THE ONE-YEAR LIMITATION

The IRS has long held that for an employee to be traveling away-from-home on business to receive tax-free travel benefits (meal, lodging, and transportation) that the travel assignment must be temporary. Tax legislation and a clarifying IRS ruling in the early 1990s provides that for an assignment to be temporary it must be expected to last less than one year and cannot be indefinite in length. Otherwise the lodging at or near the worksite is considered the employee's tax home and all travel benefits paid would be considered taxable compensation. The rational for the rule is that for an assignment lasting more than one year, the employee would be reasonably expected to move his residence to minimize travel expenses.

ONE-YEAR LIMIT

More technically, the rules provide that an away from home assignment will meet this *temporary* requirement (travel expenses not subject to income tax) if the assignment is expected to last less than one year, and does in fact last less than one year. If an assignment is extended for which it will then last more than one year, all transportation, meal & incidental per diem, housing allowances, and corporate paid housing costs must be treated as taxable compensation beginning with expenses incurred when it first becomes known that the one-year limit is anticipated to be exceeded; not just when the 366th day is reached. Expenses incurred and paid prior to when it is first anticipated the one-year limit will be exceeded do not need to be reclassified as compensation, but all future expenses must be treated as taxable compensation.

The one-year limitation applies to the general work location, not just the same assignment, and would apply even if the traveler were employed by a different agency and continued to work in the same general area (within commuting distance of the current worksite or temporary lodging) without a significant break in service.

Since all traveler assignments should have definite lengths and be less than one-year, the uncertainty for indefinite assignments should not be applicable. A taxation concern arises when the assignment including extensions begins to approach the one-year limit. The traveler and recruiter must jointly monitor such situations.

STRATEGY

Assignments with extensions failing the one-year limitation will create taxable compensation subject to applicable payroll taxes on all the travel benefits once it is anticipated the one-year limit will be exceeded. Assignment extensions must be evaluated in light of this limitation. If the additional income tax burden (could approach or exceed a 40% tax rate) on the increased taxable income is deemed unacceptable and outweighs the intrinsic benefits of the current assignment or location, the recruiter will work with the traveler to find a temporary assignment in another location with the understanding that returning to the current assignment (or location) after being away for a significant period of time (13 weeks – see **Break In Assignment** discussion) will be uncertain. During this break period there can be no written or oral understanding of the traveler returning to the general assignment area and any returning assignment will depend on the client's staffing needs after the break period.

An obvious and permitted strategy is to limit the final extension so that the multiple-extended assignment is less than a full year. Note this counting is 365 continuous calendar days from the first day of the initial assignment. Only counting days worked or any sort of subtraction of days for short assignment breaks will not solve the issue.