



BREAK IN ASSIGNMENT RESTART THE ONE-YEAR CLOCK

As explained in the **One-Year Limitation** discussion, the IRS has long held that for away-from-home travel benefits (including, but not limited to, housing and transportation) to be provided tax-free to the employee, the assignment must be “temporary” and “temporary” is defined as less than one year and not indefinite. The rule is fairly objective. However, a very contentious issue is how long the traveler must stay away from the desired client assignment or location to start-over the counting of this one-year period; restart the one-year clock.

IRS Rulings:

The IRS has specifically ruled that a break of three weeks away from the current assignment work location is too short to start over the counting on the one-year limitation. The IRS has also ruled that a break from the assignment location of seven months is significant enough to restart the counting. Unfortunately, the IRS has provided no guidance for break lengths in between these extremes. Case law provides limited guidance and is very fact sensitive, other than concluding that annual seasonal work will not restart the clock.

Company Position:

We believe (consistent with NATHO guidelines) a break in an assignment of 13 or more weeks should be significant enough to restart the counting for the one-year limitation. The 13 weeks is approximately midway between the 3-week and 7-month ruling and is also the typical length of an assignment. The break may be for pleasure, education, another assignment, or any other reasons or combination as long as the break is in a different location outside of typical commuting distance from the current assignment and the current temporary housing. In addition, there must be no written or oral understanding during this break period of returning to the assignment or assignment area; otherwise the assignment break may not restart the counting period. Multiple short breaks totaling more than 13 weeks will not accomplish the necessary break. **As a result of the *seasonal* case law rulings, school-based assignments will not achieve a break in service for summer vacations.**

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