

Section 274.—Disallowance of Certain Entertainment, Etc., Expenses

26 CFR 1.274(d)-1: Substantiation requirements.

T.D. 8784

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Substantiation of Business Expenses—Use of Mileage Allowances to Substantiate Automobile Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

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

DATES: *Effective date:* These regulations are effective October 1, 1998.

Applicability date: These regulations apply to transportation expenses paid or incurred after December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Donna M. Crisalli, (202) 622-4920 (not a toll-free number).

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(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.

New §1.274(d)-1T applies these substantiation rules to mileage allowances for business use of an automobile after December 31, 1997, without the limitation in §1.274(d)-1(a)(3) that a mileage allowance is available only to the owner of a vehicle. See Rev. Proc. 97-59 (1997-52 I.R.B. 24), for rules that implement these regulations. The regulations also adopt new §1.62-2T(e)(2) to incorporate this new rule.

Special Analyses

It has been determined that these temporary and final regulations are 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, these temporary and final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.274(d)-1 also issued under 26 U.S.C. 274(d).

Section 1.274(d)-1T also issued under 26 U.S.C. 274(d). * * *

Par. 2. In §1.62-2, paragraph (m) is amended by adding a sentence at the end of the paragraph to read as follows:

§1.62-2 Reimbursement and other expense allowance arrangements.

* * * * *

(m) * * * Paragraph (e)(2) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee with respect to expenses paid or incurred on or before December 31, 1997. For payments with respect to expenses paid or incurred after December 31, 1997, see §1.62-2T(e)(2).

Par. 3. Section 1.62-2T is added to read as follows:

§1.62-2T Reimbursement and other expense allowance arrangements (temporary).

(a) through (e)(1) [Reserved]. For further guidance, see §1.62-2(a) through (e)(1).

(e)(2) *Expenses governed by section 274(d).* For further guidance, see §1.62-2(e)(2) except that each reference to §1.274(d)-1 is deemed to be a reference to §1.274(d)-1T.

(e)(3) through (l) [Reserved]. For further guidance, see §1.62-2(e)(3) through (l).

(m) *Effective dates.* Paragraph (e)(2) of this section applies to payments made

under reimbursement or other expense allowance arrangements received by an employee with respect to expenses paid or incurred after December 31, 1997. For payments with respect to expenses paid or incurred on or before December 31, 1997, see §1.62-2(e)(2).

Par. 4. Section 1.274(d)-1 is amended by adding paragraph (b) to read as follows:

§1.274(d)-1 Substantiation requirements.

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(b) *Effective date.* This section applies to allowances described in paragraph (a)(2) of this section for expenses paid or incurred on or before December 31, 1997. For allowances for expenses paid or incurred after December 31, 1997, see §1.274(d)-1T.

Par. 5. Section 1.274(d)-1T is added to read as follows:

§1.274(d)-1T Substantiation requirements (temporary).

(a)(1) and (2) [Reserved]. For further guidance, see §1.274(d)-1(a)(1).

(a)(3) [Reserved].

(b) *Effective date.* This section applies to allowances described in §1.274(d)-1(a)(2) for expenses paid or incurred after December 31, 1997. For allowances for expenses paid or incurred on or before December 31, 1997, see §1.274(d)-1(a).

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

Approved September 14, 1998.

Donald C. Lubick,
*Assistant Secretary of
the Treasury.*