



**PER DIEM, TRAVEL AND TRANSPORTATION ALLOWANCE COMMITTEE**

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PDTATAC/dlw

26 January 2012

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: CTD for CAP 51-11(E) – Update Tax Requirements for Long-Term TDY

1. SYNOPSIS: Updates tax requirements in the JTR with new information provided from the IRS regarding long-term TDY.
2. These changes are scheduled to appear in JTR change 557, dated 1 March 2012.
3. This determination is *effective on 25 January 2012*.

*//Approved//*

**W. B. TIRRELL, SR.**

Chief, Policy and Regulations Branch

Attachment:  
Rev 2

**Civilian E-Mail Distribution:**

CAP Members T&T Branch PMO-DTS GSA-3FT GSA-OGP(MTT) DTMO CBCA Judges

## JTR REVISIONS

### C2401:

\*A. General. The AO may authorize/approve reimbursement for transportation expenses in the PDS area for travel during usual official duty hours, between:

1. Office/duty point and another place of business;
2. Places of business; or
3. Residence and place of business other than office or duty point,

\*B. Taxation of Reimbursable Transportation Expenses. Local taxable travel occurs when there is a reasonable expectation that an employee will work at an /temporary/alternate location more than one year and greater than 35 workdays during in a calendar year. The 35 Day Rule ONLY applies for **LOCAL Taxable Travel** (employee will work at the alternate location more than one year and greater than 35 workdays during calendar year). Only reimbursements for travel to/from employee residence and the alternate work location are taxable as wages.

1. Local taxable travel exists when an employee travels:
  - a. Daily to a temporary/alternate work location within general commuting area and;
  - b. To and from residence within a day.
2. An AO must advise the employee of the potential federal, state, and local income tax obligations if reimbursement for transportation expenses in the PDS area if there is a reasonable expectation that an employee will work at a temporary location more than one year and greater than 35 workdays during a calendar year. Tax rules may differ by state and locality.

**Example 1:** An employee is responsible for managing employees in two locations in the local area. The employee drives to an alternate work site 45 minutes away from the employees' residence every Thursday to approve documents, etc. meeting with employees. There is no reasonable expectation that travel will last for less than 1 year, and for less than 35 days in one year. Reimbursements for daily travel are considered taxable by the IRS.

**Example 2:** An employee takes the train daily between NYC and Peekskill, NY to attend meetings and conduct other business tasks. The employee expects to follow this routine continuously for the next five (5) months or (100 workdays). There is a reasonable expectation that travel will last for less than 1 year. The 35 Day Rule does not apply because travel is reasonably expected to last for 1 year or less. Reimbursements for daily travel are non-taxable.

**NOTE:** *The Income Tax Reimbursement Allowance (ITRA) in JTR, Ch 4 only applies to extended TDY assignments and may not be applied to local travel. (See par. C4715).*

### C. Commercial Transportation

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### D. POC Travel

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\*E. Both Commercial Transportation and POC Travel. When POC and/or commercial transportation use is

authorized/approved for travel between the residence and one or more alternate work sites within the local area, the traveler is paid:

F. Examples

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C4430:

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C. TDY Periods in Excess of 180 Consecutive Days. When mission objectives or unusual circumstances require TDY in one location for more than 180 consecutive days, and the par. C4430-A criteria are satisfied, the appropriate authority for authorizing/approving TDY assignments in excess of 180 consecutive days at any one location is the Secretary Concerned, Service Headquarters if delegated, DoD COMPONENT Director, the Chief of an appropriate bureau or staff agency specifically designated for that purpose (2 Star equivalent), or Commander/Deputy Commander of a Combatant command must determine if TDY of greater than 180 days is appropriate ([38 Comp. Gen. 853 \(1959\)](#)). *There must be no re-delegation of authority, except as stated above for Service Headquarters.* A written request and justification must be forwarded to the Secretary Concerned, Service Headquarters, a DoD COMPONENT Director, the Chief of an appropriate bureau or staff agency specifically designated for that purpose, service designated authority (refer to APP I, Part 1) (2 Star equivalent), or Commander/Deputy Commander of a Combatant command as soon as practicable. This TDY length determination should be made before the order is issued. If the situation does not permit determination before order issuance, the order may be issued and the case submitted immediately to the appropriate authority who must:

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2. Direct amending the order to:

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- d. Authorize a TCS. See par. C4430-E.

***\*NOTE 1: Authorization/approval to exceed the 180-day TDY limit is essential. If a traveler is TDY in excess of 180 days without authorization/approval, the traveler's per diem stops as of the 181<sup>st</sup> day ([54 Comp. Gen. 368 \(1974\)](#) and [B-185987, 3 November 1976](#)).***

***\*NOTE 2: The authorization/approval requirements in par. C4430-C do not apply to TDY assignments of civilian employees deployed to Afghanistan or Iraq in support of ongoing contingency operations (see APP A). The USD (P&R) memo, '[Building Increased Civilian Deployment Capacity](#)' of 12 February 2008 recognized that deployments to Iraq and Afghanistan will typically be via TDY for periods of 12 or more months. Prior to the official travel start, the TDY order must cite the 12 February 2008 USD (P&R) memo as the waiver authority. The waiver authority does not require USD (CPP) review; however, the authority when granted must be in the GOV'T's interest. This policy applies also to a non-DoD civilian employee if the order is DoD-funded (par. C1001-A). The memo authority does not allow an Agency/Service to authorize SIT of HHG extension beyond 180 days (par. C5191).***

***NOTE 3: When, after an employee's TDY assignment has ended and the employee returns to the PDS, the employee returns to the same TDY location to perform another TDY assignment within a 7 month time frame after return to the PDS, this second TDY period could be considered by the IRS to be part of the previous long-term TDY assignment and thereby establish a 'taxable' TDY period. Return to the previous long-term TDY location must not occur until at least a 7-month period at the PDS has transpired prior to return to the long-term TDY location. Only if the 7-month period at the PDS has transpired can the employee be returned to the TDY***

*location without risk of having the two TDY periods considered one TDY assignment by the IRS. See the IRS website at [http://www.irs.gov/pub/irs-tege/long\\_term\\_taxable\\_travel.pdf](http://www.irs.gov/pub/irs-tege/long_term_taxable_travel.pdf).*

***NOTE 4: Approving officials and Agencies must be aware that sending a traveler on temporary duty to one location for a year or more may result in the Agency liability for employment taxes related to the TDY due to the IRS considering such duty a permanent move.***

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E. **Taxation of Reimbursable TCS/TDY Allowances.** An AO must advise the employee of the potential federal, state, and local income tax obligations if the TCS or TDY assignment (including training assignment) is at one location for more than a year. ***Tax rules may differ by state and locality.***

1. An employee who performs TCS is subject to federal, state and local income tax obligations on some but not all of the TCS reimbursements (par. C5650 for RIT allowance).
2. A civilian employee's TDY assignment at one location for more than a year may end up being considered, by the IRS, to be a permanent assignment and any reimbursement (especially per diem) may be considered taxable income by the IRS. A traveler should research potential state and local income tax obligations incurred incident to an extended TDY assignment at one location (par. C4715 for ITRA).
3. A civilian employee's TDY assignment at one location that is initially and realistically expected to less than 1 year, but at some later date during the TDY period the TDY assignment is expected to exceed 1 year; that TDY assignment may be treated by the IRS as temporary until the date that the employee's realistic expectation changed (to a period of one year or longer). When an AGENCY has a "REALISTIC EXPECTATION" that the employee's travel will exceed 1 year, travel reimbursements become taxable going forward (i.e., it does NOT apply to travel reimbursements before that time ). See IRS website at [http://www.irs.gov/pub/irs-tege/long\\_term\\_taxable\\_travel.pdf](http://www.irs.gov/pub/irs-tege/long_term_taxable_travel.pdf). (See par. C4715 for ITRA).

**Example 1:** An employee is issued a TDY order for a period NTE 1 year at the TDY location. While at TDY, the AGENCY learns that the employee is required to remain at the TDY location in excess of 1 year. When the decision is reasonably known that the assignment will exceed 1 year, the assignment is no longer considered temporary and the TDY allowances from that point forward become potentially taxable. The assignment may be considered permanent and taxable by the IRS from the time that the decision to extend the period to be longer than 1 year is reasonably known. All time at the TDY location preceding the time that the decision is reasonably known is considered temporary and probably will not be taxed by the IRS.

**Example 2:** An employee travels from the PDS to a TDY location in another state indefinitely twice a month. Travel is indefinite in nature, but expected to last over 1 year or not expected to end in less than a year. Reimbursement of TDY allowances are considered taxable by the IRS because TDY period is expected to exceed 1 year.

4. When, after an employee's TDY assignment has ended and the employee returns to the PDS, the employee returns to the same TDY location to perform another TDY assignment within a 7 month time frame. After return to the PDS, this second TDY period could be considered by the IRS to be part of the previous long-term TDY assignment and thereby establish a 'taxable' TDY period. Return to the previous long-term TDY location must not occur until at least a 7-month period at the PDS has transpired prior to return to the long-term TDY location. Only if the 7-month period at the PDS has transpired can the employee be returned to the TDY location without risk of having the two TDY periods considered one TDY assignment by the IRS. See the IRS website at [http://www.irs.gov/pub/irs-tege/long\\_term\\_taxable\\_travel.pdf](http://www.irs.gov/pub/irs-tege/long_term_taxable_travel.pdf).

**Example:** Traveler's PDS is Alexandria, VA. The traveler performs a long-term TDY assignment in Atlanta, GA, for 179 days. The TDY ends and the traveler returns to the PDS in Alexandria, VA. The traveler remains at the PDS for 6 months and then returns to the previous TDY location in Atlanta, GA, to perform another 179-day TDY. The second TDY may be considered by the IRS to be a part of the previous

TDY assignment and taxable because the traveler did not remain at the PDS in Alexandria for more than 7 months before returning to Atlanta to perform another TDY.

\*5. An IRS statute, [26 USC §162\(a\)](#) and the implementing IRS regulations in [26 CFR 1.162](#) do not permit travel expense deductions (including amounts for meals and lodging) during a TDY assignment at one location, if the assignment exceeds one year. The traveler should check with state and local authorities regarding travel expense deductions during a TDY assignment exceeding one year at one location.