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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9020]

RIN 1545-BB19

Substantiation of Incidental Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains amendments to regulations relating to the requirement to substantiate business expenses for traveling expenses while away from home. The regulations affect taxpayers who deduct expenses for incidental expenses while traveling away from home. The text of the temporary regulations also serves as text for the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective November 12, 2002.

Applicability Date: For dates of applicability, see §1.274-5T(m).

FOR FURTHER INFORMATION CONTACT: John Moriarty (202) 622-4930 (not a toll free call).

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 deductions under section 162 or 212 for any traveling expense (including meals and lodging) while away from home. Under section 274(d), 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 1.274-5(j)(1) of the regulations permits the Commissioner to establish a method under which a taxpayer may substantiate the amount of meal expenses paid or incurred while traveling away from home by means of an allowance in lieu of substantiating the actual cost of meals.

Under this authority, the Commissioner has provided a method for taxpayers to substantiate deductible costs of business meal and incidental expenses while away from home by means of an allowance. See Rev. Proc. 2001-47 (2001-42 I.R.B. 332). These temporary regulations amend §1.274-5T to authorize the Commissioner to establish a method under which a taxpayer may substantiate the amount of incidental expenses paid or incurred while traveling away from home by means of an allowance in lieu of substantiating the actual cost. The taxpayer will 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.

Special Analyses

It has been determined that this Treasury decision 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, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

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.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 an entry in numerical order 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 1.274-5 is amended by adding paragraph (j)(3) to read as follows:

§1.274-5 Substantiation requirements.

* * * * *

(j) * * *

(3) [Reserved]. For further guidance, see §1.274-5T(j)(3).

Par. 3. Section 1.274-5T is amended by revising paragraph (j) and the last sentence of paragraph (m) to read as follows:

§1.274-5T Substantiation requirements (temporary).

* * * * *

(j)(1) and (2) [Reserved]. For further guidance, see §1.274-5(j)(1) and (2).

(3) Incidental expenses while traveling away from home. The Commissioner may 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 taxpayer will 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.

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(m) * * * Paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002.

Deputy Commissioner of Internal Revenue.

Approved:

Assistant Secretary of the Treasury.