example to clarify that the reference to players and coaches is illustrative and not exclusive.

The commenter requested that the final regulations clarify the circumstances in which meal expenses paid or incurred in connection with lodging expenses are deductible. The final regulations do not adopt this comment, as the proposed regulations did not provide rules relating to meal expenses and those issues are beyond the scope of these regulations.

Effective/Applicability Date

These regulations apply to expenses paid or incurred on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may apply these regulations to expenses paid or incurred in taxable years ending before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, for which the period of limitation on credit or refund under section 6511 has not expired.

Special Analyses

This Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 1.162-32 is added to read as follows:

§1.162-32 Expenses paid or incurred for lodging when not traveling away from home.

(a) In general. Expenses paid or incurred for lodging of an individual who is not traveling away from home (local lodging) generally are personal, living, or family expenses that are nondeductible by the individual under section 262(a). Under certain circumstances, however, local lodging expenses may be deductible under section 162(a) as ordinary and necessary expenses paid or incurred in connection with carrying on a taxpayer's trade or business, including a trade or business as an employee. Whether local lodging expenses are paid or incurred in carrying on a taxpayer's trade or business is determined under all the facts and circumstances. One factor is whether the taxpayer incurs an expense because of a bona fide condition or requirement of employment imposed by the taxpayer's employer. Expenses paid or incurred for local lodging that is lavish or extravagant under the circumstances or that primarily provides an individual with a social or personal benefit are not incurred in carrying on a taxpayer's trade or business.

(b) Safe harbor for local lodging at business meetings and conferences. An individual's local lodging expenses will be treated as ordinary and necessary business expenses if--

(1) The lodging is necessary for the individual to participate fully in or be available for a bona fide business meeting, conference, training activity, or other business function;

(2) The lodging is for a period that does not exceed five calendar days and does not recur more frequently than once per calendar quarter;

(3) If the individual is an employee, the employee's employer requires the employee to remain at the activity or function overnight; and

(4) The lodging is not lavish or extravagant under the circumstances and does not provide any significant element of personal pleasure, recreation, or benefit.

(c) Examples. The provisions of the facts and circumstances test of paragraph (a) of this section are illustrated by the following examples. In each example the employer and the employees meet all other requirements (such as substantiation) for deductibility of the expense and for exclusion from income of the value of the lodging as a working condition fringe or of reimbursements under an accountable plan.

Example 1. (i) Employer conducts a seven-day training session for its employees at a hotel near Employer's main office. The training is directly connected with Employer's trade or business. Some employees attending the training are traveling away from home and some employees are not traveling away from home. Employer requires all employees attending the training to remain at the hotel overnight for the bona fide purpose of facilitating the training. Employer pays the costs of the lodging at the hotel directly to the hotel and does not treat the value as compensation to the employees.

(ii) Because the training is longer than five calendar days, the safe harbor in paragraph (b) of this section does not apply. However, the value of the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The training is a bona fide condition or requirement of employment and Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not paying the expenses primarily to provide a social or personal benefit to the employees, and the lodging Employer provides is not lavish or extravagant. If the

employees who are not traveling away from home had paid for their own lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe under section 132(a) and (d).

(iv) Employer may deduct the lodging expenses, including lodging for employees who are not traveling away from home, as ordinary and necessary business expenses under section 162(a).

Example 2. (i) The facts are the same as in Example 1, except that the employees pay the cost of their lodging at the hotel directly to the hotel, Employer reimburses the employees for the cost of the lodging, and Employer does not treat the reimbursement as compensation to the employees.

(ii) Because the training is longer than five calendar days, the safe harbor in paragraph (b) of this section does not apply. However, the reimbursement of the expenses for the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The training is a bona fide condition or requirement of employment and Employer is reimbursing the lodging expenses for a noncompensatory business purpose and not primarily to provide a social or personal benefit to the employees and the lodging Employer provides is not lavish or extravagant. The employees incur the expenses in performing services for the employer. If Employer had not reimbursed the employees who are not traveling away from home for the cost of the lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the reimbursements to the employees are made under an accountable plan and are excluded from the employees' gross income.

(iv) Employer may deduct the lodging expense reimbursements, including reimbursements for employees who are not traveling away from home, as ordinary and necessary business expenses under section 162(a).

Example 3. (i) Employer is a professional sports team. Employer requires its employees (for example, players and coaches) to stay at a local hotel the night before a home game to conduct last minute training and ensure the physical preparedness of the players. Employer pays the lodging expenses directly to the hotel and does not treat the value as compensation to the employees.

(ii) Because the overnight stays occur more than once per calendar quarter, the safe harbor in paragraph (b) of this section does not apply. However, the value of the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The overnight stays are a bona fide condition or requirement of employment and Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not paying the lodging expenses primarily to provide a social or personal benefit to the employees and the lodging Employer provides is not lavish or extravagant. If the employees had paid for their own lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iv) Employer may deduct the expenses for lodging the employees at the hotel as ordinary and necessary business expenses under section 162(a).

Example 4. (i) Employer hires Employee, who currently resides 500 miles from Employer's business premises. Employer pays for temporary lodging for Employee near Employer's business premises while Employee searches for a residence.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by providing housing while Employee searches for a residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary employee business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and §1.162-25T.

Example 5. (i) Employee normally travels two hours each way between her home and her office. Employee is working on a project that requires Employee to work late hours. Employer provides Employee with lodging at a hotel near the office.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by relieving her of the daily commute to her residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and §1.162-25T.

Example 6. (i) Employer requires an employee to be "on duty" each night to respond quickly to emergencies that may occur outside of normal working hours.

Employees who work daytime hours each serve a “duty shift” once each month in addition to their normal work schedule. Emergencies that require the duty shift employee to respond occur regularly. Employer has no sleeping facilities on its business premises and pays for a hotel room nearby where the duty shift employee stays until called to respond to an emergency.

(ii) Because an employee’s expenses for lodging while on the duty shift occur more frequently than once per calendar quarter, the safe harbor in paragraph (b) of this section does not apply. However, the value of the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The duty shift is a bona fide condition or requirement of employment and Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not providing the lodging to duty shift employees primarily to provide a social or personal benefit to the employees and the lodging Employer provides is not lavish or extravagant. If the employees had paid for their lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees’ income as a working condition fringe.

(iv) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a).

(d) Effective/applicability date. This section applies to expenses paid or incurred on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

However, taxpayers may apply these regulations to local lodging expenses that are paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired.

Par. 3. In §1.262-1, paragraph (b)(5) is revised to read as follows:

§1.262-1 Personal, living, and family expenses.

* * * * *

(b) * * *

(5) Expenses incurred in traveling away from home (which include transportation expenses, meals, and lodging) and any other transportation expenses are not deductible unless they qualify as expenses deductible under section 162 (relating to

trade or business expenses), section 170 (relating to charitable contributions), section 212 (relating to expenses for production of income), section 213 (relating to medical expenses), or section 217 (relating to moving expenses), and the regulations under those sections. The taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses. For expenses paid or incurred before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, a taxpayer's expenses for lodging when not traveling away from home (local lodging) are nondeductible personal expenses. However, taxpayers may deduct local lodging expenses that qualify under section 162 and are

paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired. For expenses paid or incurred on or after **INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**, a taxpayer's local lodging expenses are personal expenses and are not deductible unless they qualify as deductible expenses under section 162. Except as permitted under section 162 or 212, the costs of a taxpayer's meals not incurred in traveling away from home are nondeductible personal expenses.

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Heather C. Maloy,
Acting Deputy Commissioner for Services and Enforcement.

Approved: August 22, 2013.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

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