

Part I

Section 274.—Disallowance of Certain Entertainment, Etc., Expenses

26 CFR 1.274-1: Disallowance of Certain Entertainment, Etc., Expenses

Rev. Rul. 2011-26

ISSUE

Section 274(h) of the Internal Revenue Code (the “Code”) limits deductions for expenses incurred in connection with a convention, seminar, or similar meeting (collectively, a “convention”) held outside the “North American area.” This revenue ruling contains an updated list of all geographical areas currently included in the North American area for purposes of section 274(h).

LAW AND ANALYSIS

Section 274(h) disallows deductions under section 162 for expenses allocable to attendance of an individual at a convention held outside the North American area unless the taxpayer demonstrates that the location of the convention satisfies specified standards of reasonableness.

A geographical area may be included in the North American area for purposes of section 274(h) under one of the four provisions described below.

Section 274(h)(3)(A)

Section 274(h)(3)(A) defines the term “North American area” as the United States, its possessions, the Trust Territory of the Pacific Islands, Canada, and Mexico. Under section 7701(a)(9), the United States consists of the fifty states and the District of Columbia. The Internal Revenue Service treats the following as the possessions of the United States for this purpose: American Samoa, Baker Island, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, Howland Island, Jarvis Island, Johnston Island, Kingman Reef, the Midway Islands, Palmyra Atoll, the United States Virgin Islands, Wake Island, and other United States islands, cays, and reefs not part of the fifty states or the District of Columbia. The jurisdictions that formerly constituted the Trust Territory of the Pacific Islands -- the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau -- are now covered by the compacts with the United States described below.

The Compact of Free Association Act of 1985

The Compact of Free Association Act of 1985, Pub. L. No. 99-239, 99 Stat. 1770 (1986), went into effect on October 21, 1986, with respect to the Republic of the Marshall Islands, and on November 3, 1986, with respect to the Federated States of Micronesia. Section 405 of Title IV of the Compact provides that, for purposes of section 274(h)(3)(A) of the Code, the Republic of the Marshall Islands and the Federated States of Micronesia are included in the North American area.

The Compact of Free Association Between the United States and the Republic of Palau

The Compact of Free Association between the United States and the Republic of Palau, Pub. L. No. 99-658, 100 Stat. 3672 (1986), went into effect on October 1, 1994.

Section 225(d) of Title II of the Compact with Palau provides that, for purposes of section 274(h)(3)(A) of the Code, Palau is included in the North American area.

Section 274(h)(6)

Section 274(h)(6)(A) provides that the term “North American area” includes any “beneficiary country” if, as of the time a convention begins: (i) there is in effect an agreement described in section 274(h)(6)(C) providing for the exchange of information between the United States and the beneficiary country; and (ii) there is not in effect a finding by the Secretary of the Treasury that the tax laws of the beneficiary country discriminate against conventions held in the United States.

Section 274(h)(6)(B) defines the term “beneficiary country” as a beneficiary country as defined in section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983), and Bermuda. Under section 274(h)(6)(C)(i), to constitute an agreement that provides for the exchange of information between the United States and a beneficiary country, an agreement generally must provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information

which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares.

Where an exchange of information agreement between a beneficiary country and the United States does not qualify as an agreement described in section 274(h)(6)(C)(i) or is not in effect within the meaning of section 274(h)(6)(A)(i), the beneficiary country is not included as part of the North American area under section 274(h)(6) for purposes of determining whether deductions are allowed for expenses incurred in connection with a convention.

Rev. Rul. 2007-28, 2007-1 C.B. 1039, identified each of the following jurisdictions as a beneficiary country for which there was in effect an agreement with the United States as described in section 274(h)(6)(C)(i) and for which there was not in effect a finding by the Secretary of the Treasury that the tax laws of the beneficiary country discriminate against conventions held in the United States: Antigua and Barbuda, Aruba, Bahamas, Barbados, Bermuda, Costa Rica, Dominica, Dominican Republic, Grenada, Guyana, Honduras, Jamaica, Netherlands Antilles, and Trinidad and Tobago.

Since publication of Rev. Rul. 2007-28, the “Agreement Between the Government of the United States of America and the Republic of Panama for Tax Cooperation and the Exchange of Information with Respect to Taxes” entered into force on April 18, 2011. See Treas. News Release at <http://www.treasury.gov/press-center/press-releases/Pages/tg1144.aspx> (April 18, 2011). This new agreement qualifies as an agreement described in section 274(h)(6)(C)(i). Panama is a beneficiary country, and no finding is in effect by the Secretary of the Treasury that the tax laws of

Panama discriminate against conventions held in the United States. Therefore, Panama is included within the North American area under section 274(h)(6) as of April 18, 2011.

Three other beneficiary countries -- the Cayman Islands, the British Virgin Islands, and Saint Lucia -- have entered into tax information exchange agreements with the United States that are not of the type described in section 274(h)(6)(C)(i) because of certain limitations in the scope or implementation of those agreements. Accordingly, these three beneficiary countries are not included as part of the North American area under section 274(h)(6). In the case of Saint Lucia, certain transition relief has been provided, as reflected in the Holding below.

HOLDING

For purposes of determining whether deductions are allowed for expenses incurred in connection with a convention, the following areas are included in the North American area as of the effective date of section 274(h) except as otherwise indicated:

1. The fifty states of the United States and the District of Columbia;
2. The possessions of the United States, which for this purpose are American Samoa, Baker Island, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, Howland Island, Jarvis Island, Johnston Island, Kingman Reef, the Midway Islands, Palmyra Atoll, the United States Virgin Islands, Wake Island, and other United States islands, cays, and reefs not part of the fifty states or the District of Columbia;

3. Canada;
4. Mexico;
5. The Republic of the Marshall Islands;
6. The Federated States of Micronesia;
7. The Republic of Palau;

For expenses incurred in attending a
convention that began after:

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|--------------------------|--------------------|
| 8. Antigua and Barbuda | February 9, 2003 |
| 9. Aruba | September 12, 2004 |
| 10. Bahamas | December 31, 2005 |
| 11. Barbados | November 2, 1984 |
| 12. Bermuda | December 1, 1988 |
| 13. Costa Rica | February 11, 1991 |
| 14. Dominica | May 8, 1988 |
| 15. Dominican Republic | October 11, 1989 |
| 16. Grenada | July 12, 1987 |
| 17. Guyana | August 26, 1992 |
| 18. Honduras | October 9, 1991 |
| 19. Jamaica | December 17, 1986 |
| 20. Netherlands Antilles | March 21, 2007 |
| 21. Panama | April 18, 2011 |
| 22. Trinidad and Tobago | February 8, 1990 |

The Internal Revenue Service will continue to treat Saint Lucia as not included in the North American area under section 274(h)(6) with respect to conventions that begin after April 4, 2007, except with respect to expenses for which the taxpayer demonstrates a nonrefundable contractual obligation existing as of April 4, 2007.

This revenue ruling will be updated as future developments result in the inclusion of other areas in, or the exclusion of areas from, the North American area.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2007-28 is superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is Terra-Lynn Zentara of the Office of Associate Chief Counsel (International), Branch 7. For further information regarding this revenue ruling, contact the principal author at (202) 435-5262 (not a toll-free call).