

REV-RUL, Traveling expenses; "home.", Rev. Rul. 73-529, 1973-2 CB 37, (Jan. 01, 1973)

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Rev. Rul. 73-529, 1973-2 CB 37**Section 162.--Trade or Business Expenses**

26 CFR 1.162-2: *Traveling expenses.*
(Also Sections 62, 262; 1.62-1, 1.262-1.)

[IRS Headnote] Traveling expenses; "home."--

For purposes of the traveling expense deduction under section 162(a)(2) of the Code, three objective factors are set forth that may be used to determine whether a taxpayer has a "home" in the form of a regular place of abode in a real and substantial sense or whether he is an itinerant. In addition, two situations are presented that distinguish the circumstances under which these factors will and will not be recognized as having been satisfied.

[Text]

Advice has been requested whether the expenses in the situations described below are incurred while "away from home," and thus deductible as traveling expenses under section 162(a)(2) of the Internal Revenue Code of 1954.

Situation 1. A taxpayer, an outside salesman, has a sales territory covering several states. His employer has its main office in City A, and the taxpayer returns there for approximately one month each year for business and nonbusiness reasons. The taxpayer's work assignments are temporary and he has no way of knowing where future assignments will be located. He has lived in City A for 14 years, first with his wife in his own house until their divorce, and presently with his married sister in her house. The taxpayer pays his sister \$50 per month for a room in her house where he stays when he is in City A and where he also keeps his furniture and any clothing which he does not take on his out-of-town business trips.

Situation 2. A taxpayer, an outside salesman, has a sales territory covering several states. His employer has its main office in City A, but the taxpayer does not go there for business reasons. The taxpayer's work assignments are temporary, and he has no way of knowing where his future assignments will be located. He has a room in his sister's house in City B where he keeps the things he does not need on his business trips. He stays at his sister's house for one or two weekends each year, but he performs no work in the vicinity of City B. He makes no payment to his sister for the use of the room in her house. The taxpayer has abandoned his historical and other familial contacts which are in the vicinity of City C.

Section 162(a)(2) of the Code provides that there shall be allowed as a deduction all the ordinary and necessary traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) paid or incurred during the taxable year while "away from home" in the pursuit of a trade or business. On the other hand, section 262 states that, except as otherwise expressly provided by the Code, no deduction shall be allowed for personal, living, or family expenses. In the situations presented, the deductibility of each taxpayer's expenses depends on whether he has a "home" within the meaning of section 162(a)(2). Only if he does, can he deduct his expenses as traveling expenses incurred while "away from home."

Generally, a taxpayer's "home" for purposes of section 162(a)(2) of the Code is considered to be located at (1) his regular or principal (if more than one regular) place of business, or (2) if he has no regular or principal place of business because of the nature of his trade or business, then at his regular place of abode in a real and substantial sense. See Rev. Rul. 60-189, 1960-1 C.B. 60, and Rev. Rul. 71-247, 1971-1 C.B. 54. If a taxpayer comes within neither category (1) nor category (2), he is considered to be an itinerant who has his "home" wherever he happens to work, and thus is not "away from home" for traveling expense deduction purposes. See Rev. Rul. 60-189.

All the facts and circumstances of a particular case must be considered in determining whether a taxpayer has a "home" for traveling expense deduction purposes. The fact that a taxpayer's trade or business is of such a nature that he has no regular or principal place of business will not preclude him from having a "home" for traveling expense deduction purposes, but shifts the inquiry to whether such a taxpayer has a "home" in the form of a "regular place of abode in a real and substantial sense," or whether he is an itinerant. Although such an inquiry basically is subjective, there are three objective factors that may be used to determine, with respect to the taxable year in question, the bona fide nature of a taxpayer's assertion that his claimed abode is his "regular place of abode in a real and substantial sense". They are:

(1) Whether the taxpayer performs a portion of his business in the vicinity of his claimed abode and uses such abode (for purposes of his lodging) while performing such business there;

(2) Whether the taxpayer's living expenses incurred at his claimed abode are duplicated because his business requires him to be away therefrom; and

(3) Whether the taxpayer

(a) has not abandoned the vicinity in which his historical place of lodging and his claimed abode are both located,

(b) has a member or members of his family (marital or lineal only) currently residing at his claimed abode, or

(c) uses his claimed abode frequently for purposes of his lodging.

Neither the Service nor the courts have attempted to prescribe any specific criteria delineating the dividing line between the itinerant taxpayer who has his "home" wherever he is working, and the taxpayer who because of the nature of his business, has no regular or principal place of business but does have a "regular place of abode in a real and substantial sense." The Service will recognize that a taxpayer has a "home" for traveling expense deduction purposes if he claims an abode and, under bona fide circumstances, satisfies all three objective factors set forth in the preceding paragraph. If a taxpayer is not recognized as having a "home" by virtue of the above, but does, under bona fide circumstances, satisfy two of the three objective factors set forth in the preceding paragraph, then all the facts and circumstances of his case will be subjected to close scrutiny to determine whether he has a "home" for traveling expense deduction purposes in the form of a regular place of abode in a real and substantial sense, or whether he is an itinerant. See Rev. Rul. 71-247, cited above. If a taxpayer fails to satisfy at least two of the three objective factors set forth in the preceding paragraph, he will be regarded as an itinerant who has his "home" wherever he happens to work, and thus cannot be "away from home" for purposes of section 162(a)(2).

The taxpayer in *Situation 1* has satisfied all three objective factors set forth herein (including the historical lodging aspects of factor (3) above), and therefore is considered to have a "home" in City A for purposes of section 162(a)(2) of the Code. Accordingly, his traveling expenses on trips away from that city which are of such duration as to require that he stop for substantial sleep or rest, if otherwise allowed under section 162, are deductible from gross income in computing his adjusted gross income as provided in section 62. However, the taxpayer in *Situation 2*, not having satisfied any of the objective factors set forth herein, is an itinerant having his "home" wherever he happens to work. Thus, since he is not "away from home," the cost of his meals and lodging are not deductible as traveling expenses under section 162(a)(2).

The Service's acquiescence in *Charles G. Gustafson*, 3 T.C. 998 (1944), *acq.*, 1944 C.B. 12, in which the Tax Court of the United States concluded that the taxpayer had a "home" for traveling expense deduction purposes, is withdrawn and nonacquiescence is substituted therefor since the facts in *Gustafson* are substantially the same as those in *Situation 2* in this Revenue Ruling.

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