

FRANZEN & FRANZEN, LLP

CERTIFIED PUBLIC ACCOUNTANTS

July 30, 2012 – Proposed Regulations for Local Lodging Expenses

In the past, employees were able to deduct expenses for job travel away from home, but could not deduct lodging expenses for the cost of staying in the locality where they work (local lodging). However, in 2007 the IRS announced that the regulations would be amended to change the treatment of local lodging. The Service also stipulated that until the amendment took place, an employee's deduction for local lodging would be allowed if the lodging was temporary and necessary for participation in a business function of the employer.

Accordingly, in April of 2012 the IRS proposed regulations regarding the deductibility of local lodging expenses. The proposed regulations allow a deduction for expenses paid or incurred for local lodging as ordinary and necessary expenses of a taxpayer's trade or business, including business expenses incurred as a condition of employment. For example, an employee deduction is allowed (or an employer payment is non-taxable) when local lodging expenses are incurred:

- to attend employer-mandated training at a local hotel;
- to house athletes for last-minute training and to ensure the players' preparedness; and
- to house an employee who is on call outside of normal working hours to respond to business emergencies.

Other local lodging expenses may be deductible as business expenses depending on the facts and circumstances.

The proposed regulations also provide a safe harbor for deducting local lodging expenses for business meetings and conferences. Under the safe harbor rules, an individual's local lodging is deductible if the following four conditions are met:

- 1) The lodging is necessary for the individual to participate fully in or be available for a bona fide business meeting, conference, training activity, or other business function;
- 2) The lodging is for a period that does not exceed five calendar days and does not recur more frequently than once per calendar quarter;
- 3) If the individual is an employee, the employee's employer requires the employee to remain at the activity or function overnight; and
- 4) The lodging is not lavish or extravagant under the circumstances and does not provide any significant element of personal pleasure, recreation, or benefit.

Conversely, if a local lodging expense is primarily for the employee's personal benefit or convenience, it is not deductible. The following examples illustrate local lodging that is considered personal (not business-related):

- a weekend at a luxury hotel provided by the employer;
- lodging to avoid a long-distance commute;
- lodging because the employee must work overtime;
- housing for a recently relocated employee; and
- lodging for the employee's indefinite personal use.

Until the proposals are published as final regulations, they may be applied to expenses paid or incurred in tax years for which the period of limitation on credit or refund has not expired.

If you incur lodging expenses as an employee or through your business, these proposed rules may affect your business and substantiation procedures. We are happy to answer any questions and discuss your options in greater detail. Please call our office at your earliest convenience to arrange an appointment.