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**Ken Berry, JD** • Oct. 03, 2014



Normally, a taxpayer may deduct travel expenses, including the cost of lodging, only when he or she is "away from home" on business. For this purpose, home means your tax home, usually the area surrounding your principal place of business. Therefore, you can't deduct the cost of staying overnight at a hotel after you've put in a long day at the office simply because you're too tired to go home.

But now the IRS has issued new final regulations that may provide lodging

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deduction is allowed for expenses that are lavish or extravagant or designed to provide an individual with a social or personal benefit.

The IRS has also carved out a new safe-harbor rule. How it works: Lodging is treated as an ordinary and necessary business expense if all of the following conditions are met.

- The lodging is necessary to participate fully in, or be available for, a bona fide business meeting, conference, training activity or other business function;
- The lodging lasts no longer than five calendar days and does not recur more frequently than once per calendar quarter;
- If the taxpayer is an employee, he and she is required by the employer to remain at the activity or function overnight; and
- The lodging is not lavish or extravagant under the circumstances and does not provide any significant element of personal pleasure, recreation, or benefit.

The regulations provide several examples for applying the new rules. In each example, the taxpayer is eligible to deduct the lodging expenses. Here's a sample.

**Facts:** Employer conducts a seven-day training session for its employees at a hotel near its main office. The training is directly connected with the employer's business. Some employees attending the training are traveling away from home while others are not.

Employer requires all employees attending the training to remain overnight at the hotel to facilitate the training. It pays the costs of the lodging at the hotel directly to the hotel and doesn't treat the value as compensation to the employees.

Because the training lasts longer than five calendar days, the safe harbor rule doesn't

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**Result:** The value of the lodging is excluded from income as a working condition fringe benefit. Employer may deduct the lodging expenses, including lodging for employees who aren't traveling away from home, as ordinary and necessary business expenses.

Other examples focus on various situations, including an employer who places a long-distance (two hours each way) commuter at a local hotel to maximize availability on a project requiring extra hours, an employer arranging for a new hire from out-of-town to stay at a local hotel while looking for a house and one providing a hotel room to workers who are on-call overnight so they can handle business emergencies.

**Footnote:** The new regs don't address the issue of meals incurred during the hotel stays. Presumably, they would be deductible, subject to the usual 50% limit.

The final regulations apply to expenses paid or incurred on or after October 1, 2014. They may be applied by taxpayers to expenses paid or incurred in tax years ending before that date as long as the statute of limitations hasn't expired. Thus, some taxpayers may be in line for refunds.

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