



# AMERICAN TRUCKING ASSOCIATIONS

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Internal Revenue Service  
Office of Pre-Filing & Technical Services  
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Washington, DC 20224

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Dear Sirs:

The undersigned representatives of the motor carrier industry hereby submit to the Internal Revenue Service (the Service) a request for an issue to be considered under the Service's Industry Issue Resolution program. We request the Service to consider granting the industry a safe harbor per-mile per diem allowance under Internal Revenue Code §274(d) for the expenses of meals and incidentals incurred by employee truck drivers on travel away from home. The establishment of such a safe harbor would relieve much of the nation's trucking industry not only of uncertainty over how to comply with the tax law in this area, but also of very significant tax compliance costs. Indeed, since the Service has already issued specialized field guidance on this very matter, it seems likely that creation of a per-mile safe harbor would relieve the Service's examiners of a difficult issue as well. Our request does not concern payments made by motor carriers to independent-contractor drivers (owner-operators).

### Requesting Parties

The undersigned are associations of motor carriers and truck providers:

The American Trucking Associations, Inc., of Arlington, Virginia, is a national federation of all types and sizes of motor carriers, as well as allied industries, individual-member councils, affiliated conferences of specialized carriers, and fifty affiliated state trucking associations, representing altogether some 37,000 members, including every kind of motor carrier in the United States.

The American Moving and Storage Association of Alexandria, Virginia, is the only national trade association representing the professional moving and storage industry. The association has 3,200 members who provide household goods moving services,

Good stuff.



specialized transportation for sensitive freight such as computers and trade show exhibits, and warehouse storage services.

The National Tank Truck Carriers of Arlington, Virginia, is a national association of hundreds of tank truck carriers that haul such products as milk, gasoline, cement, and chemicals.

The Truckload Carriers Association of Alexandria, Virginia, is the only national association whose sole focus is the truckload segment of the trucking industry. The association represents the operators of more than 200,000 trucks, including dry van, refrigerated, flatbed, and intermodal container carriers, operating throughout North America.

The Truck Renting and Leasing Association of Alexandria, Virginia, is a national association representing more than 400 companies owning and leasing over 1 million trucks operating in commercial transportation in North America, the majority of which are operated by private motor carriers.

Together, these associations represent a very significant portion of the national trucking industry that is affected by the per diem requirements of IRC §§62 and 274.

#### Description of Issue & Need for Guidance

The payment of per diems to truck drivers is a widespread practice in the motor carrier industry. Regular route, less-than-truckload and other short-haul carriers generally do not pay them, but a large proportion of irregular route, longer-haul carriers do so. These companies comprise a large segment of an industry that in total includes as many as half a million carriers, most of them small businesses. In all, there are believed to be one to two million employee truck drivers that commonly travel away from home in the course of their work. Thus, the current regulatory regime places a disproportionate burden on the very taxpayers who effectively lack any office support and are ill-equipped to manage the reporting and substantiation requirements the Service now demands of them in this area. The undersigned associations represent a large proportion of the carriers that operate businesses of this nature, and that employ the drivers that receive such per diem payments. Once again, we are not here discussing the characterization or substantiation of payments made by motor carriers to drivers who are independent contractors rather than employees, that is, who are owner-operators.

Many, perhaps most, of the motor carriers that pay per diem allowances do so on a per-mile basis. This is permitted under the regulations promulgated under IRC §274(d), as payment of a mileage per diem was a common practice in the trucking industry prior to December 12, 1989. Because these companies commonly calculate driver wages on the basis of the miles they drive, this is in one sense an uncomplicated method of computing per diems, providing easy comparability for carriers and drivers alike. In an industry suffering from what has become a serious perennial shortage of qualified drivers, this is not a small consideration. Motor carriers compete vigorously for drivers, and a

competitive per diem allowance is often an important element of an employment package for a driver.

In writing the regulations under §274(d), the Treasury Department clearly intended that motor carriers continue to be able to pay per diems calculated on a per-mile basis. Currently, however, motor carriers are uncertain how to proceed in this area. Although Treasury implicitly endorsed the use of a per diem allowance computed on the basis of the miles a truck driver travels, this basis does not sit easily within the framework the regulations have built around an “accountable plan.” This framework has recently been tightened by Rev. Rul. 2006-56 and its specific applicability to the examination by the Service of per mile per diems is emphasized in Memo SBSE-04-0108-003. In particular, the Memo seems to impose a requirement on a carrier paying a per diem calculated according to mileage that it maintain a system for tracking amounts in excess of the daily amount of \$52 that is “deemed substantiated” under the regulations to §274(d). Such a system is costly and burdensome for motor carriers, yet Rev. Rul. 2006-56, the subsequent Rev. Rul. 2008-41, and Memo SBSE-04-0108-003 seem strongly to indicate that the lack of such a system will be considered by the Service a “pattern of abuse” that will render a plan nonaccountable.

The flat daily amount of \$52 is a safe harbor for taxpayers, but there is no comparable safe harbor for employers that pay a per diem based on mileage traveled. This considerably reduces the practicality of the use of a mileage per diem for motor carriers. Trucking company employers must reconcile a mileage per diem against the \$52 cap, and overages properly accounted for. This is a burdensome and expensive process for motor carriers. In an area where the potential penalties – upon the Service’s finding of a “pattern of abuse” – are so great, a large number of motor carriers have, since the issuance of Rev. Rul. 2006-56, been left with an industry practice – the payment of per diem allowances on the basis of miles traveled – that has been endorsed by Treasury but which has been made impractical by the formidable substantiation requirements imposed by the Service. The establishment of the per diem allowance now at \$52 indicates a recognition on the part of the Treasury Department that full and accurate substantiation is apt to remain a difficult matter for taxpayers in this area. But many motor carriers cannot, within the current structure of their businesses, easily avail themselves of this safe harbor.

What we are requesting is a safe harbor for per diem allowances calculated by mileage; that is, a per-mile figure at which a carrier, with respect to a per diem paid for a trip that takes a driver away from home, need not reconcile the amount paid against a flat daily payment amount. Such a safe harbor would restore to the industry the option the Treasury Department evidently meant it to have: a per-mile per diem mechanism without burdensome substantiation requirements.

There appears no reason in the Code why a per mile per diem safe harbor for meals and incidental expenses could not be established by the Service in this area, just as the Service has established a per day allowance. Since federal and state regulations strictly limit a truck driver’s driving time – and thus the distance he travels in a given

time, it would seem that the mileage traveled on a given trip could serve as an acceptable proxy for the expenses incurred by a driver during that trip. Provided always that the trip was “away from home” and had the requisite business connection, the payment for the trip of an allowance that did not in total exceed the cents-per-mile safe harbor would under this proposal be “deemed substantiated”. The establishment of such a safe harbor would permit the industry to continue to use the mechanism of a per diem allowance for its drivers without having to resort to expensive and burdensome methods of substantiation. We would suggest, however, that motor carriers that choose to do so continue to be allowed to avail themselves of the established per diem allowance of \$52.

#### Issue Appropriate for IIR

This request for guidance falls within the criteria set out in Rev. Proc. 2003-36 for an issue appropriate for the IIR process: (1) the proper treatment of common fact situations in this area is uncertain for taxpayers, in that motor carriers are no longer sure that they can as a practical matter pay per diem allowances computed on the basis of mileage; (2) Memo SBSE-04-0108-003 indicates per diem allowances paid by motor carriers will be the focus of numerous examinations; (3) the uncertainty results in expense for taxpayers attempting to comply, for the Service in auditing these taxpayers, and in potentially crippling penalties for those taxpayers that are found out of compliance; (4) the issue is significant and affects many thousands of taxpayers, most of them small businesses; and (5) resolution of the issue involves extensive factual development and an understanding of specific practices in the motor carrier industry. While we believe that all of these criteria apply to our request, the third and fifth elements may have the most relevance.

Conversely, the issue does not share the characteristics declared by Rev. Proc. 2003-31 to indicate that an issue is not appropriate for the IIR: (1) the issue is not unique to one or a small number of taxpayers; (2) the issue is not under the jurisdiction of the Service’s Operating Divisions rather than the LMSB and SB/SE; (3) the issue does not involve tax avoidance or evasion and concerns bona fide business purposes; and (4) the issue does not involve transfer pricing or tax treaties.

#### Industry Assistance

If the Service grants our request for guidance on this issue, we stand ready to provide assistance in determining industry practices and in gathering the relevant facts and statistics.

Contacts

Should the Service desire more information concerning this submission, please contact either of the two individuals below:

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We thank the Service for its consideration of this request.

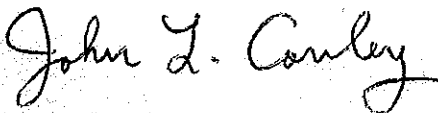
Sincerely,



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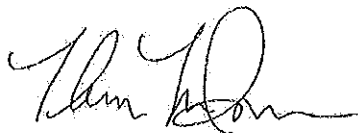
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