



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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Michael A. Swim  
CC:TE/GE:EOEG:ET1:JSpires  
TL-N-100-01

MEMORANDUM FOR ASSOCIATE AREA COUNSEL, AREA 3, NEW ORLEANS  
Small Business/Self Employed, CC:SB:3:NO  
Attn: Scott Welch, Senior Attorney

FROM: Michael A. Swim  
Chief, Employment Tax Branch 1  
Tax Exempt and Government Entities, CC:TE/GE:EOEG:ET1

SUBJECT: I.R.C. § 62(c) - Louisiana School Bus Driver - Reimbursements  
for Bus Operating Expenses

This responds to your request that this office review your proposed memorandum providing advise regarding a nondocketed case involving a Louisiana school bus driver. We have reviewed your proposed memorandum that addressed § 62(c) of the Internal Revenue Code (Code) and whether amounts paid by the State of Louisiana to a school bus driver as reimbursements of the driver's bus operating expenses are wages to be included on the Form W-2 provided to the employee. We did not find any legal errors in the proposed advice. However, we recommend that your memorandum be revised to address: (1) recent federal district and circuit court decisions regarding application of § 62(c); (2) [REDACTED]; and (3) additional factual development in this case.

RECENT FEDERAL DISTRICT AND CIRCUIT COURT DECISIONS ADDRESSING  
§ 62(c)

We recommend that you add a discussion of recent case law to the advice memorandum. The rules regarding accountable plans under § 62(c) have been addressed by federal district and circuit courts in several recent decisions. Specifically, it would be helpful if you addressed in the memorandum in the cases of Trucks, Inc. v. United States, 234 F.3d 1340 (11<sup>th</sup> Cir. 2000) (commercial truck drivers); Trans-Box Systems, Inc. v. United States, 84 A.F.T.R.2d (RIA) 6479 (N.D. Cal. 1998), aff'd without published opinion, 86 A.F.T.R.2d (RIA) 5015 (9<sup>th</sup> Cir. 2000) (courier service drivers); and Shotgun Delivery, Inc. v. United States, 85 F. Supp. 962 (N.D. Cal. 2000) (courier service drivers). These cases support your conclusion that the requirements of § 62(c) are not met in your case.

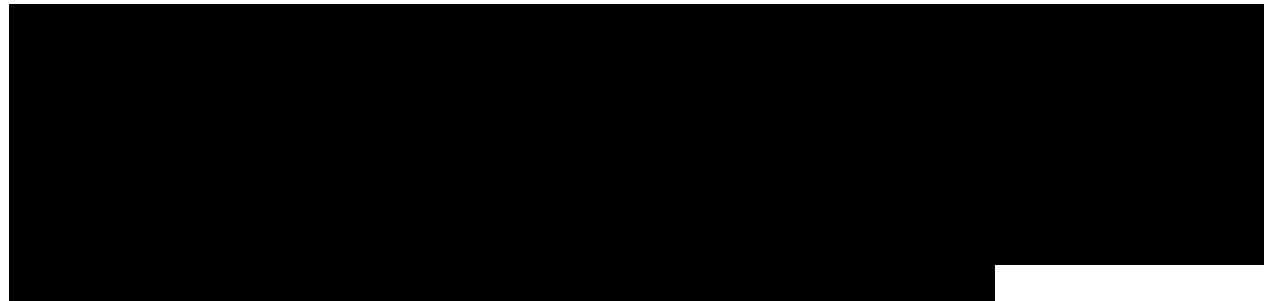
REMOVAL OF SMALL TAX CASE DESIGNATION

TL-N-100-01

In several small tax cases the Tax Court has held in favor of Louisiana school bus drivers who excluded similar reimbursements from wages. We note that under § 7463(b) of the Code, a decision of the Tax Court entered in any small tax case shall not be treated as a precedent for any other case and shall not be reviewed in any other court. Thus, small tax cases are not precedent for any future cases and cannot be appealed.



While the small tax case designation turns chiefly on the amount in dispute, the government has succeeded in having the small tax case designation removed in cases where a decision in the case will provide a precedent for the disposition of a substantial number of other cases or where an appellate court decision is needed on a significant issue. See, Kallich v. Commissioner, 89 T.C. 676, 681 (1987), (“Petitioners’ option to elect the small tax case procedure is not unlimited, even when the jurisdictional maximum for a small tax case has not been exceeded, as the election must be concurred in by the Court.”); Page v. Commissioner, 86 T.C. 1, 13 (1986) (Petitioner’s option to elect small tax case treatment was denied because the issues were common to other cases pending before the Court).



We hope you find the foregoing information helpful. If you have any additional questions, please contact Joe Spires (Identification No. 50-17971) of my staff at (202) 622-6040.