

Part I

Section 274.---Disallowance of Certain Entertainment, Etc., Expenses

26 CFR 1.274-1: Disallowance of Certain Entertainment, Etc., Expenses

Rev. Rul. 2003-109

ISSUE

Section 274(h) of the Internal Revenue Code limits deductions for expenses incurred in connection with a convention, seminar, or similar meeting held outside the “North American area.” This revenue ruling contains an updated list of all geographical areas currently included in the North American area for purposes of this section.

LAW AND ANALYSIS

Section 274(h) disallows deductions under section 162 for expenses allocable to attendance of an individual at a convention, seminar, or similar meeting (a “convention”) held outside the “North American area.” However, the disallowance does not apply if the taxpayer can demonstrate that the convention’s location satisfies specified standards of reasonableness.

Geographical areas are included in the “North American area” for purposes of section 274(h) under one of four provisions.

Section 274(h)(3)(A)

Section 274(h)(3)(A) defines the term “North American area” as the United States, its possessions, the Trust Territory of the Pacific Islands, Canada, and Mexico. The United States consists of the fifty states of the United States and the District of Columbia. The possessions of the United States, for this purpose, are American Samoa, Baker Island, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, Howland Island, Jarvis Island, Johnston Island, Kingman Reef, the Midway Islands, Palmyra, the United States Virgin Islands, Wake Island, and other United States islands, cays, and reefs not part of the fifty states or the District of Columbia. The jurisdictions that formerly constituted the Trust Territory of the Pacific Islands – the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau – are now covered by the compacts with the United States described below.

The Compact of Free Association Act of 1985

The Compact of Free Association Act of 1985, Pub. L. No. 99-239, 99 Stat. 1770 (1986) went into effect on October 21, 1986, with respect to the Republic of the Marshall Islands, and on November 3, 1986, with respect to the Federated States of Micronesia.

Section 405 of Title IV of the Compact provides that, for purposes of section 274(h)(3)(A) of the Code, the Republic of the Marshall Islands and the Federated States of Micronesia are included in the North American area.

The Compact of Free Association Between the United States and the Republic of Palau

The Compact of Free Association between the United States and the Republic of Palau, Pub. L. 99-658, 100 Stat. 3672 (1986) went into effect on October 1, 1994. Section 255(d) of Title II of the Compact with Palau provides that, for purposes of section 274(h)(3)(A) of the Code, Palau is included in the North American area.

Section 274(h)(6)

Section 274(h)(6) provides that the term “North American area” also includes any “beneficiary country” if, as of the time a convention begins, (1) there is in effect an agreement described in section 274(h)(6)(C) providing for the exchange of tax information between the United States and the beneficiary country, and (2) there is not in effect a finding by the Secretary of the Treasury that the tax laws of the beneficiary country discriminate against conventions held in the United States.

Section 274(h)(6)(B) defines the term, “beneficiary country” as meaning a beneficiary country as defined in section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983), and Bermuda. An agreement described in section 274(h)(6)(C) providing for the exchange of information between the United States and a beneficiary country generally must provide:

for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares. Section 274(h)(6)(C)(i).

Rev. Rul. 94-56, 1994-2 C.B. 37, modifying Rev. Rul. 87-95, 1987-2 C.B. 79, identifies each of the following jurisdictions as a beneficiary country for which there is in effect an agreement with the United States described in section 274(h)(6)(C) and for which there is not in effect a finding by the Secretary of the Treasury that the tax laws of the beneficiary country discriminate against conventions held in the United States: Barbados, Bermuda, Costa Rica, Dominica, Dominican Republic, Grenada, Guyana, Honduras, Jamaica, Saint Lucia, and Trinidad and Tobago. Each of these jurisdictions continues to be considered as part of the North American area under section 274(h)(6) for purposes of claiming deductions for expenses incurred in connection with a convention beginning on or after the date on which the tax information exchange agreement between the jurisdiction and the United States came into effect.

Since the publication of Rev. Rul. 94-56, the “Agreement Between the Government of the United States of America and the Government of Antigua and

Barbuda for the Exchange of Information with Respect to Taxes” has come into effect. This agreement entered into force on February 10, 2003 and came into effect as of that date. See Treas. News Release JS-165 (April 8, 2003). Antigua and Barbuda is included within the North American area under section 274(h)(6) as of February 10, 2003.

HOLDING

For purposes of claiming deductions for expenses incurred in connection with a convention, seminar, or similar meeting, the following areas are included in the “North American area” as of the effective date of section 274(h) except as otherwise indicated:

1. The fifty states of the United States and the District of Columbia;
2. The possessions of the United States, which for this purpose are American Samoa, Baker Island, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, Howland Island, Jarvis Island, Johnston Island, Kingman Reef, the Midway Islands, Palmyra, the United States Virgin Islands, Wake Island, and other United States islands, cays, and reefs not part of the fifty states or the District of Columbia;
3. Canada;
4. Mexico;
5. The Republic of the Marshall Islands;
6. The Federated States of Micronesia;
7. The Republic of Palau;

For expenses incurred in attending a convention that began after:

- | | |
|-------------------------|-------------------|
| 8. Antigua and Barbuda | February 9, 2003 |
| 9. Barbados | November 2, 1984 |
| 10. Bermuda | December 1, 1988 |
| 11. Costa Rica | February 11, 1991 |
| 12. Dominica | May 7, 1988 |
| 13. Dominican Republic | October 11, 1989 |
| 14. Grenada | July 12, 1987 |
| 15. Guyana | August 26, 1992 |
| 16. Honduras | October 10, 1991 |
| 17. Jamaica | December 17, 1986 |
| 18. Saint Lucia | April 21, 1991 |
| 19. Trinidad and Tobago | February 8, 1990 |

This revenue ruling will be updated as future developments result in the inclusion of other areas in, or the exclusion of areas from, the North American area.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 94-56 and Rev. Rul. 87-95 are superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is Mae J. Lew of the Office of Associate Chief Counsel (International), Branch 1. For further information regarding this revenue ruling, contact Mae J. Lew on (202) 435-5262 (not a toll-free call).