



Labor News-Letter

PIPE LINE CONTRACTORS ASSOCIATION

1700 Pacific Avenue, Suite 4100, Dallas, Texas 75201 • (214) 969-2700 • Fax: (214) 969-2705

June 3, 2011

2011/20

TO: ALL REGULAR MEMBERS

Re: Per Diem Payments as Taxable Income

Ladies and Gentlemen:

As you know, under the current National Pipe Line Agreement with the United Association and Laborers International Union ("PL" States), we have negotiated a per diem payment to be paid for each day of the work week as set out in the pre-job.

Under current federal tax law, a per diem payment made by a contractor to an employee is generally excluded from the employee's federal gross income, is not reported as wages for federal income tax purposes, and is exempt from the withholding and payment of federal employment taxes provided that the employee is "temporarily away from home" and the employment lasts for one year or less. The per diem exemption from federal income tax is not available if employment away from home in a single location is realistically expected to last for more than one year, or if there is no realistic expectation that the employment will last for one year or less.

The determination of whether an employee is temporarily away from home is made on an employee-by-employee basis. (For example, assume a project site is located 50 miles from Tulsa. The per diem would be taxable to an employee whose home is in Tulsa, but would not be taxable to an employee whose home is in Louisiana.)

With respect to the one-year test, the IRS, in a formal revenue ruling, has ruled that:

1. If employment away from home in a single location is realistically expected to last (and does in fact last) for 1 year or less, the employment is temporary in the absence of facts and circumstances indicating otherwise.
2. If employment away from home in a single location is realistically expected to last for more than 1 year or there is no realistic expectation that the employment will last for 1 year or less, the employment is indefinite, regardless of whether it actually exceeds

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3. If employment away from home in a single location initially is realistically expected to last for 1 year or less, but at some later date the employment is realistically expected to exceed 1 year, that employment will be treated as temporary (in the absence of facts and circumstances indicating otherwise) until the date that the taxpayer's realistic expectation changes.

The bottom line is that if you have a job that is scheduled to last longer than one year in one location, the per diem payment to United Association and Laborer workers would generally be considered as taxable income, be reported as wages, and be subject to the withholding and payment of employment taxes.

It should also be noted that the IRS, in a nonbinding, informal document known as "chief council advice," took the position that two separate job assignments in the same geographic location would be considered together in determining whether an employee is "temporarily away from home" and "whether there is a realistic expectation that the employment in a single location will last for more than 1 year."

In other words, in determining whether an employee is "temporarily away from home," the IRS in the chief council advice applied the one-year test by looking at the amount of time that the employee spends or is expected to be in a particular geographic area rather than the amount of time the employee is expected to work on a particular job assignment.

In the chief council advice, the IRS considered the following fact situation:

An employee of X from a branch office in California is assigned to X's headquarters office in Washington, D.C., for an 8-month period. While on assignment, the employee accepts a 6-month assignment to work at a client's office Washington, D.C., beginning after the first assignment ends. The employee takes long-term leave (more than a month) at the employee's residence in California between the assignments.

The IRS, in the informal chief council advice, concluded that:

[If] employment away from home in a single location initially is realistically expected to last for 1 year or less, but at some later date the employment is realistically expected to exceed 1 year, that employment will be treated as

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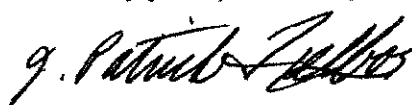
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temporary (in the absence of facts and circumstances indicating otherwise) until the date that the taxpayer's realistic expectation changes.

Here, when the employee agrees to continue to work in Washington, D.C., there is a realistic expectation that the employment in a single location – Washington, D.C. – will last for more than 1 year. The employee is no longer temporarily away from home . . . at the point the expectation changes. It is not relevant that the second assignment is for a different employer.]

If you have any questions on the above, please let me know.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Patrick Tielborg". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

J. Patrick Tielborg

JPT:kh

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