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MEMORANDUM FOR RENEE BROTMAN

FROM: George Baker
Assistant to Branch Chief
Branch 2

SUBJECT: Rev. Rul. 99-7 Issues

This Chief Counsel Advice responds to your request, at our meeting on April 4, 2000, for guidance in applying Rev. Rul. 99-7, 1999-5 I.R.B. 4. The questions you posed originated with _____, and this memorandum may be shared with field offices. We have identified certain broad issues for which additional guidance would be helpful, and we have addressed these issues below. Chief Counsel Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be relied upon or otherwise cited as precedent.

Overnight Travel v. Daily Trips

Rev. Rul. 99-7 and the scenarios deal only with "daily" transportation expenses – that is, transportation expenses incurred by an employee in going from the residence to a work location, and back to the residence, within a day. Neither Rev. Rul. 99-7 nor the scenarios deal with **overnight** travel expenses. The tax treatment of overnight travel expenses is governed by Rev. Rul. 93-86, 1993-2 C.B. 71, and involves an analysis of the employee's "tax home."

Worksite-to-Worksite Trips and Flexiplace

The scenarios, by focusing on residence-to-business trips, did not deal with business-to-business trips. Rev. Rul. 99-7, however, restates the general rule that the costs of going between one business location and another business location are deductible business expenses. Thus, reimbursements for trips by an employee between work locations away from the employee's residence continues to be nontaxable.

This general rule does not apply where one of the business locations is the employee's residence. The applicable rule in that case is stated in holding (3) of Rev. Rul. 99-7, which requires that an office-in-the-home meet the "principal place of business" criteria under § 280A(c)(1)(A) and that the trip be to a work location in the same trade or business as that of the office-in-the-home.

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Whether an office-in-the-home meets the requirements of § 280A(c)(1)(A) depends on the particular facts, and the IRS has not issued guidance regarding whether a traditional flexiplace arrangement meets these requirements. We note, however, that an employee's office-in-the-home expenses are not deductible under § 280A(c)(1)(A) unless the office is the employee's principal place of business, is used regularly and exclusively, and is for the convenience of the employer. This is inherently a factual determination.

If an employee maintains an office-in-the-home that does not meet the requirements of § 280A(c)(1)(A), then trips between the residence and other work locations are nondeductible commuting expenses unless the temporary work location rules in Rev. Rul. 99-7 apply.

Location of Employment v. Nature of Assignment

Questions have been raised concerning whether the nature of an employee's duties with respect to an assignment has any effect on the taxability issue. Generally the nature of the duties is irrelevant; the focus in Rev. Rul. 99-7 is on the taxpayer's "employment at a work location" – that is, the taxpayer's physical presence performing services at a particular location.

For example, if a particular employee expects to work "on site" on a project for only a 6-month period, it would be irrelevant that the project, on the whole, is expected to last for more than 1 year. By the same token, if an employee works at a project site for 18 months, the employment would be nontemporary even if the work consisted of a series of separate phases of the project.

An employee's job classification is irrelevant in determining whether the employee is performing services at a location for a temporary period.

Metropolitan Area

Questions have arisen about whether there is a special rule for non-overnight assignments to work locations outside of metropolitan area in which the employee normally works. For employees who have at least 1 regular work location away from the employee's residence (which the scenarios have assumed is the case for the types of employees we have discussed), it makes no difference whether an assignment at a temporary location is inside or outside this metropolitan area. If an employee only works at a series of temporary jobs, and has no regular work location, then the metropolitan area issue comes into play: the transportation expenses incurred **only** for temporary work locations outside of the metropolitan area are considered business expenses.

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Break Rule and Infrequent Trips

Questions have arisen about whether a break in service at a particular location will “restart the clock” in determining whether employment at the location following the break is temporary, or whether the two periods of employment in the same location are aggregated in applying the 1-year limitation. Because of the highly individual nature of the factual inquiry involved, the IRS has not issued general guidance in this area. It is clear, however, that a short break of 2 or 3 weeks is inconsequential in this regard, but that a break of more than 1 year will “restart the clock.”

In a similar vein, there have been questions about infrequent trips to a work location that is expected to extend over a year, such as quarterly trips to a manager’s meeting. Again, the IRS has no general guidance to offer as to whether these types of assignments will be treated as discrete temporary periods of employment or as one extended period of employment. We note that Rev. Rul. 90-23, 1990-1 C.B. 28, considered the situation of a taxpayer with numerous work locations:

A taxpayer may be considered as working or performing services at a particular location on a regular basis whether or not the taxpayer works or performs services at that location every week or on a set schedule. Thus, for example, daily transportation expenses incurred by a doctor in going between the doctor’s residence and one or more offices, clinics, or hospitals at which the doctor works or performs services on a regular basis are nondeductible commuting expenses.

Although Rev. Rul. 99-7 superseded Rev. Rul. 90-23, both rulings treat trips to regular work locations as nondeductible commuting expenses.