

Tax Court Allows Day-Trip Worker Away-From-Home Expenses Based On Sleep-Or-Rest Rule

◆ *Bissonnette, 127 TC No. 10*

The IRS has lost on a new twist in its attempt to restrict the definition of “away from home” meals and incidental expenses to those business trips requiring more than 24 hours to complete or for which a full night’s sleep or rest is needed. The Tax Court recently held that a demanding 17-hour work day that included a mid-trip four hour snooze was enough to qualify meals and incidentals at the away-from-home location for a deduction. The Tax Court also found that the day was long enough that the standard per diem rate need not be pro-rated.

■ **CCH Take Away.** The requirement of “sleep or rest” away from home to qualify the deduction of lodging, meal and incidental expenses is an elusive one. The IRS pressed for a more restrictive definition in this case and got only half of what it asked for. Ninety minutes of sleep or rest is not enough to qualify expenses. A four-hour nap between assignments during a six hour layover was sufficient, however, even though the entire roundtrip travel took less than a day. Application of these findings to situations other than the facts of this case, however, will remain uncertain because of what the court considers the factual nature of each inquiry.

Long roundtrips

The taxpayer worked as a ferry boat captain. On each voyage, the taxpayer was

responsible for a crew and up to 1,200 passengers. The taxpayer generally worked upwards of 17 hours a day, seven days on and seven days off. During the “peak season” the taxpayer had mid-cruise layovers of one hour in 2001 and five hours in 2002 and 2003. During the “off-peak season” the taxpayer’s mid-cruise layovers were six hours in duration throughout the three years at issue.

Court’s analysis

The Tax Court found that it was “reasonable” for the taxpayer to obtain sleep or rest in order to meet the “exigencies and business demands” of his employment. Furthermore, it held that the released time of six to seven hours during the “off peak” season travel was sufficient in duration to normally be related to an increase in expenses. Accordingly, the court held, the taxpayer was “away from home” during the “off peak” season for purposes of Code Sec. 162(a)(2). The shorter duration of layovers throughout the “peak” season served to bar the deduction for the taxpayer’s busy season.

Sleep or rest

Food and incidental expenses are deductible if incurred while traveling away from home on business trips requiring sleep or rest. Once sleep or rest is required, meals automatically are allowed, even though they are otherwise a personal expense if taken without a client and a business discussion. The taxpayer may take the standard per diem meals and incidental expense

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amount even though meals and incidental expenses are not actually incurred. In both cases, however, only a 50 percent deduction for meals is allowed under the usual business meal expense limitation.

The Tax Court’s taxpayer-friendly decision was based on the “sleep or rest” rule. Developed through a series of cases, the rule is the standard used to determine whether a taxpayer is “away from home.” Citing *Williams v. Patterson, 286 F.2d 333 (5th Cir. 1961)*, the court explained that, as it applies to a traveler whose work does not require him to be away from home overnight, the standard is: “If the nature of the taxpayer’s employment is such that when away from home, during released time, it is reasonable for him or her to need and

obtain sleep or rest in order to meet the exigencies of his employment or the business demands of his or her employment, his or her expenditures ... for the purpose of obtaining sleep or rest are deductible traveling expenses.”

The Tax Court found that the need for sleep or rest may be evaluated based on the particular taxpayer’s age and physical condition, among other variables. Again, the court cited *Williams*. “The particular employee’s need for rest and sleep—measured by his age, physical condition, and the length of his day, the importance of his being alert on the return trip—measured by his responsibilities and the nature of his employment; the fear of injury to others—if he should not be alert; and the penalty of losing his employment—should he fall asleep on the job...”

■ **Comment.** While the court used *Williams* to justify its present holding in connection with the ferry pilot, its extension to other common situations is uncertain. What about a long day-trip in which the taxpayer drives require a mid-day catnap since an accident could occur if the taxpayer is not alert on the return trip and job loss is a possibility if the taxpayer falls asleep in the middle of a business meeting? It’s important to note that in addition to emphasizing the need for sleep, the court reasoned that the six-hour layover was long enough for the taxpayer to incur expenses.

Per diem allocation

The court also held that the taxpayer could deduct the allowable federal M&IE rate for a full day of travel, without pro-rating. A 17-hour day was long enough and the example in the applicable revenue procedure implied that result.

*References: FED ¶48,166;
TRC BUSEXP: 24,054.*

Reference Key

FED references are to *Standard Federal Tax Reporter*
USTC references are to *U.S. Tax Cases*
CCH Dec references are to *Tax Court Reports*
TRC references are to *Tax Research Consultant*

FEDERAL TAX WEEKLY, 2006 No. 43. FEDERAL TAX WEEKLY is also published as part of CCH Federal Tax Service and SmartTax by CCH, a Wolters Kluwer business, 4025 W. Peterson Avenue, Chicago, IL 60646-6085. Editorial and Publication Office, 1015 15th St., NW, Washington, DC 20005. ©2006 CCH. All Rights Reserved.