

# Mileage between job locations deductible—partial deduction for tools & clothing despite poor records

De Chacing et vir., TC Summary Opinion 2009–127

In a Summary Opinion, the Tax Court has held that mileage between a taxpayer's first and second work locations leads to deductions even though the second work location is near his home. It also allowed a partial deduction for the taxpayer's tools and clothing, on the strength of some photos and corroborating testimony.

**Business transportation vs. commuting.** Generally, business transportation, which is deductible, is transportation between two business locations in and around the city, town, or area where the taxpayer is located, whether the locations are in the same or different businesses. (Rev Rul 90-23, 1990-1 CB 28) However, the trip from the taxpayer's home to his regular place of business or employment, and back, is commuting, which is nondeductible personal travel. (Reg. § 1.162-2(e), Reg. § 1.262-1(b)(5))

**Deduction for tools and protective clothing.** The cost (as well as maintenance) of clothing provided by an employee is deductible if the special apparel (a) is required as a condition of employment, and (b) isn't adaptable to general or continued usage so as to take the place of ordinary clothing. (Rev Rul 70-474, 1970-2 CB 34) For example, protective clothing, such as safety shoes, hard hats, work gloves, etc., is deductible if required for the job.

An employee's unreimbursed employment-connected business expenses are deductible on Schedule A to the extent they exceed 2% of adjusted gross income (AGI).

**Substantiating business expenses.** In general, all business expenses must be substantiated. Taxpayers who are eligible to and in fact deduct business auto expenses by way of the mileage rate meet the substantiation rules by keeping a record of the time, place and purpose of business trips. Records and receipts of actual expenses are not required.

Under the *Cohan* rule, where the taxpayer is unable to substantiate expense deductions through adequate records or other proof, the court may estimate the deductible amount, bearing heavily, if it chooses, upon the taxpayer whose inexactitude is of his own making. (*Cohan, George v. Com.*, (1930, CA2) 8 AFTR 10552)

**Facts.** Jose Chacin worked on a daily basis for a building contractor. Each day he drove from his home to the building contractor's office and received his assignment for the day. He would then proceed to the jobsite and perform as instructed for the day. He drove approximately 121 miles each day. Approximately 2 days each week he would proceed from the first job to a second job where he also worked as a carpenter. The second job was near his home, but he drove there from his first job.

Chacin maintained a log of his daily mileage. He would list the odometer reading and allow that reading to stand until there were nonbusiness miles. Because he drove to the same work location

each day, it was not necessary to make a posting each day. Mr. Chacin did not distinguish his mileage from his first job to his second because the second was in the vicinity of his residence. Additionally, he believed that all of his mileage was deductible.

On his 2005 return, which he filed jointly with his wife, Leslie De Chacing, Chacin claimed \$13,813 for all of his mileage (computed at the business mileage rates then in effect). He also claimed \$850 for tools and \$1,630 for protective clothing he was required to provide for work. These were gross amounts before application of the 2% of AGI floor.

**Tax Court.** The Tax Court said Chacin could not deduct the entire cost of his transportation to and from his job, but said he could claim deductions for the mileage from his first job site to the second one. Approximately 2 days each week, Chacin drove from his first job to a second job location which was near his home. Accordingly, the Court ruled that one-half of his mileage on those days (between jobs) was not commuting and is deductible.

**RIA observation:** The Tax Court's holding illustrates that the distance from the taxpayer's second job location to his home doesn't matter. Even if it's just a few blocks away from his home, mileage between the first and second job locations will still be treated as business transportation.

On the basis of the record before it, the Court held that Chacin was entitled to transportation expenses of \$5,525 for the 2005 tax year.

As for Chacin's tools and protective clothing, there was some testimony about these expenses, and he also provided bank statements, along with some written notations about the generic category of various expenditures (i.e., "Jose work clothes"). The Court said that Chacin's recordkeeping on these items fell short of showing specific purchases, but did provide some photographs of certain equipment and work clothing showing that the work clothing was not suitable for everyday wear. Applying the *Cohan* rule, the Tax Court found that Chacin was entitled to deductions of \$200 for tools and \$400 for work clothing for the 2005 tax year.

**RIA observation:** The taxpayer would have fared far better had he been able to provide receipts for his tools and clothing, along with the photos.

**RIA Research References:** For transportation between two places of business, see FTC 2d/FIN ¶ L-1602; United States Tax Reporter ¶ 1624.150; TaxDesk ¶ 290,504. For employee's deduction of the costs of uniforms and work clothes, see FTC 2d/FIN ¶ L-3801; United States Tax Reporter ¶ 1624.067; TaxDesk ¶ 351,001.

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