

Part III - Administrative, Procedural, and Miscellaneous

Information about additional criteria that will be applied in selecting proposals for the Internal Revenue Service's Industry Issue Resolution (IIR) program.

Notice 2005-59

This notice provides information about additional criteria that will be applied in considering proposals regarding accountable plans for the Internal Revenue Service's Industry Issue Resolution (IIR) program. The objective of the IIR Program is to identify frequently disputed or burdensome tax issues that are common to a significant number of business taxpayers that may be resolved through published or other administrative guidance. See Rev. Proc. 2003-36, 2003-1.C.B. 859.

During the IIR Pilot Program, the Service initiated a project involving the tax treatment of employer reimbursements of various equipment-related expenses to employees in a segment of the pipeline construction industry. Whether or not such expenses are included in the employee's income and wages is governed generally by whether or not the employer makes payments to the employee under an accountable plan in accordance with the requirements of § 62(c) of the Internal Revenue Code.¹ The industry representatives maintained that their industry practice made compliance with the accountable plan requirements unworkable. As a result of the project, the Service published two pieces of guidance: Rev. Rul. 2002-35, 202-1 C.B. 1067, making clear that expense reimbursement in the industry is excluded from income and wages only if made in accordance with the accountable plan requirements, and Rev. Proc. 2002-41, providing for deemed substantiation of expenses at a specified rate to make it possible for employers in the industry to comply with the accountable plan requirements.

¹ Whether a payment of this type is a rental payment rather than the reimbursement of an employee expense may involve the question whether the worker is serving as an independent contractor or employee. Although these payments in almost every case would not qualify as actual rental payments, it is a highly factual question. See, e.g., Eliseo v. Commissioner, T.C. Memo. 2000-176. Further, in this context, the Service is restricted from addressing classification of workers by section 530(b) of the Revenue Act of 1978.

Since the completion of the IIR pilot program, several submissions to the IIR program have asserted that compliance with various aspects of the accountable plan rules set forth under § 62(c) are unduly burdensome for businesses in certain other industries and have asked for published guidance providing administrative relief similar to that provided in Rev. Proc. 2002-41.

The Service provided guidance as part of the IIR pilot project for a segment of the pipeline construction industry because the industry had successfully demonstrated that employers could not comply with the existing accountable plan rules given certain fundamental aspects of their industry practice that could not readily be changed, if changed at all. For purposes of evaluating future IIR submissions raising similar concerns about application of the accountable plan rules in specific industries, the Service will make a comparable assessment as to whether the accountable plan rules are unworkable given aspects of industry practice that cannot be changed at all or cannot be changed without great difficulty. In addition to the requirements of Rev. Proc. 2003-36, factors to be considered in determining whether there is need for relief as to this issue would include, but not be limited to the following:

- (a) an established industry history showing that high turnover in the labor force or short-term employment with multiple employers is typical;
- (b) large expenses for maintenance, although infrequent, are predictable relative to the compensation paid to the employees for their services;
- (c) individual employers are unwilling to reimburse in full for sporadic expenses for equipment maintenance because a significant portion of the reimbursement will accrue to the benefit of a later employer/competitor;
- (d) there is a uniformity of expenses across the workforce or the existence of a uniform objective predictive proxy for measuring the expense, and
- (e) existing methods of substantiating expenses, such as Rev. Proc. 2004-64, 2004-49 I.R.B. 898 (mileage allowances), do not accurately reflect the expenses incurred by the employees on behalf of the employer.

The mere cost of collecting records, substantiating expenses and reconciling the amount of expenses with the amount of reimbursements paid does not support a claim of burden meriting relief from the requirements of the accountable plan rules.

DRAFTING INFORMATION

The principal author of this notice is Joe Spires of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice contact Jeanne Royal Singley at (202) 622-0047 (not a toll-free call).