

26 CFR 601.162: Business Expenses.
(Also Part I, §§ 170; 1.162-15, 1.170A-1)

Rev. Proc. 97-52

SECTION 1. PURPOSE

This revenue procedure provides guidance on the deductibility, under § 162 or 170 of the Internal Revenue Code, of unreimbursed travel and other out-of-pocket expenses incurred by a member of a federal advisory committee while performing services without compensation for the federal government as a member of that committee.

SECTION 2. BACKGROUND

.01 Section 162(a) allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

.02 Section 162(b) provides that no deduction is allowed under § 162(a) for any contribution or gift that would be allowable as a deduction under § 170 were it not for the percentage limitations, the dollar limitations, or the requirements regarding the time of payment, set forth in § 170.

.03 Section 1.162-15 of the Income Tax Regulations provides, in part, that no deduction is allowable under § 162(a) for a contribution or gift by an individual or a corporation if any part thereof is deductible under § 170(a).

.04 Section 170(a)(1) allows as a deduction any charitable contribution (as defined in § 170(c)) payment of which is made within the taxable year.

.05 Section 170(c)(1) provides, in part, that the term “charitable contribution” means a contribution or gift to or for the use of the United States, but only if the contribution or gift is made for exclusively public purposes.

.06 Section 1.170A-1(c)(5) provides that transfers of property to an organization described in § 170(c) that bear a direct relationship to the taxpayer’s trade or business and that are made with a reasonable expectation of financial return commensurate with the amount of the transfer may constitute allowable deductions as trade or business expenses under § 162 rather than as charitable contributions under § 170.

.07 Section 1.170A-1(g) provides that no deduction is allowable under § 170 for the contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization, contributions to which are deductible, may constitute a deductible contribution. For example, out-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible. For the purposes of this paragraph, the phrase “while away from home” generally has the same meaning as that phrase has for purposes of § 162 and the regulations thereunder.

.08 Section 1.170A-1(h)(1) provides that no part of a payment that a taxpayer makes to or for the use of an organization described in § 170(c) that is in considera-

tion of goods or services is a contribution or gift unless the taxpayer intends to and actually does pay an amount that exceeds the fair market value of the goods or services received. *See United States v. American Bar Endowment*, 477 U.S. 105 (1986).

.09 Federal advisory committees are governed by the Federal Advisory Committee Act, 5 U.S.C. app. §§ 1-15 (1994) (Act), and the regulations thereunder. A federal advisory committee is a “useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.” Act § 2(a). Under the Act, a federal agency may accept the services without compensation of a federal advisory committee member. 41 C.F.R. § 101-6.1033(d) (1996). An advisory committee member may be reimbursed by the federal agency for travel expenses, including a per diem in lieu of lodging, meal, and incidental expenses. 41 C.F.R. § 1.101-6.1033(e) (1996).

SECTION 3. LAW

Whether payments are ordinary and necessary business expenses under § 162, or are “contributions or gifts” within the meaning of § 170, depends on whether the payments bear a direct relationship to the taxpayer’s business and are made with a reasonable expectation of substantial benefit or financial return commensurate with the amount of the payment, or whether the payments are completely gratuitous. *See Rev. Rul. 72-314*, 1972-1 C.B. 44 (amounts paid by stock brokerage business to a charitable organization whose purpose is to reduce neighborhood tensions and combat community deterioration are deductible under § 162 because the payments are business related and could reasonably be expected to produce commensurate financial return for the business); *Rev. Rul. 72-293*, 1972-1 C.B. 95 (payments to the United States Transportation Exposition may be deducted under § 162 or 170 depending on the facts and circumstances); *Rev. Rul. 65-285*, 1965-2 C.B. 56 (out-of-pocket expenses of invitees to the National Conference on Law and Poverty are deductible under § 170 because invitees are rendering services without compensation to the United States); and *Singer Co. v. United States*, 449 F.2d 413 (Ct. Cl. 1971) (discounts on a taxpayer’s sales of sewing machines to

certain qualified donees, including churches, hospitals, and government agencies, were deductible (under prior law) as charitable contributions under § 170 because the taxpayer did not expect to receive substantial benefit from those discounts; discounts provided on similar sales to schools, however, were not deductible as charitable contributions under § 170 because the taxpayer expected to receive substantial benefit from those discounts in the form of increased future sales).

SECTION 4. PROCEDURE

.01 The federal income tax deductibility of unreimbursed expenses of a federal advisory committee member under § 162 or 170 depends in part on whether the committee member reasonably expects to receive substantial benefit or commensurate financial return as a result of incurring the expenses. Determining expected benefit or financial return often can be difficult when the committee member is engaged in a trade or business related to the subjects discussed by a federal advisory committee while performing services without compensation for that committee.

.02 Therefore, if a taxpayer incurs an unreimbursed travel or other out-of-pocket expense while performing services without compensation as a member of a federal advisory committee, the Service will not challenge the taxpayer’s deduction of the expense as a charitable contribution under § 170, provided the taxpayer satisfies the requirements of that section other than those relating to the expectation of any benefit or financial return. If a taxpayer incurs an unreimbursed travel or other out-of-pocket expense while performing services without compensation as a member of a federal advisory committee and the expense is reasonably related to the taxpayer’s trade or business, the Service will not challenge the taxpayer’s deduction of the expense as an ordinary and necessary business expense under § 162, provided the taxpayer satisfies the requirements of that section other than those relating to the expectation of any benefit or financial return.

SECTION 5. OTHER APPLICABLE LAW

Any deduction within the scope of this revenue procedure must conform to other

specific applicable requirements of law, such as the requirement to substantiate deducted expenses. *See* §§ 170(f)(8), 1.170A-13, 274(d), and 1.274-5T. Also, limits on the deductibility of expenses incurred for lobbying purposes may apply in certain situations. *See* §§ 162(e),

1.162-20, 1.162-28, 1.162-29, 170(f)(6), 1.170A-1(j)(11), 170(f)(9), and 1.170A-1(j)(6).

DRAFTING INFORMATION

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