

# Notice of Proposed Rule-making by Cross-Reference to Temporary Regulations

## Substantiation of Incidental Expenses

### REG-141832-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed amendments to regulations relating to the requirement to substantiate business expenses for traveling expenses away from home. In T.D. 9020 in this issue of the Bulletin, the IRS is issuing temporary regulations relating to the requirement to substantiate business expenses for traveling expenses while away from home under section 274 of the Internal Revenue Code. The text of those regulations also serves as text for these proposed regulations. This document also contains proposed regulations amending the regulations under section 62 to conform the cross-reference to the regulations under section 274.

DATES: Written or electronic comments and requests for a public hearing must be received by February 6, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-141832-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-141832-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regu-

lations, John Moriarty, (202) 622-4930; concerning submissions of comments and/or requests for a public hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Final and temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 274. The temporary regulations authorize the Commissioner to establish a method under which a taxpayer may use a specified amount or amounts for incidental expenses paid or incurred while traveling away from home in lieu of substantiating the actual cost of incidental expenses. The text of the temporary regulations also serves, in part, as text for these proposed regulations. The preamble to the temporary regulations explains the amendment.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not require a collection of information and do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

#### Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS.

The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

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

\* \* \* \* \*

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 \* \* \*

Section 1.274-5 also issued under 26 U.S.C. 274(d). \* \* \*

Par. 2. Section 1.62-2 is amended by removing the last three sentences of paragraph (e)(2) and adding two sentences in their place to read as follows:

*§ 1.62-2 Reimbursements and other expense allowance arrangements.*

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \* See § 1.274-5(g) and (j), which grant the Commissioner the authority to establish optional methods of substantiating certain expenses. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by § 1.274-5(g) or (j) will be treated as substantiation of the amount of such expense for purposes of this section.

\* \* \* \* \*

Par. 3. Section 1.274-5 is amended by: 1. Adding paragraph (j)(3).

2. Adding a new sentence at the end of paragraph (m).

The additions read as follows:

*§ 1.274–5 Substantiation requirements.*

[The text of proposed § 1.274–5(j)(3) and the proposed new sentence at the end of § 1.274–5(m) are the same as the text of § 1.274–5T(j)(3) and the last sentence of § 1.274–5T(m) published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,  
*Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on November 8, 2002, 8:45 a.m., and published in the issue of the Federal Register for November 12, 2002, 67 F.R. 68539)