United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

DEC - 6 1993

FINANCIAL ADMINISTRATION MEMORANDUM NO. 93-079 (II.G.1.)

To: Bureau Assistant Directors, Administration
Director, Office of Administrative Services
Bureau Finance Officers
Chief, Division of Fiscal Services

From: Chief, Division of Financial Administration
Office of Financial Management

Subject: Reporting Per Diem Payments as Taxable Income

Attached is a copy of Internal Revenue Service (IRS) Notice 93-29, **Change in Deduction for Expenses Away From Home**, which was recently issued to implement Public Law No. 102-486. This Notice changes the treatment of travel expenses paid to employees who are at the same temporary duty location for **more than one year.**

In cases where an employee's temporary duty travel exceeds one year at a location, all travel payments made directly to the employee or to a third party (for providing meals, lodging, and return home transportation for leave or visits), excluding travel away from the temporary duty location required to conduct official business, must be included in the employee's gross taxable income. This includes all payments received by the employee after January 1, 1993, even though the payment represents reimbursement for expenses in calendar year 1992. The income resulting from these payments will not be subject to withholding of Federal or State Income Tax; however, the applicable portion of FICA tax must be withheld (i.e., CSRS employees are required to pay medicare tax only and FERS employees must pay both OASDI and medicare). The FICA tax collected from the employee must be matched by an employer contribution. Employees should make quarterly payments to IRS for any Federal Income Tax liability that may accrue as a result of the travel payments. This change may also require an employee to file a tax return in the State where they reside at the temporary duty location, as well as the State claimed as the permanent home.

When the employee is **expected** to be located at one location for a full year or longer, the payments should be reported to PAY/PERS for inclusion in gross income concurrent with making each payment. Payments **must be reported** as soon as they are made when the employee has a travel authorization covering 12 months or more temporary duty at the same location. Breaks of less than 45 days and temporary duty at other locations of less than 30 days will not be considered as being away from one location, especially when dual lodging is authorized or paid. Changing

lodging locations and/or jobs (duties) while on temporary duty at a location will not affect the taxability of the travel payments.

This tax change may not be used as a basis for increasing or decreasing the per diem paid for long term temporary duty. The per diem rate is to be established based the additional cost of subsistence to be incurred as a result of being at a temporary duty location. All flat rate per diem goes to the temporary duty location.

Please provide this Division a report by January 10, 1994, showing employee name and amount of reportable income resulting from travel payments made to each employee who has been on temporary duty at one location for more than a year or is currently on temporary duty which is expected to exceed a year. The report must include those employees that received payments in 1993 for temporary duty in 1992 that exceeded one year or that received payments in 1993 for temporary duty where the combination of 1992 and 1993 temporary duty exceeds one year. Also, please provide a copy of the current policy on authorizing long term temporary duty and establishment of per diem rates for the long term assignment. Income reported to PAY/PERS should be in agreement with this report.

Request you disseminate information about this change to all personnel involved in arranging and/or performing official travel.

Please direct any questions you may have on this subject to Mr. Lesley Oden of this Division on (202) 208-5223.

Stephen J. Varholy

Attachment

Prior Financial Administration
Memorandum on this Subject:

No. 91-068 (II.G.1.), September 30, 1991 - Canceled

Plans Technical and Actuarial Division. For further information regarding this notice, call (202) 622-6076 between 2:30 and 4:00 p.m. Eastern time (not a toll-free number). Ms. Prestia's number is (202) 622-7377 (also not a toll-free number).

Credit for Producing Fuel From a Nonconventional Source, Inflation Adjustment Factor, and Reference Price

Notice 93-28

This notice publishes the inflation adjustment factor, nonconventional source fuel credit, and the reference price for calendar year 1992 that determines the availability of the credit for producing fuel from a nonconventional source under section 29 of the Internal Revenue Code. The calendar year 1992 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to the sales of barrel-of-oil equivalent of qualified fuels sold by a taxpayer to an unrelated person during the 1992 tax year, the domestic production of which is attributable to the taxpayer.

BACKGROUND

Section 29(a) of the Code provides for a credit for producing fuel from a nonconventional source, measured in barrel-of-oil equivalent of qualified fuels, the production of which is attributable to the taxpayer and sold by the taxpayer to an unrelated person during the tax year. The credit is equal to the product of $3.00 and the 1992 inflation adjustment factor.

Section 29(b)(1) and (2) of the Code provides for a phaseout of the credit. The credit allowable under section 29(a) must be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as the amount by which the reference price for the calendar year in which the sale occurs exceeds $23.50 bears to $6.00. The $3.00 in section 29(a) and the $23.50 and $6.00 must each be adjusted by multiplying these amounts by the 1992 inflation adjustment factor. In the case of gas from a tight formation, the $3.00 amount in section 29(a) must not be adjusted.

Section 29(c)(1) of the Code defines the term "qualified fuels" to include, oil produced from shale and tar sands; gas produced from geopressurized brine, Devonian shale, coal seams, or a tight formation, or biomass; and liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

Section 29(d)(1) of the Code provides that the credit is to be applied only for sale of qualified fuels the production of which is within the United States (within the meaning of section 638(1)), or a possession of the United States (within the meaning of section 638(2)).

Section 29(d)(2)(A) of the Code requires that the Secretary, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year.

Section 29(d)(2)(B) of the Code defines "inflation adjustment factor" for a calendar year as the fraction the numerator of which is the GNP implicit price deflator for the calendar and the denominator of which is the GNP implicit price deflator for the calendar year 1979. The term "GNP implicit price deflator" means the first version of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

Section 29(d)(3) of the Code provides that in the case of property or facility in which more than one person has an interest, except to the extent provided by regulations prepared by the Secretary, production from the property or facility (as the case may be) should be allocated among the persons in proportion to their representative interests in the gross sales from the property or facility.

Section 29(d)(5) and (6) of the Code provides that the term "barrel-of-oil equivalent" with respect to any fuel generally means that amount of the fuel which has a Btu content of 5.8 million.

INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICE

The inflation adjustment factor for calendar year 1992 is 1.8430. The reference price for calendar year 1992 is $15.98. As required by section 29(d)(2)(A) of the Code, the inflation adjustment factor and reference price for calendar year 1992 where published in the Federal Register on April 1, 1993 (58 Fed. Reg. 17302).

PHASE-OUT CALCULATION

Because the calendar year 1992 reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of the credit provided for in section 29(b)(1) of the Code does not occur for any qualified fuel based on the above reference price.

CREDIT AMOUNT

The nonconventional source fuel credit under section 29(a) of the Code is $5.53 per barrel-of-oil equivalent of qualified fuels ($3.00 x 1.8430). This amount was published in the Federal Register on April 1, 1992 (58 Fed. Reg. 17302).

DRAFTING INFORMATION CONTACT

The principal author of this notice is David G. McMunn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. McMunn on (202) 622-3110 (not a toll-free call).

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Change in Deduction for Expenses Away From Home

Notice 93-29

Pursuant to section 1938 of the Energy Policy Act of 1992 (the "Act"), Pub. L. No. 102-486, enacted on October 24, 1992, a taxpayer will not be treated as being temporarily away from home under section 162(a)(2) of the Internal Revenue Code during any period of employment if such period exceeds 1 year. The new 1-year rule is effective for costs paid or incurred after December 31, 1992. Costs paid or incurred during 1992 are not affected by the Act.

Section 162(a)(2) of the Code allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business, including traveling expenses while away from home in the pursuit of a trade or business. Traveling expenses include amounts expended for meals and lodging, other than lavish or extravagant amounts.

Under section 162(a) of the Code, as amended by the Act, if a taxpayer's period of employment away from home in a single location lasts for more than 1 year, no deduction is allowed for travel expenses paid or incurred after December 31, 1992, for that period of employment. Any reimbursement received by an employee for the nondeductible expenses must be included in the employee's gross income. See section 62(c) and section 1.62-2 of the Income Tax Regulations.

The new 1-year rule applies to travel expenses paid or incurred after December 31, 1992, even if the taxpayer's period of employment away from home began prior to that date. The following example illustrates the new 1-year rule. A taxpayer began an employment assignment away from home on March 1, 1992, and remains on assignment at that location until July 31, 1993. The taxpayer may be able to deduct travel expenses paid or incurred during 1992 in connection with the assignment if the requirements of section 162(a)(2) of the Code are met. The taxpayer cannot, however, deduct such travel expenses paid or incurred in 1993 because the period of employment away from home exceeds 1 year.

The Internal Revenue Service intends to publish further guidance on this new 1-year rule and requests comments on issues raised by this new rule. Comments should be submitted in writing by June 30, 1993. These comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Benjamin Franklin Station, Attn: CC:CORP:T:R (IA-Branch 2), Room 5228, Washington, D.C. 20044.

The principal author of this notice is David A. Schneider of the Office of the Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice contact Mr. Schneider on (202) 622-1585 (not a toll-free call).

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26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 93-3A

Rev. Proc. 93-3, 1993-1 I.R.B. 71, lists areas in which the Internal Revenue Service will not issue rulings or determination letters. Inadvertently omitted from that revenue procedure was the no-rule provision regarding section 7701 of the Internal Revenue Code that was announced in Rev. Proc. 92-87, 1992-42 I.R.B. 38. This revenue procedure revises Rev. Proc. 93-3 by adding this no-rule provision to Section 4 and by adding a reference to this in the changes section.

1. Section 1.02

Section 1.02, dealing with changes, is supplemented by adding a new section 1.02(6A) to read as follows:

> (6A) New section 4.01(49) deals with section 7701 of the Code. *See* Rev. Proc. 92-87, 1992-42 I.R.B. 38.

2. Section 4.01

Section 4.01, dealing with areas in which rulings or determination letters will not ordinarily be issued, is supplemented by adding a new section 4.01(49) to read as follows:

> (49) Section 7701.—Definitions.—Whether a limited partnership lacks the corporate characteristics of limited liability and continuity of life if the limited partnership (1) is formed pursuant to a state limited partnership act that the Service has determined in a revenue ruling is a statute that corresponds to the Uniform Limited Partnership Act, and (2) meets the other requirements contained in Rev. Proc. 92-88, 1992-42 I.R.B. 39.

EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 93-3 is supplemented.
Rev. Proc. 92-87 is superseded.

The changes set forth in this revenue procedure will be reflected in Rev. Proc. 93-3 when it is reprinted in 1993-1 C.B.

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26 CFR 601.104: Collection functions.
(Also Part I, Sections 894, 1441, 3402; 1.894-1.)

Rev. Proc. 93-22

SECTION 1. PURPOSE AND SCOPE

This revenue procedure modifies Rev. Proc. 87-8, 1987-1 C.B. 336, and Rev. Proc. 87-9, 1987-1 C.B. 368, by providing the representations that an alien must make to claim a withholding exemption under certain newly ratified income tax treaties.

Under most U.S. income tax treaties, an alien student, teacher, or researcher at a United States university or other educational institution who receives income for personal services is generally exempt from income tax provided certain requirements are met. These requirements include a limited number of years in which the alien can claim the exemption and a maximum dollar amount for the exemption in a taxable year.

Normally, the payor of compensation for personal services is required under section 1441 or 3405 of the Code to withhold and pay over federal taxes on such income. However, withholding is not required if the income is exempt under treaty. In order to claim the withholding exemption, the alien must submit Form 8233 to the withholding agent certifying that the income is exempt from taxation under treaty.

An alien student, teacher, or researcher must include within Form 8233 representations providing the conditions under which the income is exempt under treaty. These representations are provided in Rev. Proc. 87-8 (applicable to students) and Rev. Proc. 87-9 (applicable to teachers and researchers). Upon receiving these representations, the withholding agent will not be liable for failure to withhold and pay over federal income tax, unless the agent actually knows or reasonably should know that the alien is not eligible for the treaty exemption.

This revenue procedure modifies Rev. Proc. 87-8 and Rev. Proc. 87-9 by providing the representations that an alien must include in Form 8233 to claim a withholding exemption under the newly ratified treaties with Germany (Article 20), India (Article 22), Indonesia (Articles 19 & 20), Spain (Article 22), and Tunisia (Article 20). This revenue procedure also modifies the representations in Rev. Proc. 87-9 pertaining to the treaty with the former Union of Soviet Socialist Republics (Article VI).

This revenue procedure obsoletes representations in Rev. Proc. 87-8 and Rev. Proc. 87-9 pertaining to the earlier treaty with Finland, which has been replaced by a newly ratified treaty. The new treaty does not exempt income earned within the United States by alien students, teachers, or researchers.