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STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

November 6, 1990

The Honorable J.D. Williams
State Auditor
700 West State Street
Boise, ID 83720

Re: State Troopers' Meal Reimbursements

Dear Mr. Williams:

You have requested that we reexamine whether the state should withhold taxes and FICA on state troopers' meal reimbursements. This question finally has been resolved by regulation. Based upon our understanding of the current procedures of the Department of Law Enforcement, the reimbursements are excluded from the employee's gross income, are not required to be reported on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes. 26 C.F.R. § 1.62-2T (1990).

Business or Personal Expense

The first question which must be resolved is whether the state troopers' meal expenses are business expenses or personal expenses. Pursuant to 26 U.S.C. § 62(a)(2)(A), employees are allowed to deduct business expenses as set forth in 26 U.S.C. § 162. However, personal, living or family expenses are not deductible. 26 U.S.C. § 262. The cost of meals is ordinarily a nondeductible personal expense. Christey v. United States, 841 F.2d 809, 811 (8th Cir. 1988), cert. denied, 109 S.Ct. 1131 (1989) (citing Treas. Reg. § 1.262-1(b)(5)(1987)). However, under some circumstances a personal expense may be so limited by regulations that it becomes a business expense. Id. at 811-812.

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permit -- troopers are required to stay within their patrol area during that time, are not allowed to eat at home, and are discouraged from coming to the larger cities within their patrol areas for meals; restrictions are placed on mealtimes and number of troopers eating at a particular time to provide better coverage during meals; troopers are required to be available to the public during meals -- are frequently interrupted to provide information to the public and are subject to being called away for an emergency whether they have eaten what they have paid for or not. The restrictions placed upon Idaho state troopers closely resemble those placed upon the Minnesota state troopers in the Christey case. Therefore, the meal expenses of Idaho state troopers fit within the parameters of § 162 as deductible business expenses.

Accountable Plan

Pursuant to 26 C.F.R. § 1.62-2T, if the arrangement for reimbursement of business expenses as defined in § 162 is an "accountable plan" the amounts paid are "excluded from the employee's Form W-2, and are exempt from the withholding and payment of employment taxes." To qualify as an "accountable plan" reimbursement must meet three tests: business connection, substantiation and returning amounts in excess of expenses. 26 C.F.R. § 1.62-2T.

The business connection test requires that the reimbursement be for business expenses which are deductible pursuant to various Code provisions, including § 162, and "that are paid or incurred by the employee in connection with the performance of services as an employee." 26 C.F.R. § 1.62-2T(d). Since the troopers' meal reimbursements are for business expenses within § 162 and are paid in connection with the troopers' services as employees, the business connection test is satisfied.

Since meal expenses not related to overnight travel do not fall within 26 U.S.C. § 274(d), the substantiation test requires that the "information submitted to the payor be sufficient to enable the payor to identify the specific nature of each expense and to conclude that the expense is attributable to the payor's business activities." 26 C.F.R. § 1.62-2T(e)(3). Darell Ehlers of the Department of Law Enforcement's Fiscal Bureau has advised me that each trooper is required to turn in a daily log for each duty day and a separate log including the cost of any meal consumed on duty. These logs meet the substantiation requirement.

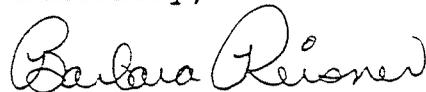
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The final test which must be met is that amounts provided in excess of expenses must be returned. 26 C.F.R. § 1.62-2T(f). Reimbursements are provided to troopers only after the precise cost has been submitted and are limited to a specified amount. Since advances are not provided and only substantiated expenses are reimbursed, troopers are not paid any amount in excess of expenses. Therefore, under the facts and circumstances of this reimbursement program, the final test that amounts provided in excess of expenses be returned is met.

Since the meal reimbursement plan for state troopers meets the business connection, substantiation and returning amounts in excess tests, the plan is an accountable plan. Therefore, meal reimbursements are excluded from the employee's gross income, are not required to be reported on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes.

This letter is provided to assist you. The response is an informal and unofficial expression of the views of this office based upon the research of the author.

Sincerely,



BARBARA J. REISNER
Deputy Attorney General

BJR/dks