

Notice of Proposed Rulemaking
Substantiation of Business
Expenses—Use of Mileage Rates
to Substantiate Automobile
Expenses

REG-122488-97

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Notice of proposed rulemak-
ing.

SUMMARY: This document contains
proposed regulations relating to the use
of mileage rates to substantiate automo-
bile business expenses. The regulations
affect taxpayers who deduct expenses,
and payors who make payments and em-
ployees who receive payments under re-
imbursement or other expense allowance
arrangements, for the business use of an
automobile.

DATES: Written or electronically gener-
ated comments and requests for a public
hearing must be received by December
30, 1998.

FOR FURTHER INFORMATION CON-
TACT: Concerning the regulations, con-
tact Edwin B. Cleverdon or Donna M.
Crisalli, (202) 622-4920 (not a toll-free
number).

ADDRESSES: Send submissions to
CC:DOM:CORP:R (REG-122488-97),
room 5228, Internal Revenue Service,
P.O. Box 7604, Ben Franklin Station,
Washington, DC 20044. In the alterna-
tive, submissions may be hand delivered
between the hours of 8 a.m. and 5 p.m. to
CC:DOM:CORP:R (REG-122488-97),
Courier's Desk, Internal Revenue Ser-
vice, 1111 Constitution Avenue, NW,
Washington, DC.

Additionally, taxpayers may submit
comments electronically via INTERNET
by selecting the "Tax Regs" option on the
IRS INTERNET site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

SUPPLEMENTARY INFORMATION

*Background and Explanation of
Provisions*

Section 274(d) provides that a taxpayer

is not allowed a deduction or credit for
certain expenses unless the expense is
substantiated. These substantiation re-
quirements apply to the expenses of use
of any listed property (defined in section
280F(d)(4)), which includes any passen-
ger automobile and any other property
used as a means of transportation. The
Secretary may issue regulations that pro-
vide that some or all of the substantiation
requirements will not apply to expenses
that do not exceed a prescribed amount.

Section 1.274-5T(b)(6) sets forth the
elements of an expenditure or use, i.e., the
amount, time, and business purpose, that
are required to be substantiated with
respect to listed property. Section
1.274(d)-1 provides, in part, that the
Commissioner may prescribe rules under
which mileage allowances reimbursing
ordinary and necessary expenses of local
travel and transportation while traveling
away from home will satisfy the substan-
tiation requirements of §1.274-5T(c), and
the requirements of an adequate account-
ing to the employer for purposes of
§1.274-5T(f)(4). However, §1.274(d)-
1(a)(3) provides that such mileage al-
lowances are available only to the owner
of a vehicle.

Proposed §1.274-5(g) applies these
substantiation rules to mileage allowances
for business use of an automobile without
the limitation in §1.274(d)-1(a)(3) that a
mileage allowance is available only to the
owner of a vehicle. Proposed §1.274-
5(j)(1) continues to authorize the Com-
missioner to establish a method for com-
puting meal expenses while traveling
away from home (see current §1.274-
5T(j)), while §1.274-5(j)(2) authorizes
the Commissioner to establish a method
under which a taxpayer may use mileage
rates to determine the amount of the ordi-
nary and necessary business expenses of
using an automobile for local transporta-
tion and transportation to, from, and at the
destination while traveling away from
home in lieu of substantiating the actual
costs. The mileage rate method may in-
clude appropriate limitations and condi-
tions in order to reflect more accurately
automobile expenses over the entire pe-
riod of usage. The taxpayer would not,
however, be relieved of substantiating the
amount of each business use (i.e., the

business mileage) and the time and busi-
ness purpose of each use. See Rev. Proc.
97-59 (1997-52 I.R.B. 24), for rules for
using the mileage rate method. This pro-
posed §1.274-5(g), (j), and (m) supple-
ment §1.274-5(c) and (f) as proposed on
March 25, 1997, in the **Federal Register**
(62 F.R. 14051). Conforming changes to
§1.62-2 are also proposed.

Special Analyses

It has been determined that this notice
of proposed rulemaking is not a signifi-
cant regulatory action as defined in EO
12866. Therefore, a regulatory assess-
ment is not required. It also has been de-
termined that section 553(b) of the Ad-
ministrative Procedure Act (5 U.S.C.
chapter 5) does not apply to these regula-
tions, and, because the regulations do not
impose a collection of information on
small entities, the Regulatory Flexibility
Act (5 U.S.C. chapter 6) does not apply.
Pursuant to section 7805(f) of the Internal
Revenue Code, this notice of proposed
rulemaking will be submitted to the Chief
Counsel for Advocacy of the Small Busi-
ness Administration for comment on its
impact on small business.

*Comments and Requests for a Public
Hearing*

Before adopting these proposed regula-
tions as final regulations, consideration
will be given to any comments that are
submitted timely (and in the manner de-
scribed in the ADDRESSES portion of
this preamble) to the IRS. All comments
will be available for public inspection and
copying. A public hearing will be sched-
uled and held upon request by any person
who submits comments on the proposed
rules. Notice of the time and place for the
hearing will be published in the **Federal
Register**.

Drafting Information

The principal authors of these proposed
regulations are Edwin B. Cleverdon and
Donna M. Crisalli, Office of the Assistant
Chief Counsel (Income Tax and Account-
ing). However, personnel from other of-
fices of the IRS and Treasury Department
participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In §1.62–2, paragraph (e)(2) is revised to read as follows:

§1.62–2 Reimbursement and other expense allowance arrangements.

* * * * *

(e) * * *

(2) *Expenses governed by section 274(d).* An arrangement that reimburses travel, entertainment, use of a passenger automobile or other listed property, or other business expenses governed by section 274(d) meets the requirements of this paragraph (e)(2) if information sufficient to satisfy the substantiation requirements of section 274(d) and the regulations thereunder is submitted to the payor. See §1.274–5T. Under section 274(d), information sufficient to substantiate the requisite elements of each expenditure or use must be submitted to the payor. For example, with respect to travel away from home, §1.274–5T(b)(2) requires that information sufficient to substantiate the amount, time, place, and business purpose of the expense must be submitted to the payor. Similarly, with respect to use of a passenger automobile or other listed property, §1.274–5T(b)(6) requires that information sufficient to substantiate the amount, time, use, and business purpose of the expense must be submitted to the payor. See §1.274–5(g), however, which grants the Commissioner authority to prescribe rules permitting the amount of certain expenses to be deemed substantiated to the payor (in lieu of substantiating the actual amount of such expenses) by means of per diem or mileage rates for travel away from home or transportation expenses. See also §1.274–5(j)(1), which grants the Commissioner the authority to establish a method under which a taxpayer may use a specified amount for meals while traveling away from home in lieu of substantiating the actual cost of

meals, and §1.274–5(j)(2), which grants the Commissioner the authority to establish a method under which a taxpayer may use mileage rates to determine the amount of the ordinary and necessary expenses of using an automobile for local transportation and transportation to, from, and at the destination while traveling away from home in lieu of substantiating the actual costs. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by §1.274–5(g) or (j) will be treated as substantiation of the amount of such expense for purposes of this section.

* * * * *

§1.62–2T [Removed]

Par. 3. Section 1.62–2T is removed.

Par. 4. Section 1.274–5 is added to read as follows:

§1.274–5 Substantiation requirements.

(a) through (f) [Reserved]. For further guidance, see §1.274–5T(a) through (f).

(g) *Substantiation by reimbursement arrangements or per diem, mileage, and other traveling allowances—(1) In general.* The Commissioner may, in his or her discretion, prescribe rules in pronouncements of general applicability under which allowances for expenses described in paragraph (g)(2) of this section will, if in accordance with reasonable business practice, be regarded as equivalent to substantiation by adequate records or other sufficient evidence for purposes of §1.274–5T(c) of the amount of such expenses and as satisfying, with respect to the amount of such expenses, the requirements of an adequate accounting to the employer for purposes of §1.274–5T(f)(4). If the total allowance received exceeds the deductible expenses paid or incurred by the employee, such excess must be reported as income on the employee’s return. See paragraph (j)(1) of this section relating to the substantiation of meal expenses while traveling away from home, and paragraph (j)(2) of this section relating to the substantiation of expenses for the business use of an automobile.

(2) *Allowances for expenses described.* An allowance for expenses is described in this paragraph (g)(2) if it is a—

(i) Reimbursement arrangement covering ordinary and necessary expenses of

traveling away from home (exclusive of transportation expenses to and from destination);

(ii) Per diem allowance providing for ordinary and necessary expenses of traveling away from home (exclusive of transportation costs to and from destination); or

(iii) Mileage allowance providing for ordinary and necessary expenses of local transportation and transportation to, from, and at the destination while traveling away from home.

(3) *Limitation.* For expenses paid or incurred on or before December 31, 1997, a mileage allowance described in paragraph (g)(2)(iii) of this section is available only to the owner of a vehicle.

(h) and (i) [Reserved]. For further guidance, see §1.274–5T(h) and (i).

(j) *Authority for optional methods of computing certain expenses—(1) Meal expenses while traveling away from home.* The Commissioner may establish a method under which a taxpayer may use a specified amount or amounts for meals while traveling away from home in lieu of substantiating the actual cost of meals. The taxpayer would not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place, and business purpose of the travel. See §1.274–5T(b)(2) and (c).

(2) *Use of mileage rates for automobile expenses.* The Commissioner may establish a method under which a taxpayer may use mileage rates to determine the amount of the ordinary and necessary expenses of using an automobile for local transportation and transportation to, from, and at the destination while traveling away from home in lieu of substantiating the actual costs. Such method may include appropriate limitations and conditions in order to reflect more accurately automobile expenses over the entire period of usage. The taxpayer would not be relieved of the requirement to substantiate the amount of each business use (i.e., the business mileage), or the time and business purpose of each use. See §1.274–5T(b)(2) and (c).

(k) and (l) [Reserved]. For further guidance, see §1.274–5T(k) and (l).

(m) *Effective date.* Paragraphs (g) and (j) of this section apply to expenses paid or incurred after December 31, 1997.

§1.274–5T [Amended]

Par. 5. Paragraphs (g) and (j) of §1.274–5T are removed and reserved.

§1.274(d)–1 [Amended]

Par. 6. Section 1.274(d)–1 is amended by removing paragraph (a)(3).

§1.274(d)–1T [Removed]

Par. 7. Section 1.274(d)–1T is removed.

Michael P. Dolan,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on September 30, 1998, 8:45 a.m., and published in the issue of the Federal Register for October 1, 1998, 63 F.R. 52660)
