

## Notice of Proposed Rulemaking

### Substantiation of Business Expenses—Use of Mileage Rates to Substantiate Automobile Expenses

#### REG-122488-97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the use of mileage rates to substantiate automobile business expenses. The regulations affect taxpayers who deduct expenses, and payors who make payments and employees who receive payments under reimbursement or other expense allowance arrangements, for the business use of an automobile.

DATES: Written or electronically generated comments and requests for a public hearing must be received by December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, contact Edwin B. Cleverdon or Donna M. Crisalli, (202) 622-4920 (not a toll-free number).

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG-122488-97), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-122488-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

Additionally, taxpayers may submit comments electronically via INTERNET by selecting the "Tax Regs" option on the IRS INTERNET site at: [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html).

#### SUPPLEMENTARY INFORMATION

##### *Background and Explanation of Provisions*

Section 274(d) provides that a taxpayer

is not allowed a deduction or credit for certain expenses unless the expense is substantiated. These substantiation requirements apply to the expenses of use of any listed property (defined in section 280F(d)(4)), which includes any passenger automobile and any other property used as a means of transportation. The Secretary may issue regulations that provide that some or all of the substantiation requirements will not apply to expenses that do not exceed a prescribed amount.

Section 1.274-5T(b)(6) sets forth the elements of an expenditure or use, i.e., the amount, time, and business purpose, that are required to be substantiated with respect to listed property. Section 1.274(d)-1 provides, in part, that the Commissioner may prescribe rules under which mileage allowances reimbursing ordinary and necessary expenses of local travel and transportation while traveling away from home will satisfy the substantiation requirements of §1.274-5T(c), and the requirements of an adequate accounting to the employer for purposes of §1.274-5T(f)(4). However, §1.274(d)-1(a)(3) provides that such mileage allowances are available only to the owner of a vehicle.

Proposed §1.274-5(g) applies these substantiation rules to mileage allowances for business use of an automobile without the limitation in §1.274(d)-1(a)(3) that a mileage allowance is available only to the owner of a vehicle. Proposed §1.274-5(j)(1) continues to authorize the Commissioner to establish a method for computing meal expenses while traveling away from home (see current §1.274-5T(j)), while §1.274-5(j)(2) authorizes the Commissioner to establish a method under which a taxpayer may use mileage rates to determine the amount of the ordinary and necessary business expenses of using an automobile for local transportation and transportation to, from, and at the destination while traveling away from home in lieu of substantiating the actual costs. The mileage rate method may include appropriate limitations and conditions in order to reflect more accurately automobile expenses over the entire period of usage. The taxpayer would not, however, be relieved of substantiating the amount of each business use (i.e., the

business mileage) and the time and business purpose of each use. See Rev. Proc. 97-59 (1997-52 I.R.B. 24), for rules for using the mileage rate method. This proposed §1.274-5(g), (j), and (m) supplement §1.274-5(c) and (f) as proposed on March 25, 1997, in the **Federal Register** (62 F.R. 14051). Conforming changes to §1.62-2 are also proposed.

##### *Special Analyses*

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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 its impact on small business.

##### *Comments and Requests for a Public Hearing*

Before adopting these proposed regulations as final regulations, consideration will be given to any comments that are submitted timely (and in the manner described in the ADDRESSES portion of this preamble) to the IRS. All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon request by any person who submits comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

##### *Drafting Information*

The principal authors of these proposed regulations are Edwin B. Cleverdon and Donna M. Crisalli, Office of the Assistant Chief Counsel (Income Tax and Accounting). However, personnel from other offices of 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 \* \* \*

Par. 2. In §1.62-2, paragraph (e)(2) is revised to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(2) *Expenses governed by section 274(d).* An arrangement that reimburses travel, entertainment, use of a passenger automobile or other listed property, or other business expenses governed by section 274(d) meets the requirements of this paragraph (e)(2) if information sufficient to satisfy the substantiation requirements of section 274(d) and the regulations thereunder is submitted to the payor. See §1.274-5T. Under section 274(d), information sufficient to substantiate the requisite elements of each expenditure or use must be submitted to the payor. For example, with respect to travel away from home, §1.274-5T(b)(2) requires that information sufficient to substantiate the amount, time, place, and business purpose of the expense must be submitted to the payor. Similarly, with respect to use of a passenger automobile or other listed property, §1.274-5T(b)(6) requires that information sufficient to substantiate the amount, time, use, and business purpose of the expense must be submitted to the payor. See §1.274-5(g), however, which grants the Commissioner authority to prescribe rules permitting the amount of certain expenses to be deemed substantiated to the payor (in lieu of substantiating the actual amount of such expenses) by means of per diem or mileage rates for travel away from home or transportation expenses. See also §1.274-5(j)(1), which grants the Commissioner the authority to establish a method under which a taxpayer may use a specified amount for meals while traveling away from home in lieu of substantiating the actual cost of

meals, and §1.274-5(j)(2), which grants the Commissioner the authority to establish a method under which a taxpayer may use mileage rates to determine the amount of the ordinary and necessary expenses of using an automobile for local transportation and transportation to, from, and at the destination while traveling away from home in lieu of substantiating the actual costs. 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.

\* \* \* \* \*

**§1.62-2T [Removed]**

Par. 3. Section 1.62-2T is removed.

Par. 4. Section 1.274-5 is added to read as follows:

*§1.274-5 Substantiation requirements.*

(a) through (f) [Reserved]. For further guidance, see §1.274-5T(a) through (f).

(g) *Substantiation by reimbursement arrangements or per diem, mileage, and other traveling allowances—(1) In general.* The Commissioner may, in his or her discretion, prescribe rules in pronouncements of general applicability under which allowances for expenses described in paragraph (g)(2) of this section will, if in accordance with reasonable business practice, be regarded as equivalent to substantiation by adequate records or other sufficient evidence for purposes of §1.274-5T(c) of the amount of such expenses and as satisfying, with respect to the amount of such expenses, the requirements of an adequate accounting to the employer for purposes of §1.274-5T(f)(4). If the total allowance received exceeds the deductible expenses paid or incurred by the employee, such excess must be reported as income on the employee's return. See paragraph (j)(1) of this section relating to the substantiation of meal expenses while traveling away from home, and paragraph (j)(2) of this section relating to the substantiation of expenses for the business use of an automobile.

(2) *Allowances for expenses described.* An allowance for expenses is described in this paragraph (g)(2) if it is a—

(i) Reimbursement arrangement covering ordinary and necessary expenses of

traveling away from home (exclusive of transportation expenses to and from destination);

(ii) Per diem allowance providing for ordinary and necessary expenses of traveling away from home (exclusive of transportation costs to and from destination); or

(iii) Mileage allowance providing for ordinary and necessary expenses of local transportation and transportation to, from, and at the destination while traveling away from home.

(3) *Limitation.* For expenses paid or incurred on or before December 31, 1997, a mileage allowance described in paragraph (g)(2)(iii) of this section is available only to the owner of a vehicle.

(h) and (i) [Reserved]. For further guidance, see §1.274-5T(h) and (i).

(j) *Authority for optional methods of computing certain expenses—(1) Meal expenses while traveling away from home.* The Commissioner may establish a method under which a taxpayer may use a specified amount or amounts for meals while traveling away from home in lieu of substantiating the actual cost of meals. The taxpayer would not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place, and business purpose of the travel. See §1.274-5T(b)(2) and (c).

(2) *Use of mileage rates for automobile expenses.* The Commissioner may establish a method under which a taxpayer may use mileage rates to determine the amount of the ordinary and necessary expenses of using an automobile for local transportation and transportation to, from, and at the destination while traveling away from home in lieu of substantiating the actual costs. Such method may include appropriate limitations and conditions in order to reflect more accurately automobile expenses over the entire period of usage. The taxpayer would not be relieved of the requirement to substantiate the amount of each business use (i.e., the business mileage), or the time and business purpose of each use. See §1.274-5T(b)(2) and (c).

(k) and (l) [Reserved]. For further guidance, see §1.274-5T(k) and (l).

(m) *Effective date.* Paragraphs (g) and (j) of this section apply to expenses paid or incurred after December 31, 1997.

**§1.274–5T [Amended]**

Par. 5. Paragraphs (g) and (j) of §1.274–5T are removed and reserved.

**§1.274(d)–1 [Amended]**

Par. 6. Section 1.274(d)–1 is amended by removing paragraph (a)(3).

**§1.274(d)–1T [Removed]**

Par. 7. Section 1.274(d)–1T is removed.

Michael P. Dolan,  
*Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on September 30, 1998, 8:45 a.m., and published in the issue of the Federal Register for October 1, 1998, 63 F.R. 52660)

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