



# TaxNewsFlash

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## Rev. Proc. 2019-48: Rules for using per diem rates to substantiate expenses incurred away from home

The IRS today released an advance version of Rev. Proc. 2019-48 concerning the rules for using per diem rates to substantiate the amount of ordinary and necessary business expenses paid or incurred while traveling away from home.

**Rev. Proc. 2019-48** [PDF 99 KB] (31 pages) modifies and supersedes Rev. Proc. 2011-47 and incorporates changes made by the 2017 U.S. tax law (Pub. L. No. 115-97, that is often referred to as the “Tax Cuts and Jobs Act” or TCJA).

### Background

Section 162(a) allows a deduction for ordinary and necessary business expenses paid or incurred in carrying on a trade or business, including expenses related to travel away from home. To deduct expenses for travel away from home in pursuit of business, a taxpayer must substantiate the expenses in accordance with section 274(d).

For purposes of determining adjusted gross income, section 62(a)(2) allows a deduction for expenses paid or incurred by an employee in performing services under a reimbursement other expense allowance arrangement. This Code section also allows a deduction to specified service providers (e.g., qualified performing artists, eligible educators, and Armed Forces reservists) for certain business expenses paid or incurred in performing services. Amounts paid under a reimbursement other expense allowance arrangement are treated as paid under an accountable plan—and thus excludable from income and wages—if the arrangement meets the requirements of business connection, substantiation, and returning amounts in excess of expenses. An employee must be required to substantiate the expenses except to the extent provided in regulations under section 274(d).

Regulations under section 274 authorize the Commissioner to prescribe rules under which reimbursement arrangements or per diem allowances are regarded as equivalent to substantiation and satisfy the requirement of adequate accounting of the amount of travel expenses for this purpose. The regulations also permit the Commissioner to establish a method allowing a taxpayer to treat a specific amount as paid or incurred for meals and for incidental expenses while traveling away from home instead of substantiating the actual cost.

The TCJA amended section 274 to disallow deductions for expenses with respect to entertainment, amusement, and recreation even when directly related to the conduct of a taxpayer's trade or business. The 2017 tax law, however, retained the 50% deduction limitation applicable to otherwise deductible food and beverage expenses paid or incurred in connection with business travel away from home.

The TCJA also amended section 67 to suspend all miscellaneous itemized deductions for tax years beginning after December 31, 2017, and before January 1, 2026, including unreimbursed employee travel expenses. Expenses paid or incurred by employees that are deductible under section 62(a)(2) are above-the-line deductions determined without regard to section 67.

### **Rev. Proc. 2019-48**

The revenue procedure:

- Provides rules for using a per diem rate to substantiate the amount of ordinary and necessary business expenses paid or incurred while traveling away from home—that is, an employee's expenses for lodging, meal, and incidental expenses, or for meal and incidental expenses only, that a payor (an employer, its agent, or a third party) reimburses.
- Updates the definition of "incidental expenses" to reflect the definition of the term in current "Federal Travel Regulations"
- Addresses the 2017 tax law (TCJA) changes that: (1) disallow a deduction for unreimbursed employee travel expenses that are miscellaneous itemized deductions subject to the 2% of adjusted gross income floor during the suspension period; and (2) generally disallow a deduction for expenses with respect to entertainment, amusement or recreation for amounts incurred or paid after December 31, 2017
- Provides that certain specified employees and self-employed individuals who deduct unreimbursed expenses for travel away from home may use a per diem rate for meals and incidental expenses, or incidental expenses only
- Does not provide rules for using a per diem rate to substantiate the amount of lodging expenses only (consistent with Rev. Proc. 2011-47)

Consistent with a related IRS release—[IR-2019-190](#)—taxpayers are not required to use a method described in Rev. Proc. 2019-48, but may substantiate actual allowable expenses provided that the taxpayers maintain adequate records. As the IRS further explained, while the TCJA suspended the miscellaneous itemized deduction that employees could take for non-reimbursed business expenses, self-employed individuals and certain employees (including Armed Forces reservists, fee-basis state or local government officials, eligible educators, and qualified performing artists) who deduct unreimbursed expenses for travel away from home may still use per diem rates for meals and incidental expenses, or incidental expenses only.

The IRS clarified that while the TCJA amended the previous rules to disallow a deduction for expenses for entertainment, amusement, or recreation paid or incurred after December 31, 2017, otherwise allowable meal expenses remain deductible if the food and beverages are purchased separately from the entertainment, or if the cost of the food and beverages is stated separately from the cost of the entertainment.

Rev. Proc. 2019-48 explains that the IRS annually publishes a notice that provides the special per diem rates for purposes of provisions of this revenue procedure and the list of high-cost localities for

purposes of other provisions of the revenue procedure. The annual notice (for example, Notice 2019-55) provides:

- The special transportation industry meal and incidental expenses rates (M&IE rates)
- The rate for the incidental expenses only deduction
- The rates and list of high-cost localities for purposes of the high-low substantiation method.

### **Effective date**

Rev. Proc. 2019-48 is effective for per diem allowances for lodging, meal, and incidental expenses, or for meal and incidental expenses only that are paid to an employee on or after November 26, 2019, for travel away from home on or after November 26, 2019.

For purposes of computing the amount allowable as a deduction for travel away from home, Rev. Proc. 2019-48 is effective for meal and incidental expenses or for incidental expenses only paid or incurred on or after November 26, 2019.

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