Availability of Per Diem Rates for Self-Employed Farmers and Ranchers

Neil E. Harl
Iowa State University

Follow this and additional works at: http://lib.dr.iastate.edu/aglawdigest

Part of the Agricultural and Resource Economics Commons, Agricultural Economics Commons, Agriculture Law Commons, and the Public Economics Commons

Recommended Citation
Available at: http://lib.dr.iastate.edu/aglawdigest/vol18/iss7/1
Availability of Per Diem Rates for Self-Employed Farmers and Ranchers

-by Neil E. Harl

The issue of whether and to what extent self-employed taxpayers can make use of the federal per diem rates\(^1\) for lodging, meals and incidental expenses incurred during business travel away from home without the need to produce receipts was brought into focus by an early 2007 Tax Court decision.\(^2\) The case, *Riley v. Commissioner*,\(^3\) was a small Tax Court decision but illustrates some important points for travel expense deductibility.

**The facts of the case**

The facts in *Riley v. Commissioner*\(^4\) were that the taxpayer was a farmer and cattle feeder in Utah who purchased additional farmland in Minnesota. Those farms and trips to purchase feeder cattle involved about 40 days per year of travel totaling roughly 15,000 miles per year.\(^5\)

The taxpayer deducted the travel expenses including transportation, meals and lodging on Schedules F and E.\(^6\) The taxpayer did not, however, keep logs to substantiate dates away from home on business and to substantiate the business purpose of the travel.\(^7\) The taxpayer kept some, but not all, of the receipts for gasoline, meals and lodging expense but did not use the receipts to calculate travel expense.\(^8\) Rather, the taxpayer used the federal low-cost figure for that year, $90 per day for lodging and meals,\(^9\) for a total claimed deduction of $3600 (40 days times $90 per day) for those two expenditure categories.

The taxpayer allocated $1,400 of that amount to Schedule E to cover the rental portion of the travel and the remainder to Schedule F for the farming enterprise.

On audit, the Internal Revenue Service disallowed all travel expenses for lack of adequate substantiation.

**The regulations**

Under the regulations, issued in 1985, a taxpayer is required to substantiate each element of an expenditure incurred in traveling away from home on business, including meals.\(^10\) by showing, convincingly, (1) the amount of each expenditure except that the daily cost of the taxpayer’s own breakfast, lunch and dinner may be aggregated; (2) the time of each expenditure (the dates of departure and return for each trip away from home and the number of days spent on business); (3) the place of each expenditure; and (4) the business purpose of each expenditure.\(^11\)

IRS conceded that a relatively small part of the expenses for each of the years in question was adequately substantiated ($391 in 2001, $940 in 2002 and $385 in 2003).

---

\(^{1}\) Charles F. Curtiss Distinguished Professor in Agriculture and Emeritus Professor of Economics, Iowa State University; member of the Iowa Bar.
The taxpayer’s argument and the court’s response

The taxpayer asserted that they were entitled to use the federal per diem rates to substantiate their travel expense deductions.\textsuperscript{12} The annual revenue procedures authorize the per diem method to substantiate lodging, meals and incidental expenses,\textsuperscript{13} but the per diem method is only available where an employer pays a per diem allowance in lieu of reimbursing actual expenses an employee incurs while traveling away from home. As the Tax Court explained, the taxpayer’s claimed lodging expenses do not come within this provision because the taxpayer was self-employed in connection with the farming and rental activities and was not functioning in the role of an employee.\textsuperscript{14}

The Tax Court noted, however, that the taxpayer, as a self-employed individual, was entitled to rely on the per diem method allowed for substantiation for meals and incidental expenses if the taxpayer could substantiate the elements of time, place and business purpose for the travel expenses. The Tax Court was satisfied with the substantiation for those expenses and allowed, over IRS objection, a deduction in the amount of $990 for 2001 ($30 times 33 days), $480 for 2002 ($30 times 16 days) and $360 for 2003 ($30 times 12 days). The Tax Court then applied the 50 percent limitation on meals and incidental expenses\textsuperscript{15} with an allowed deduction of $445 for 2001, $240 in 2002 and $180 for 2003.\textsuperscript{16}

The Tax Court concluded the discussion by stating that the taxpayer’s “... ineligibility to claim greater amounts for meals and lodging is a result of his failure to maintain proper records of his expenses, including logs showing the dates, places, and business activity conducted while he was away from home.”\textsuperscript{17}

On another issue, the Tax Court, not surprisingly, held that the taxpayer was unable to deduct depreciation and other actual costs for business vehicles and, also, to deduct an allowance under the standard mileage rate\textsuperscript{18} for the 15,000 miles driven each year. The standard mileage rate is in lieu of all operating and fixed costs of the vehicle, including depreciation, maintenance and repairs, tires, gasoline, oil, insurance, license and registration fees.\textsuperscript{19} Inasmuch as the actual expenses (for depreciation and fuel expenses) exceeded the standard mileage rate figure, the Tax Court allowed actual expenses for travel.

The taxpayers were held liable for the accuracy-related penalties\textsuperscript{20} for each of the three years in question of 20 percent of the portion of the underpayment attributable to negligence or disregard of rules and regulations.

Footnotes
\textsuperscript{4} Id.
\textsuperscript{5} Id.
\textsuperscript{6} Id.
\textsuperscript{7} Id.
\textsuperscript{8} Id.
\textsuperscript{9} Id.
\textsuperscript{10} Temp. Treas. Reg. § 1.274-5T.
\textsuperscript{11} Temp. Treas. Reg. § 1.274-5T(b)(2).
\textsuperscript{14} Id.
\textsuperscript{15} I.R.C. § 274(n)(1).
\textsuperscript{17} Id.
\textsuperscript{18} Treas. Reg. § 1.274-5(j)(2).
\textsuperscript{19} E.g., Rev. Proc. 2002-61, 2002-2 C.B. 616, § 5.03.
\textsuperscript{20} I.R.C. § 6662(a).

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr

ADVERSE POSSESSION

FENCE. The plaintiffs purchased their property from an owner who at one time owned the plaintiffs’ property and the defendant’s neighboring property. The properties were split by a fence which existed when the original owner owned both properties and the plaintiffs were told that the fence was their boundary line. After the defendant purchased the neighboring property, the defendant had a survey performed which showed that the true boundary line was on the plaintiffs’ side of the fence. The defendant wanted to move the fence on to the true boundary but the plaintiffs filed a quiet title action to have the disputed strip of land included in their title under adverse possession. The plaintiffs argued that they had used the disputed strip of land over 10 years as part of their ranch operation. The defendant argued that the fence was not moved to the true boundary line when the plaintiffs purchased their property solely as a matter of convenience to the seller and that adverse possession