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Notice of Proposed Rulemaking

Substantiation of Business Expenses for Travel, Entertainment, Gifts and Listed Property

1997-1 C.B. 753; 1997 IRB LEXIS 1587

January 1997

[\*1]

**RELATED-REFS:**

**REFERENCE:** REG-209785-95

**TEXT:**

**AGENCY:**

Internal Revenue Service (IRS), Treasury.

**ACTION:**

Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:**

In *T.D. 8715*, page 79, the IRS is issuing temporary regulations relating to the substantiation requirements for business expenses for travel, entertainment, gifts, or listed property. The text of those temporary regulations also serves as the text of these proposed regulations.

**DATES:**

Written or electronically generated comments and requests for a public hearing must be received by June 23, 1997.

**ADDRESSES:**

Send submissions to CC:DOM:CORP:R (REG-209795-95), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-209785-95). Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or electronically, via the IRS Internet site at: [http:// www.irs.ustreas.gov/prod/tax\\_reggs/ comments.html](http://www.irs.ustreas.gov/prod/tax_reggs/comments.html).

**SUPPLEMENTARY INFORMATION**

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and [\*2] Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, **Office of Information and Regulatory Affairs**, Washington, DC 20503,

with copies to the **Internal Revenue** Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, Comments on the collection of information should be received by May 27, 1997.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below); How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, [\*3] maintenance, and purchase of service to provide information.

The collection of information in this notice of proposed rulemaking is in § 1.274-5T (c) (2) and (f) (4). This information is required by the IRS as a condition for a taxpayer to deduct certain business expenses or exclude from income certain reimbursed business expenses of employees. This information will be used to determine whether a taxpayer properly qualifies for a deduction or exclusion. The collection of information is required in order to deduct certain business expenses or exclude from income certain reimbursed business expenses of employees. The likely respondents and recordkeepers are individuals, business or other for-profit institutions, state or local governments, federal agencies, and nonprofit institutions. Estimated total annual reporting and recordkeeping burden: 36,920,000 hours.

The estimated annual burden per respondent or recordkeeper varies from 10 minutes to 20 hours, depending on individual circumstances, with an estimated average of 1.3 hours.

Estimated number of respondents and recordkeepers: 28,400,000.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a [\*4] person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, by increasing the receipt threshold from \$25 to \$75, these regulations are expected to reduce the existing recordkeeping requirements of taxpayers, including small entities, from 49,375,000 hours to 36,920,000 hours. The regulations do not otherwise significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) [\*5] is not required. Pursuant to *section 7805 (f) of the Internal Revenue Code*, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for a Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any comments that are submitted timely (and in the manner described in ADDRESSES portion of this preamble) to the IRS. The IRS is considering publishing a revenue procedure implementing § 1.274-5T (f) (4) (ii) of the temporary regulations (that is,

prescribing rules under which an employee may make an adequate accounting to his employer by submitting an expense voucher or equivalent without submitting documentary evidence such as receipts) for federal government agencies that use the published procedures. In addition, the IRS is considering whether there are circumstances or conditions under which the IRS could extend these procedures beyond federal government agencies, and requests comments in this regard. The IRS also requests comments on what procedures (such as internal controls) should be required in any [\*6] rules that permit a taxpayer to satisfy the substantiation requirements of *section 274 (d)* for purposes of deducting business expenses reimbursed to employees who have accounted for their expenses only by means of an expense voucher or equivalent without documentary evidence such as receipts. All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

\* \* \*

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### **PART 1-INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding an entry 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 added to read as follows:

#### **§ 1.274-5 Substantiation requirements.**

(a) through (c) (2) (iii) (A) [Reserved]. For further guidance, see § 1.274-5T.

(c) (2) (iii) (B) [The text of paragraph (c) (2) (iii) (B) is the same as the text in § 1.274-5T published in *T.D. 8715*].

(c) (2) (iv) [\*7] through (f) (3) [Reserved]. For further guidance, see § 1.274-5T.

(f) (4) through (f) (4) (iii) [The text of paragraphs (f) (4) through (f) (4) (iii) is the same as the text in *T.D. 8715*, page 79.

(f) (5) through (1) [Reserved]. For further guidance, see § 1.274-5T.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

(Filed by the Office of the Federal Register on March 24, 1997, 8:45 a.m., and published in the issue of the Federal Register for March 25, 1997, 62 *F.R.* 14051)

