

One-Year Assignment Limit Rule

The IRS has long held that for an employee traveling away from home on business to receive tax-free travel benefits (meal, lodging, and transportation) 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 work site is considered the employee's tax home and all travel benefits paid would be considered taxable compensation. The rationale for the rule is that for an assignment lasting more than one year, the employee would be reasonably expected to move their residence to minimize travel expenses.

One-Year Limit

More precisely, 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 and 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 work site 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 and other assignments in the same area, 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. Note the additional income tax burden (could approach or exceed a 40 percent tax rate) on the increased taxable income may be deemed unacceptable and outweigh 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 at least 13 weeks (see *Break in Assignment* discussion) will be uncertain.** During this break period there can be no definitive plans 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 traveler is not expected to be in the same area for more than a full year. Note this counting is 365 *continuous calendar days* from the first day of the initial assignment in the area. Only counting days worked or any sort of subtraction of days for short assignment breaks will not solve the issue.

DISCLAIMER: The information contained herein is general in nature and based on authorities that are subject to change. Tax information contained in this document is not intended to be used, and cannot be used, by any person as a basis for avoiding tax penalties that may be imposed by the IRS or any state. We recommend each taxpayer seek advice based on their circumstances from an independent tax advisor.