

Martin A. Kapp, C.P.A., E.A.

*An Accountancy Corporation
9841 Airport Boulevard Suite 1500
Los Angeles, CA 90045-5400
Toll-Free (800) 728-1040
Phone (310) 641-1040
Fax (310) 641-3327*

TRAVEL DEDUCTIONS ARE BOTH AUTOMATIC & "DEEMED SUBSTANTIATED"



In the 2002 August/September issue of **Lagniappe Magazine** I introduced many Louisiana CPAs to two U.S. Tax Court

Cases that were initiated by my tax office in Los Angeles, allowing two sea captains an almost unlimited amount of travel deductions while they served aboard their ship without my office ever having to show any travel receipts to any IRS Auditor even though both of my clients' meals and lodging were completely provided by their employers.

The cites for my two U.S. Tax Court decisions are again "*Marin I. & Anita J. Johnson v. Comm 115 TC 210*" (9/15/00) and "*Jim L. Westling v. Comm T.C. Memo 2000-289*" (9/15/00). Many tax professionals have been calling me wanting to know why both cases were published on the same date. The answer is simple - both of the trials were held simultaneously. I simply chose to put Marin Johnson on the witness stand ten minutes ahead of Jim Westling; so that is why the legal precedent established by my two Tax Court cases is forever to be known as the "Johnson Decision." All of the legal issues were otherwise identical.

The page numbers cited in this article refer to the page numbers shown on the Tax Court Website. I specifically choose for my Tax Court cases two sea captains working on the largest ships to the smallest ships to

prevent the IRS from ever challenging travel deductions for any qualifying merchant sailor.

TAX COURT AGREES "TRAVEL IS TRAVEL"

Another question posed to my office is why I chose to have two separate Tax Court cases rather than just one consolidated trial. I always wanted to have two trials because IRS Auditors throughout the US, along with the IRS Chief Counsel's Office in Washington DC wants to somehow treat international travel by one set of "rules" while domestic travel seems to get treated "differently." Capt. Marin Johnson works on a very large Container Ship traveling the entire world while Capt. Jim Westling works on a very small Tug Boat generally making local deliveries.

Shocking as it may seem to the IRS, the Tax Court fully agreed with me that domestic travel and international travel are legally equivalent. Remember, the tax code defines "travel" as simply being away from home long enough for taxpayers to be released from duty in order to obtain "necessary rest or sleep." The local bus driver working around New Orleans does not qualify because he can go home to "rest or sleep," but the Greyhound bus driver going between New Orleans and Dallas should qualify for travel deductions.

*Written for Louisiana Society of Certified Public Accountants
by Martin A. Kapp, C.P.A., E.A. (800) 728-1040 or www.sailortax.com*

ALL TRAVEL EXPENSES ARE "DEEMED SUBSTANTIATED"

CPAs across Louisiana are calling me because they are simply too baffled and too uncomfortable to claim travel deductions for tug/barge sailors because "all meals and lodging are provided by these sailors' employers." But this is exactly why I chose to sue the IRS in Tax Court! My tax office is unique in that I specialize in taxpayers who travel for a living. Travel deductions are broken down into three distinct categories – Lodging – Meals – and Incidental Travel Expenses. As it turns out, my two Tax Court cases were the first cases ever to reach the U.S. Tax Court specifically demanding "Travel Incidental Expenses." Again, taking a closer look at these two Tax Court decisions, we told the Court that neither of the taxpayers had any receipts for their claimed travel deductions. The Tax Court agreed that receipts for travel deductions are generally unnecessary – including lodging!

Please take the time to read the 14 IRS Revenue Procedures (Rev Proc) each stating in their opening paragraph "that all travel related lodging, meals, and/or incidental expenses will be 'deemed substantiated'." All taxpayers (not just merchant sailors) need to be told their travel deductions are now both automatic and "deemed substantiated" – no receipts have been required since 1989 – if you otherwise follow the requirements of IRC 274. My two Tax Court decisions were the first to exclusively rely on these IRS Travel Revenue Procedures (Rev Proc). For a closer look, go to my website and then select any of the listed Revenue Procedures:

Specific Reference	Tax Period
Rev Proc 2002-63	01/01/03 to 12/31/03
Rev Proc 2001-47	01/01/02 to 12/31/02
Rev Proc 2000-39	01/01/01 to 12/31/01
Rev Proc 2000-9	01/01/00 to 12/31/00
Rev Proc 98-64	01/01/99 to 12/31/99
Rev Proc 97-59	01/01/98 to 12/31/98
Rev Proc 96-64	01/01/97 to 12/31/97
Rev Proc 96-28	04/01/96 to 12/31/96
Rev Proc 94-77	01/01/95 to 03/31/96
Rev Proc 93-50	01/01/94 to 12/31/94
Rev Proc 93-21	03/12/93 to 12/31/93
Rev Proc 92-17	01/01/92 to 03/11/93
Rev Proc 90-60	01/01/90 to 12/31/91
Rev Proc 89-67	01/01/89 to 12/31/89

TAX COURT AGREES – NO TRAVEL RECEIPTS ARE REQUIRED!

Still worried about claiming travel deductions without receipts? Let me cite my Johnson decision page 24,

"We [the U.S. Tax Court] disagree with respondent's [the IRS] assertion that petitioner [Marin Johnson] must introduce into evidence actual receipts of his incidental expenditures in order to deduct them. As we read Rev. Proc. 96-28, 1996-1 C.B. 686, and its progenitors, one of the primary purposes of those revenue procedures is to allow taxpayers to deduct a set amount of travel expenses incurred away from home in lieu of maintaining written records to substantiate the actual amount. See also sec. 1.274-5T(j), Temporary Income Tax Regs., 50 Fed. Reg. 46032 (Nov. 6, 1985) ('the Commissioner may establish a method under which a taxpayer may elect to use a specified amount or amounts for meals while traveling in lieu of substantiating the actual cost of meals')."

*Written for Louisiana Society of Certified Public Accountants
by Martin A. Kapp, C.P.A., EA. (800) 728-1040 or www.sailortax.com*

DID YOU KNOW TUG/BARGE SAILORS DO NOT HAVE THEIR MEALS PROVIDED?

I have chosen to concentrate this article and my previous article on tug/barge sailors because this group of taxpayers makes up the largest type of sailors typically working in Louisiana. Please understand that tug/barge sailors do not routinely have their meals provided. These taxpayers merely receive a grocery allowance of just \$8 to \$11/day in the Louisiana area to cover their meals, which is much less than the federal automatic meal rates that range from \$38 to \$46/day depending on the location of travel. Still want more "ammunition" before claiming meals for sailors already receiving a small meal allowance? Just click here to go to the 2001 IRS Publication 463 and select pages 5, 27, and 28.

NO 50% MEAL REDUCTION FOR MERCHANT SAILORS

As stated in my previous article in *Lagniappe Magazine*, merchant sailors are also not subject to any percentage limitation for their food or beverages while working aboard a vessel. Merchant sailors are specifically protected by Internal Revenue Code (IRC) Sec. 274(n)(2)(E)(i) from having to limit their meal deductions while assigned to their ships. Annual sailor meal deductions of \$8,000 in Louisiana are not uncommon. Offshore oil supply vessel sailors also qualify for these very large automatic meal deductions along with almost all inland waterway sailors.

DON'T STOP HERE – STILL MORE TRAVEL DEDUCTIONS ARE ALLOWED

But please do not limit your clients to just the meal or incidental rate for their

locations of travel. Notice 95-50 and my two Tax Court decisions tell you to keep racking up these travel deductions. The Tax Court stated that taxpayers do not have to have any receipts for travel expenses of any kind under \$75 per incident. Taxpayers could easily have multiple incidents per day. For example, a cab ride from the deep sea port in New Orleans into town is easily a \$60 expense each way. Again, I am just the first CPA to ever go to Tax Court and rely on Notice 95-50.

But please do not read more into Notice 95-50 than is written. Several CPAs throughout the U.S. have started giving all of their sailor clients an automatic \$75/day. This is both incorrect and could get the offending tax preparers and their clients in real trouble. And contrary to the article published in June's issue of *Lagniappe Magazine*, my office never asked for \$75/day in either my Johnson case nor my Westling case because both the law and the Tax Court says I did not need to!

From the Johnson decision starting on page 29,

"We [the U.S. Tax Court] note that taxpayers such as petitioner need not limit their deductions to the incidental expense portion of the M&IE rates. Specifically, taxpayers, to the extent that the amounts set forth in the revenue procedures fail to reflect the actual cost of their incidental expenditures, are entitled to a deduction for their actual expenses. In such a situation, however, taxpayers must be prepared to meet all the substantiation requirements, including, especially, written documentation as to the amounts

*Written for Louisiana Society of Certified Public Accountants
by Martin A. Kapp, C.P.A., EA. (800) 728-1040 or www.sailortax.com*

of those costs. But see sec. 1.274-5T(c)(2), Temporary Income Tax Regs., 50 Fed. Reg. 46017 (Nov. 6, 1985) (written documentation generally not required for any expenditure less than \$25); Notice 95-50, 1995-2 C.B. 333 (notifies taxpayers that sec. 1.274-5T(c)(2)(iii)(B), Temporary Income Tax Regs., 50 Fed. Reg. 46019 (Nov. 6, 1985), will be amended to provide that no receipts are required for expenditures less than \$75 which are incurred after Oct. 1, 1995)."

READY FOR MORE GOOD NEWS?

The Tax Court also agreed that the tax home for both Johnson and Westling was their residence and therefore each and every time they left home for anything related to their occupation, travel or transportation deductions were to be allowed. In other words, the term "non-deductible commuting costs" does not exist for merchant sailors. Since sailors are allowed to claim travel deductions whenever they leave their tax homes, these taxpayers can claim the same automatic daily rate whether they are in port or in the middle of the open ocean! Start running the numbers - - - most Louisiana sailors are away from home about 250 days per year!

See the Johnson decision page 19,

"Petitioner [Marin Johnson] also had a legitimate reason for maintaining his personal residence in Freeland while traveling throughout the world with and for his employer. First, petitioner's family did not travel with him while he

worked; thus, petitioner was required to maintain a family residence somewhere. We [the U.S. Tax Court] refuse to second guess petitioner's decision to maintain his family residence in Freeland, instead of moving his family to the location of his Florida employer or to one of the many cities to which he traveled. To have a tax home for purposes of section 162(a), a taxpayer need not maintain a residence in a city in which he or she actually works."

**TRAVEL RECEIPTS ARE
NOT REQUIRED, BUT 60+
PAGES OF TRAVEL
"PAPERWORK" IS
REQUIRED TO BE
ATTACHED TO CLIENTS'
RETURNS**

But how do you establish the amount of your client's travel deductions if receipts are no longer required? Again quoting from the Johnson decision, page 24,

"We [the U.S. Tax Court] note, however, that petitioner has introduced into evidence records which meet the time, place, and business purpose requirements of sec. 1.274-5T(b)(2), Temporary Income Tax Regs., 50 Fed. Reg. 46014 (Nov. 6, 1985), as to his incidental expenses. Those records show clearly: (1) The dates of petitioner's departure for and return from each city that he visited while away from home (the time requirement), (2) the cities or points of travel (the place requirement), and (3) the business nexus between his employment and his travel (the

business purpose requirement). See *id.*; see also 41 C.F.R. sec. 301-7.2(a)(2) (1994 & 1996)."

TAX COURT & IRS BOTH AGREE – DO NOT USE SCHEDULE 2106

While the Tax Court fully agreed with me that to legally claim these "deemed substantiated" travel deductions – receipts are not generally required – the Court also agreed with me that attaching the required "IRC 274 paperwork" to claim these tax returns is required. Just as I quoted you above in Johnson Page 24, you must establish in writing the (1) date, (2) place, and (3) the business purpose for their traveling. To properly comply with IRC 274, you must then attach these travel documents to your clients' tax returns. ***My CPA office is typically attaching between 50 and 90 pages of required travel documents to tug/barge sailors working in Louisiana.*** The IRS National Office agrees with me that just slapping a travel total on a Schedule 2106 does not meet the requirements of *IRC 274* nor does a Schedule 2106 travel total meet the

requirements established by either of my two U.S. Tax Court decisions.

ARE YOU OR YOUR SAILOR CLIENTS STILL AFRAID OF THE IRS?

Did you know that since 1998 Congress has switched the legal burden of proof in Tax Court onto the IRS and away from the taxpayer to disprove these automatic travel expenses? In my other published article in "News Flash" titled "How I Won Twice in Tax Court" I will provide you with additional legal "muscle" you can use with the IRS if they challenge any of your tax clients claiming these wonderfully large, automatic, and "deemed substantiated" travel deductions.

Knowing just what travel documents are required to be attached to a particular clients' returns can sometimes become confusing, frustrating, or very time consuming. For a more personal discussion on any of the tax issues raised in this or my other tax articles, please visit www.sailortax.com or call (800) 728-1040 to speak to the author.

Be Very Careful to Attach All Tax Court Required Travel Documents

"Beech Trucking Co." (5/23/02) lost in Tax Court because they did not attach my Travel Documents.

"see also Johnson v. Commissioner, (2000). In that event, properly substantiated nonmeal travel expenses might have been deductible without limitation by section 274(n). Instead, Beech Trucking elected to use the deemed substantiation method provided by the Revenue Procedures. Having made this election, Beech Trucking cannot avail itself of the benefits of the Revenue Procedures without adhering to the conditions the Commissioner has imposed."

*Written for Louisiana Society of Certified Public Accountants
by Martin A. Kapp, C.P.A., EA. (800) 728-1040 or www.sailortax.com*

Notice 95-50

September 29, 1995

Code Secs. 274(d); 274

IRS intends to amend regs under Code Sec. 274(d), and increase threshold amount for which receipt is needed to prove deduction from \$25 to \$75, effective 10/1/95. Public comment is invited on other potential changes to related substantiation rules.

IRS EASES RECEIPT REQUIREMENT

☛ **Washington -- The Internal Revenue Service announced today a significant change for employers and employees by raising the requirement for many business receipts from \$25 to \$75 starting Oct. 1, 1995.**

The law requires taxpayers to have adequate records for proof of expenses such as traveling, entertainment or gifts in order to claim a deduction. Current regulations allow a deduction if taxpayers have a receipt for lodging when on business travel, and have receipts for other expenses of \$25 or more. The \$25 threshold dates back to 1962.

IRS Commissioner Margaret Milner Richardson said, ***"This change is part of our ongoing efforts to make government work better and cost less. IT WILL MAKE RECORDKEEPING A LOT LESS DIFFICULT FOR BUSINESSES AND EMPLOYEES. We are working hard to update our regulations whenever possible or simply eliminate them if we can."***

Other adequate accounting rules require employers who reimburse employees for business expenses to obtain and keep records such as receipts provided by employees and to produce them if IRS requests. IRS is reviewing these rules to determine whether changes should be made to provide alternative ways to satisfy these recordkeeping requirements. IRS invites the public to comment on this matter. The address to send comments and further information can be found in Notice 95-50. This notice will appear in Internal Revenue Bulletin 1995-42 dated Oct. 16, 1995 and is attached.

Part III. Administrative, Procedural, and Miscellaneous

Notice 95-50 - Substantiation Requirements for Travel & Entertainment Expenses

This notice provides information on a change that the Service will make to the substantiation rules in the regulations under section 274(d) of the Internal Revenue Code, and also invites public comment on possible additional changes to certain other substantiation rules under that section.

Receipt threshold to increase from \$25 to \$75. Section 274(d) disallows an otherwise allowable deduction under sections 162 or 212 for any expense for traveling entertainment, gifts, or listed property, unless the expense is substantiated by adequate records. Section 1.274-5T(c)(2)(iii) of the temporary Income Tax Regulations requires a taxpayer to maintain documentary evidence (such as receipts) for (A) any lodging expenditure, and (B) any other expenditure of \$25 or more. The \$25 receipt threshold was established in 1962. ***The Service will amend section 1.274- 5T(c)(2)(iii)(B) to increase the \$25 receipt threshold to \$75, effective for expenditures incurred on or after October 1, 1995.***

- End of I.R.S. Notice 95-50 -

*Written for Louisiana Society of Certified Public Accountants
by Martin A. Kapp, C.P.A., EA. (800) 728-1040 or www.sailortax.com*