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The Honorable William R. Timmons, IV
U.S. House of Representatives
Washington, D.C. 20515

Attention:

Dear Representative Timmons:

Thank you for your letter of June 6, 2023. You requested guidance to define "living expenses" for Members of Congress (members) for purposes of Section 162. You also asked us to clarify that transportation expenses are deductible travel expenses when a member travels from their home state to Washington, D.C., to conduct official business of Congress. You also raised the issue of the treatment of certain campaign-related expenses.

Deductibility of living expenses for members

Section 162(a) provides for the deduction of all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Section 162(a) provides a specific rule for members that the place of residence of a member within the State, congressional district, or possession that the member represents in Congress shall be considered the member's home. However, amounts expended by such members within each taxable year for living expenses shall not be deductible for income tax purposes.

Before Congress enacted the Tax Cuts and Jobs Act (TCJA), this section provided that a member could deduct amounts expended for living expenses up to a maximum of \$3,000 per year. However, TCJA amended the language under Section 162(a) by striking "in excess of \$3,000," at the end of the sentence, and retained the rest of the sentence that disallowed a deduction of living expenses for members.¹ Therefore, under the current version of Section 162(a), members may not deduct any living expenses.

Prior to 1952, Section 162(a) did not contain any language addressing deductions by members. Members could not deduct living expenses while in Washington, D.C., as business traveling expenses because the Tax Court determined Washington, D.C., to be their tax home.² In 1952, Congress amended Section 162(a) to specify that the state

¹ Public Law 115-97, Section 13311(a), 131 Stat. 2054 (Dec. 22, 2017).

² *Lindsay v. Commissioner*, 34 B.T.A. 840, 843 (1936).

that a member represents is the member's home. This change allows members a deduction up to \$3,000 for living expenses while away from home in Washington, D.C., on official business of Congress.³

In addition, Congress explained the effect of the 1952 amendment on living expenses members incur when Congress enacted rules for state legislators. A House Report stated that "[t]herefore, a member (who does not commute on a daily basis from his congressional district) can deduct up to \$3,000 of his expenses of living in the Washington, D.C., area."⁴ The Supreme Court also discussed the amendment, stating that by including a provision specifying a tax home, and allowing a specific deduction for members, Congress intended to solve the special travel expense problems inherent in service as a national legislator.⁵

The Tax Court, in *Chappie v. Commissioner*, explained the 1952 amendment and discussed the legislative history of the specific rule for members under Section 162(a).⁶ Explaining the effect of the amendment, the court pointed out that "[b]y legislatively determining the tax home of a member, the amendment allowed them a deduction for meals and lodging expenses while in Washington on official business on behalf of their constituents."⁷

In addition, the court pointed out that "members were permitted to deduct amounts up to \$3,000 expended for living expenses while away from that tax home."⁸ As you acknowledged, the court recognized the deductibility of living expenses by a member while the member is away from home on official business. The Tax Court discussed Section 162(a), as in effect before TCJA, which allowed a specific deduction for living expenses for members up to a maximum of \$3,000 per tax year.

Based on the legislative history and cases, for members, the "living expenses" language in Section 162(a) refers to living expenses paid or incurred while in the Washington, D.C., area on official business. Accordingly, for tax years beginning after December 31, 2017, members are not allowed to deduct any living expenses paid or incurred while in the Washington, D.C., area on official business.

Deductibility of transportation expenses to Washington, D.C., for members

Section 162(a)(2) provides for the deduction of all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. This includes travel expenses (including amounts expended for meals and lodging other than amounts that are lavish or extravagant under the circumstances) while away from home

³ See Pub. L. 471, ch. 598, 66 Stat. 467 (July 9, 1952). See also Senate Report Number 82-1828, at 2 (1952).

⁴ See House of Representatives Report NO. 94-658, at 122 (1975).

⁵ *Commissioner v. Stidger*, 386 U.S. 287, 292 (1967).

⁶ *Chappie v. Commissioner*, 73 T.C. 823 (1980),

⁷ *Id.* at 830.

⁸ *Id.* at 829.

engaged in a trade or business. The daily transportation costs of going between one business location and another business location generally are deductible under Section 162(a).⁹ For example, if members travel between their home district offices in the Washington, D.C., area, and their offices in Washington, D.C., their transportation expenses would be deductible business expenses. However, as you acknowledged, the members' costs of commuting from their residences to their home district offices are nondeductible personal commuting expenses.¹⁰

Travel expenses, including travel fares, meals, and lodging, are deductible if such expenses are reasonable and necessary and paid while away from home while engaged in a trade or business.¹¹ Members' respective home districts are their tax homes, and the members must be "away from home" to deduct travel expenses under Section 162(a)(2).¹² In addition, "away from home" expenses will always exclude commuting costs, which are not deductible under Section 262.¹³

You asked whether members who live away from Washington, D.C. (for example, California, Oregon, Washington, etc.), are allowed to deduct travel expenses from their districts to Washington, D.C., to attend formal hearings and votes. Under these circumstances, members are away from home and may deduct travel fares (for example, airfare) between their home districts and Washington, D.C., and for the return trip from Washington, D.C., to their home districts, as travel expenses under Section 162. To deduct meals and lodging expenses as travel expenses going from their home districts to Washington, D.C., and returning to their home districts from Washington, D.C., the travel must be substantially longer than an ordinary day's work and require an overnight stay or substantial sleep or rest.¹⁴ Therefore, certain travel expenses from a member's home district to Washington, D.C., may be deductible if the member is "away from home" and the other requirements for a deductible expense are satisfied under Section 162(a).

In addition, the member must meet the substantiation requirements under Section 274 to deduct such travel expenses. For more information, please see Publication 5137, Fringe Benefit Guide.

Income treatment of exempt function expenses described in Section 527

You also asked whether certain expenses, including travel fares, lodging, and meals, paid for by an organization described in Section 527 on behalf of an individual result in taxable income to that individual. Section 527 exempts from income taxation the income of an organization organized and operated primarily for an exempt function that is segregated from other income and used only for an exempt function. An exempt

⁹ See Revenue Ruling 99-7, 1999-5 I.R.B. 4.

¹⁰ Sections 1.162-2(e) and 1.262-1(b)(5).

¹¹ Sections 162(a)(2) and 1.162-2(a).

¹² See Chappie, 73 T.C. at 830-831. See also H.R. REP. NO. 94-658, at 122 (1975).

¹³ *Id.* at 831 ("Section 262 takes precedence over the provisions of Section 162").

¹⁴ See *United States v. Correll*, 389 U.S. 299, 304 (1967); Rev. Rul. 75-170, 1975-1 C.B. 60; Publication 5137, Fringe Benefit Guide.

function, as defined in Section 527(e)(2), includes all direct and indirect activities related to the process of selecting individuals for public or political office. Exempt functions also include expenditures relating to a public or political office which, if incurred by the individual, would be deductible under Section 162(a). An exempt function is shown by facts and circumstances demonstrating that the activity influences or attempts to influence the selection, nomination, election, or appointment of any such individual.¹⁵

Amounts expended by an organization described in Section 527 for an exempt function are not income to any individual on whose behalf the expenditure is made. Conversely, expenditures not for an exempt function that result in direct or indirect financial benefit to an individual are includible in the gross income of the individual.¹⁶

When an organization described in Section 527 supports a candidate for public office by, for example, paying for the candidate's travel fares, lodging, and meals during campaign-related travel, these expenditures are for an exempt function.¹⁷ The benefit the candidate receives from these expenditures, therefore, is not includible in the candidate's gross income.¹⁸ As provided in Section 527(e)(2), when the organization pays for expenditures relating to a public office that would be deductible by the individual under Section 162(a), such as travel fares, the benefit to the individual is not includible in the individual's gross income.

I hope this information is helpful. If you or a member of your staff have any questions, please contact me or _____ at - - - .

Sincerely,

Norma C. Rotunno
Branch Chief, Branch 1
(Income Tax & Accounting)

¹⁵ See Treasury Regulation Section 1.527-2(c).

¹⁶ See Treas. Reg. Section 1.527-5(a)(1).

¹⁷ See Treas. Reg. Section 1.527-2(c)(5)(i).

¹⁸ See, for example, Rev. Rul. 79-12, 1979-1 C.B. 208 (1979) (amounts expended for a taxpayer, an elected legislator, to attend a political convention are not includible in the taxpayer's gross income).