Spouse Convention Expenses Can be Deducted

When a contractor knows the ground rules and observes them, spouse’s convention expenses can be deducted

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For more than half a century, the Internal Revenue Service and American taxpayers have been fighting over the propriety of IRS decisions that deny deductions of expenses for spouses attending conventions with their husbands or wives.

In approximately 70 percent of the cases involving this issue, the IRS has won. Despite the success rate of the IRS in the courts, however, taxpayers continue (evidently in increasing numbers) to take such deductions.

On a number of occasions, the IRS has issued warnings that such deductions will be “...carefully scrutinized, since the possibility of abuse is so great in this area.”

Tax planning is important

Particularly when a convention is to be held in an appealing locale, it is essential that the organization sponsoring the convention be cognizant of the requisites for a spouse’s travel deduction and plan activities in such a manner as to maximize the prospect for a successful deduction. (The IRS has announced that business deductions for the expenses of attending conventions in resort settings will receive close attention.)

Tax planning involves nothing more than forming plans and shaping facts in response to the stimulus (the economic penalties and rewards) provided by the law. Factual distinctions determine legal consequences in this as in other areas of the law.

Business convention deductions

Before setting forth practical suggestions for convention activities which are designed to bolster the taxpayer’s changes for a successful spouse’s travel deduction, a discussion of the applicable law is necessary.

When business requires that a taxpayer temporarily leave his home, Section 162 of the Internal Revenue Code permits the taxpayer to deduct from his gross income expenses incurred as a result of such travel. Even if the taxpayer engages in personal activities of a pleasurable nature while away from home on business, the taxpayer may still make a business travel deduction for the expense of transportation, lodging, and necessary meals, if the trip was “related primarily to the taxpayer’s trade or business.” For example, if a snowbound Boston executive is required to travel to Palm Springs in February to attend an industry trade show, the availability of a business travel deduction will not be jeopardized if the executive incidentally plays a few rounds of golf and acquires a winter tan.

Factors of concern

The IRS is concerned primarily with two factors:

1. The nature of the activities of the taxpayer.

2. The apportionment of the taxpayer’s activities with respect to the categories of “business” and “personal.”

In short, if the taxpayer spent a substantial portion of each day in (Continued on page 29)
the active pursuit of business (activity which is intended to result in profit either immediately or in the future), the taxpayer is entitled to deduct the costs of his transportation, lodging, meals, and miscellaneous business expenses, which may include entertainment expenses.

The regulations specifically provide that the expense of attending a business convention is to be considered "business travel," for which a deduction may be taken. Even though commercial activity of the more obvious sort, such as the negotiation of contracts, does not take place at the convention, the expense of attending such a convention is deductible as a business expense if it serves an educational purpose related to the taxpayer's profession.

Spouse travel expense deductions

The deduction for the spouse's travel expense may not be taken unless the taxpayer is entitled to deduct his own travel expenses. In other words, the spouse's travel expense deduction presupposes that the travel or convention was primarily for the purpose of business.

In addition, the taxpayer may not take a deduction for the travel expenses of his spouse unless "... it can be adequately shown that the spouse's presence on the trip has a bona fide business purpose." Two tests, then, must be passed: the "business activity" test and the "bona fide business purpose test."

While the courts and the IRS have attempted to explain the abstract meaning of "bona fide business purpose," the meaning of the phrase is only clear, if at all, in reference to the particular facts of a given case. As is true of many legal concepts, attempts to lend theoretical clarity to the concept result only in evasiveness.

As a rule, those distinctions which legislators cannot define, courts are left to refine. The sometimes cumbersome and always fac-
Section 9723), an appeals court refused to allow Mr. Weatherford to deduct the travel expenses of his wife, who accompanied him on a business trip to Japan in conjunction with a display by the Oregon Wheat Growers Association to promote the sale of Oregon wheat in Japan. Mr. Weatherford was a farmer by profession, not a sales executive, and the trip did not afford opportunities for intimate “business socializing” as part of the sales initiative.

Bank of Stockton case

In a recent memorandum decision (Bank of Stockton) the Tax Court permitted a California bank to deduct as a noncompensatory business expense reimbursements paid to its executives for the expenses the executives and their spouses incurred in attending a banking association convention. The court found that the bank’s purpose in sending its employees to the convention was to establish personal relations with other bankers that would lead to the formation of business arrangements, such as loan participation agreements.

Moreover, the bank required that its employees bring their spouses as registered participants to the convention, which had been planned in such a manner as to include the conventioners’ spouses in many business-related activities. The court ruled that the spouses had actively participated in business-related events and socializing intended to lead to commercial relationships: “Since bank activities required close personal relationships among bank officers, and the participation of officers and their wives in banking conventions facilitated such relationships, there was a bona fide purpose. The court held that the wives were instrumental to the success of the social activities, aided the bank in making contacts, and enhanced the bank’s public image.”

The government has until October 25 to appeal the Bank of Stockton case.

In the case of Roy O. Disney (1969-2 U.S.T.C. Section 9494), Mr. Disney, a vice president of Walt Disney Productions, was permitted to deduct the travel expenses of his wife who accompanied him on several trips to Europe and one trip around the world.

Edna Disney did no more than appear with her husband at social events and where the press was in attendance. But the court ruled that the policy of Walt Disney Productions requiring that company executives travel in the company of their wives was reasonably related to the objective of preserving the corporate image as a purveyor of wholesome, family entertainment. Implicit in the court’s reasoning was the assumption that the presence of Mrs. Disney was business-related in that she served to prevent any incidents that would be deleterious to the image of Walt Disney Productions.

In Ralph E. Duncan (1973-1 U.S.T.C. Section 9707), the district court permitted the taxpayer to deduct nearly $10,000 in travel expenses incurred by the taxpayer and his wife in the course of clinics engaged in the treatment of alcoholism. Mr. Duncan’s wife, although not medically trained, actively assisted him and served as a partner in the clinic.

The Inspector General of the Foreign Service was permitted to deduct the travel expenses of his wife, who accompanied him on a trip through Eastern Europe. The trip was undertaken by the Inspector General for the purpose of gathering information and elevating the morale of the foreign service officers stationed in Eastern Europe. Mrs. Wilkins, who was quite experienced in foreign service matters, contributed to both objectives of the trip. Moreover, the Secretary of State had specifically requested that Mrs. Wilkins accompany her husband on the trip.