



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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The Honorable Jim Webb
United States Senate
Washington, DC 20510

Attention:

Dear Senator Webb:

I am responding to your letter dated December 5, 2008, on behalf of your constituent, _____, asked about the tax treatment of expenses he incurred during travel overseas related to his employment.

I responded directly to _____ as you requested. I am enclosing a copy of my response.

I hope this information is helpful. If you have additional questions, please contact me or _____ at () _____.

Sincerely,

Christopher F. Kane
Branch Chief, Branch 3
(Income Tax and Accounting)

Enclosure



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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

January 28, 2009

Dear :

I am responding to your letter to Senator Webb about the tax treatment of expenses incurred during overseas travel in connection with your employment. Senator Webb wrote to us on your behalf and asked us to respond directly to you.

In general, you can deduct all the ordinary and necessary expenses paid or incurred in carrying on any trade or business, including traveling expenses, while in the pursuit of business away from your tax home. Your tax home is usually your regular place of business or post of duty, regardless of where you maintain your family home. If you do not have a regular or main place of business because of the nature of your work, then your tax home may be the place where you regularly live. Generally, you are not considered to have a tax home in a foreign country for any period in which your abode is in the United States.

Travel expenses are generally nondeductible if they are paid or incurred in connection with an indefinite or permanent work assignment. Travel expenses paid or incurred in connection with a temporary work assignment away from the taxpayer's home are deductible.

A temporary work assignment is limited to one year. If you expect your employment to last for less than one year and it does, in fact, last for less than one year, it is temporary unless facts and circumstances indicate otherwise. If you expect it to last for more than one year, it is an indefinite work assignment. If you expect it to last for one year or less but at some later date you expect it to last longer than one year, it is temporary (in the absence of facts and circumstances indicating otherwise) until your expectation changes. Once your expectation changes, it is indefinite and travel expenses incurred are non-deductible.

Generally, if you can satisfy that you were away from your tax home due to foreseeable temporary employment, your travel expenses are deductible. Deductible expenses include:

- Lodging

- Up to 50 percent of meals or you can utilize the Meals and Incidental Expenses ("M&IE") per diem sheet released by the GSA. If you use the M&IE sheet, you do not need to record exact amounts of meals. However, you must still keep records of the meals to prove time, place, and business purposes.

Some employers may provide reimbursement for travel expenses incurred during temporary work assignments. A per diem allowance is a fixed amount of daily reimbursement your employer gives you for your lodging and meals when you are away from home on business. If you receive a per diem, you are not taxed on the amount of the per diem, unless you receive an excess amount over your actual expenses.

An employer does not have to provide reimbursement or a per diem for your travel expenses. If your employer does not reimburse you for your travel expenses that you incurred in temporary employment away from your home, you can still deduct the expenses on Form 2106, Employee Business Expenses, or 2106-EZ, Unreimbursed Employee Business Expenses.

To deduct expenses, you must substantiate all deductions with clear records. For examples of what the records must show, please refer to Publication 463, *Travel, Entertainment, Gift and Car Expenses*. You should fill out Form 2106 (or Form 2106EZ, if applicable) and attach it to the taxable year's Form 1040. You can use Form 2106EZ if your employer did not reimburse your expenses, the expenses are related to your job and, if you are claiming a car deduction, you claim the standard mileage rate.

Because your temporary work assignment is located outside the United States, you should also refer to Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*. This publication has information on the foreign earned income and housing exclusion. You can also contact your employer for assistance in determining your expenses. All of the above documents are available on our website, www.irs.gov.

I hope this information is helpful. If you have further questions, please
, at

Sincerely,

Christopher F. Kane
Branch Chief, Branch 3
(Income Tax & Accounting)

cc: The Honorable Jim Webb
Attn: