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broadly, however, *Lake* introduces the possibility that the Kentucky Court of Appeals is de-emphasizing the policy of finality in favor of justice. Regardless of which of these competing interests is emphasized, the Court should thoughtfully balance them rather than mechanically follow the "law of the case" doctrine. When faced with a situation similar to *Lake*, it should welcome the opportunity to correct its past mistakes instead of attempting to camouflage them in its rationale of the case. Only when this is done will the "law of the case" doctrine serve any useful purpose in Kentucky law.

Michael McGraw

FEDERAL INCOME TAXATION—A SURVEY OF COMMUTING DEDUCTIONS UNDER § 162 OF THE INTERNAL REVENUE CODE AND THE RAMIFICATIONS OF UNITED STATES V. CORRELL

The scope of this comment is specifically limited to the deductibility of commuting expenses where a taxpayer drives to work, and returns to his residence that same day. The cases to be discussed are those in which the taxpayer has incurred only transportation expenses as distinguished from situations in which transportation as well as meals and lodging are involved. The statutory language in the commuting area is very general, and subjecting this problem to judicial scrutiny has resulted in confusion and divergent treatment among taxpayers.

   (a) *In General.*—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—
   (2) traveling expenses (including amounts expended for meals and lodging ...) while away from home in the pursuit of a trade or business.

2 Some of the confusion in this area may be because of the generally small amounts involved in the taxpayer's claim which limit the attorney's research time.

3 Compare Gregorio Castillo, 1971-87 Tax Ct. Mem. (April 26, 1971) with Donald W. Fausner, 55 T.C. 620 (1971). On identical facts Fausner was allowed a portion of his commuting expenses because he was required to carry his flight bag and suitcase with him, but Castillo's deduction was denied only because he lived in the Ninth instead of the Second Circuit. (controlled by Sullivan v. Comm'r., 388 F.2d 1007 (2d Cir. 1966)). Compare United States v. Tauferner, 407 F.2d 248 (10th Cir. 1969), with Edmerson v. United States, 25 Am. Fed. Tax R.2d 70-1263 (D.C. Wash. 1970). In these cases the courts reached opposite results with respect to taxpayers who commuted to employment located in a remote area. Compare Berhow v. United States, 279 F. Supp. 737 (D. Neb. 1968), with William B. Turner, 56 T.C. No. 3 (April 8, 1971). Here the courts were divided on the question of whether the taxpayers could deduct commuting when working temporarily at a distant job site.
The purpose of this comment is to survey the area of commuting in general, with special emphasis on the effects of the Supreme Court's decision in *United States v. Correll*. The cases relevant to the commuting question will be examined with an attempt to separate the entire body of case law into specific identifiable factual situations. This conceptual breakdown should prove helpful to the practicing attorney when faced with a specific "commuting" situation.

**INTRODUCTION**

The cost of going to and from an individual's place of employment and residence is generally characterized as a non-deductible commuting expense. The following situations have not caused this basic

\[4 889 U.S. 299 (1967)\]. In *Correll* the Court in approving the Commissioner's "overnight rule" held meal expenses incurred on one-day trips were not deductible under § 162(a) (2) as "away from home" expenses because the trip did not require sleep or rest.

principle to be altered: when public transportation is unavailable; when the taxpayer is subject to emergency calls; where the husband and wife work in different cities; when the expenses are necessitated by physical disability; or even where a great distance must be traveled. In Frank H. Sullivan the Board of Tax Appeals, following English precedent and Internal Revenue Service Solicitors Memorandum 1048, established the American judicial doctrine that commuting is a non-deductible personal expense which results from the taxpayer's choice of residence and not the exigencies of his business. However, as will be seen, if a business purpose can be attributed to the trip, the deduction may be allowed. Before discussing these "commuting" cases the relevant statutory provisions will be examined in detail.

**Statutory Pattern**

As noted above, commuting is generally a non-deductible personal expense. However, when intimately related to business, commuting

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12 Sol. Mem. 1048, 1 Cum. Bull. 101 (1919): Obviously an individual is free to fix his residence wherever he chooses. He fixes it according to his personal convenience and inclinations, as a matter separate and apart from business. Any expense, therefore, incident to such residence as fixed by the individual is a matter personal to him. If he prefers, for personal reasons, to live in a different city from that in which his business or employment is located, any expense incident to so doing is the result of decision based on personal convenience and preference, and it is not the result of anything undertaken for business purposes and, therefore, is not a business expense.
15 Commuting expenses have been held deductible in Sullivan v. Comm'r, 368 F.2d 1007 (2d Cir. 1966) (taxpayer carrying tools); Joseph H. Sherman, 16 T.C. 332 (1957) (taxpayer with two places of employment); Wright v. Hartsell, 305 F.2d 221 (9th Cir. 1962) (worksite in remote area); Carlson v. Wright, 181 F. Supp. 558 (D.C. Idaho 1959) (taxpayer resides centrally to several distant worksites); Wright v. Hartsell, 305 F.2d 221 (9th Cir. 1962) (employment is temporary).
expenses are deductible under § 162 of the Internal Revenue Code of 1954 which states:

(a) In General.—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business including—

. . . .

(2) traveling expenses (including amounts expended for meals and lodging . . .) while away from home in the pursuit of a trade or business. . . .

Although failure to qualify under § 162 is a sufficient basis upon which to justify disallowance of the deduction, the courts also frequently allude to § 26216 (which disallows deductions for personal expenses) to further support their conclusion that the expense should be non-deductible. Thus these sections overlap to the extent that a personal expense disallowed under § 262 is the antithesis of a business expense which would be allowed under § 162.17 Although § 262 disallows personal expenses, it is limited to the disallowance of those personal expenses for which a deduction is not "otherwise expressly provided,"18 and therefore an expense may be personal in nature and still be deductible because of an intimate relation to business.19 For example, although commuting is generally a non-deductible personal expense, carrying tools may be sufficiently related to carrying on a business so that the expense will be allowed under § 162(a).

In order that the statutory scheme be complete, the interrelation of § 162 and § 62 must be considered. Section 6220 lists all types of

16 INT. REV. CODE OF 1954, § 262. PERSONAL, LIVING, AND FAMILY EXPENSES. Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses. Treas. Reg. § 1.262-1(b)(5).

The taxpayer's cost of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses.


18 INT. REV. CODE OF 1954, § 262.

19 Cases cited note 15 supra.

20 INT. REV. CODE OF 1954, § 62. ADJUSTED GROSS INCOME DEFINED. [T]he term 'adjusted gross income' means . . . gross income minus the following deductions.

(1) Trade and business deductions.—The deductions allowed by this chapter . . . which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Trade or business deductions of employees.—

. . . .

(B) Expenses for travel away from home.—The deductions allowed by part VI (sec. 161 and following) which consist of (Continued on next page)
expenditures which are allowed in computing adjusted gross income.\textsuperscript{21} Any items not listed in \S 62 must be deducted in computing taxable income under \S 63.\textsuperscript{22} Section 162 provides the substantive requirements which must be satisfied in order to deduct transportation expenses.\textsuperscript{23} Once a particular expense qualifies under \S 162, it must next be determined whether or not it may be allowed in computing adjusted gross income under \S 62.\textsuperscript{24} There are two major corresponding subdivisions in \S 162 and in \S 62 which must be considered. First, \S 162(a)\textsuperscript{25} allows transportation expenses incurred in the taxpayer's metropolitan or "home" area to be deducted as general business expenses.\textsuperscript{26} Under \S 162(a) the expenses must be "ordinary and necessary"\textsuperscript{27} and incurred in "carrying on a trade or business."\textsuperscript{28} Expenditures which meet the \S 162(a) requirements of deductibility are allowed in computing adjusted gross income by virtue of the corresponding provisions in \S\S 62(2)(B) and 62(1).\textsuperscript{29} Second,\textsuperscript{26} 

(Footnote continued from preceding page) 

expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee. 

(C) Transportation expenses.—The deductions allowed by part VI (sec. 161 and following) which consist of expenses of transportation paid or incurred by the taxpayer in connection with the performance by him of services as an employee. 

\textsuperscript{21} Treas. Reg. \S 1.62-1(b); Section 62 merely specifies which deduction shall be allowed in computing adjusted gross income. It does not create any new deductions. 

\textsuperscript{22} Int. Rev. Code of 1954, \S 63. 

\textsuperscript{23} See notes 1 supra and 27, 28, 31, 32, and accompanying text infra. 

\textsuperscript{24} This categorization is significant in two respects. First, deductions from adjusted gross income may only be taken in lieu of the standard deduction. See e.g., Frank Fisher, 24 T.C. 1118 (1954). Second, the adjusted gross income figure is used in computing the amount of certain deductions (medical expenses \S 213, charitable contributions \S 170, child care \S 214, amount of the standard deduction \S 141). 

\textsuperscript{25} Note 1 supra. 

\textsuperscript{26} Treas. Reg. \S 1.62-1(g). 

\textsuperscript{27} Treas. Reg. \S 1.62-1(g). Rev. Rul. 58-479, 1958-2 Cum. Bull. 60. "Ordinary and necessary" have been defined as follows: 

(1) An expense is 'ordinary,' within the meaning of these statutory provisions, where the expense is common and accepted in the general industry or type of activity in which the taxpayer is engaged; and (2) An expense is 'necessary' where it is appropriate and helpful in furthering the taxpayer's business. . . . Lamont, Controversial Aspects of Ordinary and Necessary Business Expense, 42 Taxes 808 (1964). 


\textsuperscript{28} Definition of "trade or business" is more limited than merely engaged in activity for profit. It has been defined as "holding one's self out to others as engaged in the selling of goods or services". Deputy v. Du Pont, 308 U.S. 488 (1940) (Mr. Justice Frankfurter concurring). For purposes of \S 162 an employee is considered to be engaged in a trade or business. Noland v. Comm'r, 269 F.2d 108 (4th Cir. 1959); Thomas v. Patterson, 289 F.2d 108 (5th Cir. 1961); Trent v. Comm'r, 291 F.2d 669 (2d Cir. 1961). 

\textsuperscript{29} Note 20 supra.
§ 162(a)(2) allows transportation costs incurred away from the taxpayer's residence or principle post of duty to be deducted as "away from home" expenses. Under § 162(a)(2) the expenses must be "reasonable and necessary" traveling expenses incurred in the "pursuit of a trade or business," and in addition be expended "while away from home." Section 162(a)(2) type expenditures are allowed in computing adjusted gross income by virtue of §§ 62(2)(B) and 62(1).

The first "commuting" cases to be discussed are those which have arisen under the § 162(a) general business expense provisions. These cases involve transportation expenses incurred within the taxpayer's "home" area. They are: (1) where the taxpayer must commute to work and carry his tools, and (2) when the taxpayer has more than one place of employment within his general area of employment and must drive between various locations during his work day. The second group of cases have arisen under § 162(a)(2) and involve commuting expenses incurred while "away from home" on one-day trips. They include: (1) various places of employment located in different cities, (2) employment located in a remote area where living quarters are unavailable, (3) residence centrally located to various employment locations, and (4) temporary employment. The ultimate question in these latter cases has been the definition of "home" within the meaning of § 162(a)(2). In order to obtain a deduction under these exceptions to the "commuter rule," the taxpayer must persuade the court that his residence is his "tax home," so that all transportation away from his residence will be "away from home."

30 Note 1 supra.
31 This is substantially the same requirement as the "ordinary and necessary" test under § 162(a). Note 27 supra. "Reasonable and necessary" is construed to mean "appropriate" or "helpful." Rev. Rul. 64-272, 1964-2 CUM. BULL. 55; Rev. Rul. 63-275, 1963-2 CUM. BULL. 85. See Comm'r v. Flowers, 326 U.S. 465 (1945).
32 The expense must be incurred in pursuit of business. This means that there must be a direct connection between the expenditure and the carrying on of the trade or business of the taxpayer or of his employer. Maurice Wills, 48 T.C. 308 (1967), aff'd 411 F.2d 537 (9th Cir. 1969). See Comm'r v. Flowers, 326 U.S. 465 (1945); Cyril K. Chappuis, 27 CCH Tax Ct. Mem. 222 (1968).
34 Note 20 supra. Treas. Reg. § 1.62-1(e).
COMMENTS

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COMMITTING WITH TOOLS—§ 162(a)

When the taxpayer is required to carry tools to work in his automobile, at least some portion of his commuting expense may be deductible. The conceptual notion involved here is that the taxpayer may be said to be "carrying on a trade or business" within the meaning of § 162(a) from the time he departs from his residence with a carload of tools, instead of his job beginning when he arrives at his worksite. The original position of the Internal Revenue Service with respect to deductibility of tool transportation expenses was announced in Revenue Ruling 56-25 where the service stated that commuting expenses were nondeductible notwithstanding the fact that the taxpayer also carried tools.\textsuperscript{35} The first case to express a view contrary to this principle was Charles T. Crowther.\textsuperscript{36} In Crowther\textsuperscript{37} and cases following, the Tax Court allowed a deduction for the portion of the expense allocable to the transportation of bulky tools since the necessity of carrying tools prevented possible use of cheaper transportation.\textsuperscript{38} In Rice v. Riddell\textsuperscript{39} a federal district court allowed a full deduction for transportation expenses incurred by a musician who carried several bulky instruments.\textsuperscript{40} The court reasoned that since he would not have driven to work but for the necessity of carrying his musical instruments the entire automobile expense should be allowed. The Internal Revenue Service in Revenue Ruling 63-100\textsuperscript{41} based on facts similar to Rice, modified

\textsuperscript{35} Rev. Rul. 56-25, 1956-1 CUM. BULL. 152.

\textsuperscript{36} The expenses incurred by an employee in using his automobile for commuting between his place of abode and his place of work ... represent non-deductible personal expenses within the purview of section 262 . . . notwithstanding the fact that the automobile is also used to transport tools used by the employee in his work.

\textsuperscript{37} 28 T.C. 1293 (1957).

\textsuperscript{38} On appeal the Ninth Circuit allowed the entire expense but based the decision on other factors. Crowther v. Comm'r, 296 F.2d 292 (9th Cir. 1959).


\textsuperscript{40} 179 F. Supp. 576 (S.D. Cal. 1959).

\textsuperscript{41} But see, Teague v. Riddell, 4 Am. Fed. Tax R.2d 5190 (S.D. Cal. 1959) (deduction denied musician because his costs were not increased by transportation of bass violin).

\textsuperscript{41} Rev. Rul. 63-100, 163-1 CUM. BULL. 34. Automobile expense of musician transporting his instruments between home and place of work are deductible if instruments are too bulky to be carried otherwise, and he would not use automobile except for that reason.

The Tax Court in James A. Kistler, 40 T.C. 657 (1963), held that only the excess transportation cost allocable to the musical instruments and not the entire transportation cost is deductible. This opinion was subsequently withdrawn.
their position in Revenue Ruling 56-25\(^\text{42}\) following Rice to the extent that if the taxpayer would not have driven his automobile to work but for the necessity of carrying tools, the commuting deduction should be allowed. Subsequently the Second Circuit in Sullivan v. Commissioner\(^{43}\) went beyond Revenue Ruling 63-100\(^{44}\) and allowed a construction worker to deduct that portion of his commuting expense which the taxpayer could show was allocable to the transportation of tools, even if he would have driven to work had it not been necessary to transport tools. Thus, even if public transportation is unavailable and the taxpayer would have driven to work in any event, he is nevertheless entitled to a partial deduction when he carries tools. The Second Circuit gave no indication of how to make the allocation between deductible and nondeductible commuting, and on remand the Tax Court held without explanation that the taxpayer was entitled to deduct one-third of his automobile expense.\(^{45}\)

The decision in Sullivan was soon followed by the Seventh Circuit's holding in Tyne v. Commissioner,\(^{46}\) which approved the even if test of Sullivan. On remand of Tyne, the Tax Court again held without explanation, that the taxpayer was entitled to deduct 50% of the transportation expenses incurred. The taxpayer appealed, but the even if theory was abandoned and the Seventh Circuit held that he would be entitled to a full deduction if he could prove that he would not have driven to work but for the necessity of transporting tools.\(^{47}\)

Despite Sullivan and the first Tyne decision the Tax Court has

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\(^{42}\) Rev. Rul. 56-25, 1956-1 Cum. Bull. 152, is modified to remove the implication that such expenses would not be deductible even if the employee would not have used his automobile on such trips but for the necessity of taking his tools with him. Rev. Rul. 63-100, 1963-1 Cum. Bull. 34.

\(^{43}\) 368 F.2d 1007 (2d Cir. 1966), rev'd and rem'd 45 T.C. 217 (1965).

\(^{44}\) Note 41 supra.


There are several possibilities for developing guidelines for allocating transportation expenses. First, a predetermined percentage might be established which would be applicable in all tool transportation deduction cases. A second method would be to allow the taxpayer to deduct the expense of having the tools carried by a delivery service if such expense did not exceed the total cost of transportation. A third possibility would be to allow a deduction based on the proportionate weight of the tools to the total weight of the tools and the taxpayers. 4 San Diego L. Rev. 323, 327 n. 17 (1967).

In Arnold T. Anderson, 55 T.C. 756 (1971), the Tax Court held that a taxpayer carrying bulky tools too heavy for public transportation may deduct automobile expenses exceeding the cost of public transportation. 385 F.2d 40 (7th Cir. 1967), rev'd and rem'd 25 CCH Tax Ct. Mem. 1112 (1966).

\(^{46}\) Tyne v. Comm'r, 409 F.2d 485 (7th Cir. 1969), rev'd and rem'd an unreported Tax Court decision.
refused to follow the *even if* allocation.\(^{48}\) The Tax Court reasoned against the *even if* test by stating that if the taxpayer would have driven to work in any event his costs are not increased by transporting tools and no deduction should be allowed.\(^{49}\) However, in *Donald Fausner*\(^ {50}\) where a pilot carried his flight bag to work, the court accepted the *even if* rule since that case arose in the Second Circuit and was controlled by *Sullivan*.\(^ {51}\) The Tax Court has also held in *Arnold T. Anderson*,\(^ {52}\) contrary to the second *Tyne* decision, that it will not allow a full deduction even where the taxpayer would not have driven to work *but for* the necessity of carrying tools. The court was of the opinion that only expenses above and beyond those which the taxpayer would otherwise ordinarily incur in commuting should be deductible. Thus, if the taxpayer normally rode the bus he would subtract the usual bus fare from his automobile expense when computing the amount of his deduction.

**TWO PLACES OF EMPLOYMENT—§ 162 (a)**

The taxpayer who has two employment locations within his general area of employment is allowed a deduction for transportation costs incurred in going from one business location to another.\(^ {53}\) This is not a pure exception to the "commuter rule" since the taxpayer is driving between businesses and not between his residence and business. The deductions allowed here are only those incurred in going from one business or employment location to another, and not those incurred in commuting between one's residence and business. For example, in *Robert B. Steele*\(^ {54}\) a building inspector was allowed to deduct costs of transportation between various buildings he inspected but was denied a deduction for commuting from his residence to the first location inspected and expenses from the last location he inspected to his residence. Thus, if the taxpayer reports to various employment loca-


\(^{49}\) Id.

\(^{50}\) 55 T.C. 620 (1971).


tions throughout his work area but does not visit at least two on the same day, no deduction is allowed.\textsuperscript{55} This result is achieved because the expenses of the trip to work and return to residence are non-deductible commuting expenses.\textsuperscript{56}

**Effects of United States v. Correll**

In *United States v. Correll*\textsuperscript{57} the Supreme Court of the United States held that meal expenses which were incurred on one-day business trips away from the taxpayers residence but did not keep him away “overnight” were not deductible as “away from home” expenses under § 162(a)(2).\textsuperscript{58} In so holding, the Court sustained the validity of the Commissioner’s so called “overnight rule,”\textsuperscript{59} which provides that a trip must require sleep or rest in order for the travel expenses to be deductible under the “away from home” provisions of § 162(a)(2). Since in *Correll* the taxpayer was not “away from home” within the meaning of the “overnight rule” his meal expenses were held non-deductible. Unfortunately recent Tax Court cases\textsuperscript{60} have held that *Correll* precludes the deduction of one-day trip transportation costs under § 162(a)(2). However, the application of the “overnight rule” to transportation costs as distinguished from meals and lodging may be unjustified. In light of *Correll* it is necessary to consider the applicability of the “overnight rule” to transportation costs incurred on one-day trips before discussing the “commuting cases” arising under § 162(a)(2).

The *Correll* decision held that a taxpayer on a one-day trip is not permitted to deduct his meal expenses. However, the transportation issue was not before the Court in *Correll* and the decision cannot be regarded as controlling on the question of whether the “overnight rule” applies to one-day trip transportation expenses. This is supported

\textsuperscript{55} It is generally recognized that transportation to and from work within the taxpayer’s general metropolitan area is nondeductible commuting. Amoroso v. Comm’r, 193 F.2d 583 (1st Cir. 1952); Joseph M. Winn, 32 T.C. 220 (1959); R. C. Musser, 3 B.T.A. 495 (1925); Rev. Rul. 55-238, 1955-1 Cum. Bull. 274.


\textsuperscript{57} 389 U.S. 299 (1967).

\textsuperscript{58} Int. Rev. Code of 1954, § 162(a)(2).


by some of the rationale for the holding which suggests a contrary result when transportation expenses are at issue. The Court stated that § 162(a)(2) "speaks of 'meals and lodging' as a unit, suggesting . . . that Congress contemplated . . ." a meal deduction only when lodging is involved.61 No comparable argument is available in the case of transportation expenses.62

The Correll Court also stated that the enactment of the 1954 Code subsequent to the Commissioner's promulgation of the "overnight rule" indicated Congressional approval thereof.63 This reasoning is in accordance with the conclusion that the "overnight rule" does not apply when one-day trip commuting expenses are involved. This conclusion follows for the reason that when the 1954 Code was adopted, the courts had held64 that these costs could be deducted in arriving at adjusted gross income under the "away from home" provisions of § 22(n) of the 1939 Code.65 Having reached this result in Kenneth Waters66 the Tax Court stated:

Surely it would be absurd to say that an employee who flies from Boston to Washington on business and returns to Boston the same day is not entitled to the deduction, but that if he takes two days for the whole trip, he is entitled to the deduction.67

In Joseph M. Winn,68 the Tax Court followed Waters with reference to transportation expenses but held that the "overnight rule" precluded a deduction for meals. In Revenue Ruling 60-14770 the Internal Revenue Service acquiesced, stating that transportation costs incurred on one-day trips arising under § 22(n) of the 1939 Code would subsequently be allowed in computing adjusted gross income.71

62 See Joseph M. Winn, 32 T.C. 220 (1959); Alan L. Hanson, 35 T.C. 418, rem'd Hanson v. Comm'r, 298 F.2d 391 (9th Cir. 1962); Comm'r v. Bagley, 374 F.2d 204, 207 n.10 (1st Cir. 1967).
67 12 T.C. 414 (1949).
68 Id. at 417.
70 Rev. Rul. 60-147, 1960-1 CUM. BULL. 682.
71 The Internal Revenue Service will no longer litigate cases arising under section 22(n)(2) of the Internal Revenue Code of 1939 where an employee incurs transportation expenses (as distinguished from the cost of meals and lodging) on business trips which take him outside his home area but do not keep him away from home overnight. Rev. Rul. 60-147, 1960-1 CUM. BULL. 682.
When the 1954 Code was adopted § 22(n) was carried over as § 62(2)(B) and § 62(2)(C) was added.\textsuperscript{72} The Committee Reports suggest that the purpose of the addition was to allow transportation expenses incurred while not "away from home" to be deducted in computing adjusted gross income.\textsuperscript{73} The Tax Court in \textit{William B. Turner}\textsuperscript{74} has recently clandestinely intimated that the addition of § 62(2)(C) exhibits a congressional intent to exclude one-day trip transportation expenses from deductibility under the "away from home" provision. However, the legislative history demonstrates that the addition of § 62(2)(C) was not intended to limit the § 162(a)(2)-§ 62(2)(B) "away from home" provision to situations in which the trip is an "overnight" one, but was only added in order to allow employees an adjusted gross income deduction for metropolitan area transportation costs.\textsuperscript{75}

There is a substantial amount of precedent supporting the view that the "overnight rule" does not apply to the one-day trip transportation situation.\textsuperscript{76} The decisions arising under the 1939 Code reaching this conclusion held that the "overnight rule" did not apply to preclude deductions under § 22(n).\textsuperscript{77} The decisions arising under the 1954 Code ordinarily allowed the deductions under § 162(a)(2) without discussing the applicability of the "overnight rule."\textsuperscript{78} The courts have recently, on the basis of \textit{Correll}, abandoned these precedents and held § 162(a)(2) inapplicable to the one-day trip situation.\textsuperscript{79} As suggested above such a result is probably beyond the scope of the holding in \textit{Correll}. After finding the § 162(a)(2) "away from home" provisions inapplicable because of \textit{Correll}, the courts have looked to the § 162(a)\textsuperscript{80} general business expense provisions as a basis for the deduction. Since there is no precedent under § 162(a) the expenses

\textsuperscript{73} Because these expenses, when incurred, usually are substantial, it appears desirable to treat employees in this respect like self-employed persons. . . . Thus, employees will be able to deduct business transportation expenses and still use the standard deduction. S. Rep. No. 1622, 83d Cong., 2d Sess. 9 (1954).
\textsuperscript{74} 50 T.C. No. 3 (April 8, 1971).
\textsuperscript{76} Cases cited notes 65 supra and 78 infra.
\textsuperscript{77} Cases cited note 65 supra.
\textsuperscript{78} Carlson v. Wright, 181 F. Supp. 568 (D. Idaho 1959); Wright v. Hartsell, 305 F.2d 231 (9th Cir. 1962); Crowther v. Comm'r, 269 F.2d 292 (9th Cir. 1959); Mathews v. Comm'r, 310 F.2d 98 (9th Cir. 1962). But in Emmert v. United States, 146 F. Supp. 322 (S.D. Ind. 1955), the court specifically refused to follow the "overnight rule" with respect to transportation costs. Nor was one judge "... to be penalized on the basis that he is a commuter because he has chosen to travel almost daily between his home and the court."
\textsuperscript{79} Cases cited note 60 supra.
\textsuperscript{80} Intr. Rev. Code of 1954, § 162(a), note 1 supra.
have been routinely disallowed without discussion of the possibility of applying the exceptions to the "commuter rule" previously developed under § 162(a)(2). Assuming that this construction of Correll is correct there seems to be no reason why the courts should not apply these judicially created exceptions to § 162(a) in order to reflect the policy of allowing all business related expenditures to be deducted, instead of abruptly abandoning these § 162(a)(2) precedents with respect to one-day trip transportation costs.

TWO PLACES OF BUSINESS OR EMPLOYMENT—§ 162(a)(2)

Where the taxpayer has two places of business or employment, one of which is located in a city or area outside of his general metropolitan area, he is entitled to a § 162(a)(2) "away from home" expense deduction for transportation costs incurred in driving between them. This is to be distinguished from the situation arising under § 162(a), which allows deductions of transportation expenses incurred by the taxpayer in getting from one business or employment location to another within his general metropolitan or "tax home" area. Thus, when state supreme court justices are required by law to maintain their residence in a particular district of the state, and the court sits in a distant city, the taxpayer is allowed a deduction for his transportation expenses incurred in driving to and from his residence. A similar situation arises where the taxpayer has a business in a distant city and also a business in the city of his residence, as in Joseph H. Sher-
man,\textsuperscript{85} where the Tax Court held that when the taxpayer can establish two geographically separate business locations, he is entitled to deduct the transportation expenses incurred in commuting to the business removed from the city of his residence.

**REMOTE AREA EMPLOYMENT—§ 162(a)(2)**

When it is impossible for the taxpayer to reside near his job site the expenses of commuting to and from the nearest habitation have been deductible.\textsuperscript{86} *Wright v. Hartsell*\textsuperscript{87} is the most often cited although there were at least two cases recognizing this principle when *Hartsell* was decided.\textsuperscript{88} In *Hartsell* the taxpayer drove 140 miles round trip to and from a remote job site. To the extent the employment was temporary, since he could not reasonably be expected to move his residence to employment of a short duration, Hartsell was entitled to a full deduction. However, when the employment became indefinite, meaning that it was expected to continue for a substantial length of time (usually more than one year), and the nearest he could live to the site was 46 miles, the expenses of 92 miles of the round trip were allowed. The court recognized it was the exigencies of business rather than the taxpayer's personal choice which necessitated the travel.\textsuperscript{89} The *Hartsell* court compared the remote area situation to that of the taxpayer with two widely separated jobs "who obviously cannot live simultaneously in both localities."\textsuperscript{90} The court concluded

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\textsuperscript{85} 16 T.C. 332 (1957).


\textsuperscript{87} 305 F.2d 221 (9th Cir. 1962).

\textsuperscript{88} Carlson v. Wright, 181 F. Supp. 568 (D.C. Idaho 1959) (deduction allowed temporarily employed taxpayer who could reside no closer than 55 miles from work site); Crowther v. Comm'r, 269 F.2d 292 (9th Cir. 1959) (deduction allowed logger who drove to various temporary logging sites). In *Crowther* the taxpayer carried tools but in a later decision where a taxpayer drove to various logging sites and did not carry tools the same court held the tool issue was not essential to the *Crowther* decision and allowed the deduction. Mathews v. Comm'r, 310 F.2d 98 (9th Cir. 1962) (per curiam), rev'd 36 T.C. 483 (1961).

\textsuperscript{89} Distinguishing Comm'r v. Flowers, 326 U.S. 465 (1945), where the court found the travel did result from the taxpayer's personal choice.


The cases under consideration are not cases involving a taxpayer with

\begin{footnotesize}(Continued on next page)\end{footnotesize}
"that a taxpayer’s inability to live near his job site is a valid ground for the deduction as travel expense the resulting cost of his transportation. . . ." 91 In Leo M. Verner 92 commuting deductions were disallowed because the situation was not sufficiently analogous to Hartsell as there was merely a scarcity of housing in the work area. 93 The Verner court distinguished the situation in that case as being quite different from a work site located in the middle of a vast desert as in Hartsell. 94 More recently, in Sanders v. Commissioner, 95 civilian employees who weren’t allowed to live on a remote Government base were denied deductions for automobile expenses incurred in traveling to work from the nearest habitable community. The court distinguished the temporary employment situation in Hartsell since in Sanders the employment was permanent. However, in Hartsell the deduction was allowed for driving to the remote area when the employment was indefinite, as well as when it was temporary. Therefore, although for tax purposes there is a valid distinction between temporary and indefinite employment, 96 there seems to be no such distinction recognized between permanent and indefinite employment, and the court’s rationale in this respect appears erroneous. The Sanders court also noted that Hartsell had been undermined by the decision in Smith v. Warren 97 in which a deduction was denied under § 162(a) to a ship pilot for expenses incurred in traveling between his home and various piers at which he worked on the Seattle waterfront. Although Smith did not involve a remote area it was analogous in the sense that no matter how close to the waterfront

(Footnote continued from preceding page)

a temporary job; or a taxpayer with a permanent job and a temporary assignment; or a taxpayer working in two widely separate localities; or a public official who is required to maintain his residence in his home district but perform his official duties elsewhere. . . . 52 T.C. at 988.

Here we are concerned with "taxpayers with permanent places of employment who commute regularly between residence and work." 52 T.C. at 988.

91 Wright v. Hartsell, 365 F.2d 221, 225 (9th Cir. 1962).
93 See Arthur Sansone, 41 T.C. 271 (1963); James R. Whitaker, 24 T.C. 750 (1955); Willard S. Jones, 13 T.C. 880 (1949); Henry C. Warren, 13 T.C. 205 (1949).
95 499 F.2d 296 (9th Cir. 1971), cert. denied, 40 U.S.L.W. 3141 (U.S. Oct. 12, 1971) (No. 70-185), aff’g 52 T.C. 964 (1969).
96 The theory of the temporary-indefinite rule is that when a taxpayer accepts temporary employment away from his residence, he cannot reasonably be expected to uproot his family and establish a place of residence near his employment, so his residence is considered his “tax home” and the expenses are considered due to the exigencies of business. Peurifoy v. Comm’r, 358 U.S. 59 (1958); Wright v. Hartsell, 305 F.2d 221 (9th Cir. 1962); E. G. Leach, 12 T.C. 20 (1949); Harry F. Schurer, 3 T.C. 544 (1944). See Rev. Rul. 60-189, 1960-1 Cum. Bull. 69 (one year limit on “temporary assignment”).
97 338 F.2d 671 (9th Cir. 1968).
he moved, the taxpayer necessarily incurred automobile expenses in going to work. Seemingly on this basis the Sanders court stated that "Smith v. Warren impliedly rejected necessity as a principled basis of an exception to the general rule that commuting expenses are non-deductible personal expenses." The court's analogy seems strained since in Smith the taxpayer did not travel outside his regular work area and the case merely stands for the generally accepted proposition that driving to and from work within a taxpayer's regular work area is a non-deductible commuting expense. Thus, in Sanders the court seems to be overreaching on this point and indicates a general willingness to disallow as commuting any expense of driving back and forth to work. The Sanders court also relied on United States v. Tauferner, in which deductions for commuting expenses were denied a taxpayer residing 27 miles from his job site, even though his residence was located in the nearest habitable community. In Tauferner as in Sanders the employment was permanent, however the principle authority relied upon in both of these cases was United States v. Correll, which the Sanders court held precluded a remote area deduction under § 162(a)(2) because the taxpayer was not away from home "overnight." Thus Correll defined "away from home" to exclude from § 162(a)(2) trips requiring neither sleep or rest. As previously discussed, reading Correll as applying the "overnight rule" to one-day trip transportation expenses as distinguished from meals is dicta and completely contrary to previous authority under § 162(a)(2). The courts in Tauferner and Sanders nevertheless abandoned previous decisions in this area, most notably Wright v. Hartsell, and reached the seemingly unjustified conclusion that § 162(a) is the only possible provision for deducting transportation expenses incurred on one-day trips. As a result, the courts are now readily characterizing every trip, notwithstanding impossibility of habitation or even temporary nature

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99 Notes 54, 55, 56 and accompanying text supra.
100 The courts in recent cases seem to be abandoning the fundamental policy of disallowing commuting only when there is an element of personal choice. For early cases establishing this principle see Frank H. Sullivan, 1 B.T.A. 93 (1924), and Comm'r v. Flowers, 326 U.S. 465 (1945). Cases typical of the current attitude are Sanders v. Comm'r, 439 F.2d 296 (1971), aff'g 52 T.C. 964 (1969), cert. denied, 40 U.S.L.W. 3141 (U.S. Oct. 12, 1971) (No. 70-185); United States v. Tauferner, 407 F.2d 243 (10th Cir. 1969); William B. Turner, 56 T.C. No. 3 (April 8, 1971); Virgil Q. Pemberton, 29 CCH Tax Ct. Mem. 875 (1970). But see note 90 supra.
101 407 F.2d 243 (10th Cir. 1969).
103 See text accompanying notes 54-85 supra.
104 See note 78 supra.
105 305 F.2d 221 (9th Cir. 1962).
as non-deductible commuting unless the taxpayer spends the night.\textsuperscript{106} This new approach is a complete abandonment of the \textit{Hartsell} rationale and since it is based on \textit{Correll} appears erroneous.

In another post-\textit{Correll} decision, \textit{Edmerson v. United States},\textsuperscript{107} the District Court of Washington allowed government employees who were not permitted to live at the job site to deduct their commuting expenses. In \textit{Edmerson} the court recognized that \textit{Correll} was not applicable to one-day trip \textit{transportation} expenses.\textsuperscript{108} The court rejected the Tax Court decision in \textit{Raymond A. Sanders},\textsuperscript{109} and followed the \textit{Hartsell} case even though in \textit{Edmerson} the employment was permanent. However, because the \textit{Edmerson} case is appealable to the Ninth Circuit, it is now effectively overruled by that court’s decision in \textit{Sanders v. Commissioner}.\textsuperscript{110}

\textbf{CENTRALLY LOCATED RESIDENCE—§ 162(a)(2)}

This factual situation arises where a taxpayer maintains his residence centrally to several distant work sites and commutes daily from his residence to one of the sites. Although this is a relatively untried area, the possibilities for obtaining a deduction appear to be favorable. The only case directly illustrative is \textit{Carlson v. Wright},\textsuperscript{111} which involved a construction worker who was employed at a series of temporary jobs surrounding his residence. However, the theory appears equally applicable to an employee who’s residence is centrally located with respect to a number of work locations he regularly visits as part of his permanent employment duties. The \textit{Carlson} court reasoned that since the taxpayer resided centrally to various work sites, so that his commuting expenses could not possibly be minimized by moving his residence, the expenses were deductible.

\textsuperscript{106} In \textit{United States v. Tauferner}, 407 F.2d 243, 246 (10th Cir. 1969), the Tenth Circuit expressed the current attitude of the courts:

\begin{quote}
The basic and unmodified fact of whether the taxpayer is going to the place where he begins work or is returning from the place where he ceases work should be determinative. Such travels are expenses within section 262 as "personal, living or family expenses" whether in an urban, suburban, or rural setting. They are not ordinary business expenses under section 162(a).
\end{quote}


\textsuperscript{108} The taxpayers in this case are not seeking to deduct expenses incurred for meals and lodging. Although \textit{Sanders} (\textit{Raymond A. Sanders}, 52 T.C. 964 (1969)) would equate meals (as in \textit{Correll}) to traveling expenses (as in \textit{Hartsell}) that legal computation has not yet been approved by the Ninth Circuit and until it is, \textit{Hartsell} remains the law and will be applied in this case. \textit{Id.} at 70-1264.

\textsuperscript{111} 181 F. Supp. 568 (D. Idaho 1959).
Carlson suggests a fair and workable approach to the problems in the commuting area in general, as well as to the central location aspect.\textsuperscript{112} The court advocated abandoning technical definitions of "home" as the test of deductibility in the commuting area, and substituting a consideration of whether under all the circumstances the expense was dictated by the exigencies of business.\textsuperscript{113} First, the court recognized the general proposition that a taxpayer should not be entitled to deduct expenses of commuting within his city or general work area.\textsuperscript{114} Second, the court would require that a taxpayer move as close as possible to his job\textsuperscript{115} and in this regard, case law indicates


\textsuperscript{113} It is settled that a taxpayer cannot deduct expenses incurred in traveling between his home and his place of business when both are located in the city or area. Such expenses are "commuting" expenses and are not incurred "while away from home." Id. at 573.

\textsuperscript{114} The court stated:

Although in many of the cases, considerable discussion has revolved around the meaning of "home" as used in section 162, the Court believes, as is suggested by the opinion in Barnhill v. Comm'r, 148 F.2d 913 (4th Cir. 1945), that the actual problem should be determined not by reference to a technical definition of the word "home," but rather by a consideration of whether, under the circumstances a particular expense may properly be considered an ordinary and necessary expense due to the exigencies of the taxpayer's trade or business and incurred in the pursuit thereof while away from the town or area where the taxpayer maintains his permanent residence. Carlson v. Wright, 181 F. Supp. 568, 573 (D. Idaho 1959).

\textsuperscript{115} This was also suggested in Comm'r v. Stidger, 386 U.S. 287, 298 (1967) (Mr. Justice Douglas, with whom Mr. Justice Black and Mr. Justice Fortas concurred, dissenting):

If the taxpayer chooses to maintain his residence at a place far removed from his place of business, the travel expenses are not "ordinary and necessary" since not dictated by business needs. Comm'r v. Flowers, 326 U.S. 465 (1946). On the other hand, if the taxpayer cannot reasonably maintain his residence at his place of business, the travel expenses are "ordinary and necessary" and hence deductible. Such an interpretation would give effect to the Congressional policy of allowing a deduction for expenses dictated by the needs of the taxpayer's employment.
that when housing is merely scarce the test would not be satisfied.\textsuperscript{116} In the central location situation the taxpayer would satisfy the second criterion simply by showing that he resided centrally in relation to two or more jobs. Under Carlson, the temporary-indefinite test should also be employed in keeping with the theory that the employee should not be expected to uproot his family and move his residence to an employment location of relatively short duration.\textsuperscript{117} The result of the first provision would be to prevent the deduction of any commuting within the taxpayer's general employment area, and the second would test whether the commuting was the result of personal choice.\textsuperscript{118} When applied to a specific commuting situation these provisions would allow a deduction for expenses dictated by business needs but prevent deduction of any expenses resulting from personal choice. Under this approach the deduction could be allowed as an "ordinary and necessary" business expense under § 162(a) although it borrows from judicially created exceptions to the "commuter rule" developed under § 162(a)(2). Using § 162(a) as a basis for the deduction would eliminate the problem created by the courts reading Correll as applying the "overnight rule" to one-day trip commuting costs, since the "overnight rule" only applies to the "away from home" provisions of § 162(a)(2).

Although Carlson v. Wright\textsuperscript{119} is the only case directly illustrating the central location concept, there have been cases which indirectly support the theory. In two recent decisions\textsuperscript{120} the Tax Court disallowed deductions as personal commuting expenses when the taxpayers could have avoided the costs by residing in central proximity to their job sites. These cases appear to suggest that commuting costs incurred by taxpayers residing centrally to their job sites will be deductible. There are also analogous situations where the taxpayer is "away from home" overnight and incurs meals and lodging as well as transportation expenses. In these situations the taxpayer has widely separated places of employment and his "tax home" is considered the area of his residence even if it is not his principle place of employment, or indeed a place of employment at all.\textsuperscript{121} In Revenue Ruling 71-247,\textsuperscript{122} the

\textsuperscript{116} See note 93 supra.
\textsuperscript{117} Note 98 supra.
\textsuperscript{120} Joseph J. Bunevith, 52 T.C. 887 (1969); Harold Gilburg, 55 T.C. 611 (1971).
Internal Revenue Service ruled that where a taxpayer maintains his residence somewhere in a widely separated work area his residence will be considered his “tax home” for purposes of the § 162(a)(2) meal and lodging deduction. Presumably, if the taxpayer in Carlson had spent the night at his work area, his residence would have been considered his “tax home” under Revenue Ruling 71-247, and his meals and lodging deductible under § 162(a)(2). Assuming that under the Correll holding the “overnight rule” is not applicable to one-day trip transportation expenses, Revenue Ruling 71-247 would seem to support a deduction under § 162(a)(2) when a factual pattern similar to that of Carlson arises.

TEMPORARY EMPLOYMENT—§ 162(a)(2)

When a taxpayer accepts employment away from his residence which is “temporary” as distinguished from “indefinite” or permanent, he is entitled to deduct the expenses of commuting from his residence to the temporary work site if the job is located outside of his general working area. Employment will be considered “temporary” if at its inception it is expected to last less than one year. The reason behind this rule is that the taxpayer cannot reasonably be expected to move his residence to a distant employment location of short duration. Although the “temporary” exception to the “commuter rule” was first recognized in connection with the “overnight rule,” it has also been applied to the one-day trip. The Internal Revenue Service has recognized the exception in IRS Publication No. 17 which states: “If you have a temporary or minor assignment beyond the general area of your tax home, and return home each evening, you can

123 INT. REV. CODE OF 1954, § 162(a)(2) note 1 supra.
125 INTERNAL REVENUE SERVICE PUB. NO. 17, YOUR FEDERAL INCOME TAX 57 (1972 ed.).
126 See note 96 supra.
127 Harvey v. Comm'r, 283 F.2d 491 (9th Cir. 1960); Barnhill v. Comm'r, 148 F.2d 913 (4th Cir. 1945); Arthur Sansone, 41 T.C. 277 (1963).
128 Harry F. Schurer, 3 T.C. 544 (1944); E. G. Leach, 12 T.C. 20 (1949); Peurifoy v. Comm'r, 358 U.S. 59 (1959), aff'd 254 F.2d 483 (4th Cir. 1957); rev'd 27 T.C. 149 (1956); Cockrell v. Comm'r, 321 F.2d 504 (8th Cir. 1963).
130 INTERNAL REVENUE SERVICE PUB. NO. 17, YOUR FEDERAL INCOME TAX 57 (1972 ed.).
deduct the expenses of the daily round trip transportation." One of the cases illustrative is Wright v. Hartsell where the taxpayer drove 140 miles round trip in commuting daily to his worksite. The court approved a deduction for the "temporary" portion of the employment but denied it when the employment became "indefinite." The deduction was disallowed for the latter because the taxpayer could reasonably be expected to move closer to an employment location of substantial duration. In the more recent case of Berhow v. United States a federal district court upheld the temporary-indefinite rule with respect to one-day trip commuting expenses, and also concluded that United States v. Correll did not change the result. The court held that while Correll firmly established the "overnight rule" with respect to meals expenses incurred "while away from home," "its reasoning lacks equal force" in the one-day trip situation. The Berhow court recognized the logical inconsistency in applying the "overnight rule" to one-day trip commuting expenses when it stated that if § 162(a)(2) would "justify a deduction for the meals and lodging expense" of a taxpayer who establishes a temporary residence, "why should the taxpayer be penalized for having chosen the alternative" of commuting over a long distance. Favoring the result reached in Berhow, pre-Correll cases consistently upheld § 162(a)(2) as authority for the deduction of one-day trip transportation costs incurred in commuting to a "temporary" assignment. Also, litigation arising under § 22(n) of the 1939 Code culminating in Revenue Ruling

132 305 F.2d 221 (9th Cir. 1962). Wright v. Hartsell also involved the remote area exception to the "commuter rule." See notes 88-92 and accompanying text supra.
133 See notes 127 & 112 supra.
136 Berhow v. United States, 279 F. Supp. 737 (D. Neb. 1968): [W]e do not believe that the fact that the taxpayer chose to commute rather than establish a temporary "home" at the job site alters this result. While the "overnight rule" is firmly established with regard to meals away from home [citing Correll] its reasoning lacks equal force in this situation. If the temporary and unusual nature of the employment would justify a deduction for the meals and lodging expense of establishing a temporary residence, why should the taxpayer be penalized for having chosen the alternative of having commuted over a long distance. Id. at 740. Cf. Edmerson v. United States, 25 A.F.T.R.2d 70-1263 (D.C. Wash. 1970).
138 Id.
139 See notes 65 & 78 supra.
140 See note 78 supra.
suggests likewise since these cases held the "overnight rule" inapplicable to the one-day trip.

Even after Correll various Internal Revenue Service publications continue to recognize the validity of the "temporary" assignment commuting deduction. Unfortunately the Tax Court in recent decisions has reached the opposite result. In William B. Turner the taxpayer worked on two separate "temporary" jobs, had no more than a six month employment commitment, and made daily round trips from his residence to work and back of 72 and 120 miles. The Tax Court in disallowing the commuting expenses relied on Correll and held that § 162(a)(2) was unavailable in the case of one-day trips. After rejecting § 162(a)(2) the Turner court denied applicability of the "temporary" theory to § 162(a), stating that "the concepts of 'temporary' and 'indefinite' are of little or no value in distinguishing [deductible] transportation expenses from [non-deductible] 'commuting' expenses." In support of this conclusion the court illustrated its reasoning by way of an example:

The illogic and unfairness of differentiating between temporary and permanent employment with respect to commuting expenses can be illustrated by this example: Suppose the Petitioner's next door neighbor, Mr. Smith, is a permanent employee [and Petitioner is a temporary employee at the same firm]. Petitioner and Mr. Smith drive 60 miles to work together, each using his automobile on alternative days. Would it make sense to allow Petitioner a deduction for his commuting expenses and deny a deduction to Mr. Smith because Petitioner is a temporary employee and Mr. Smith is a permanent employee? Certainly not.

The court's example not only ignores a substantial amount of precedent but also the basic premise of the temporary-indefinite theory, which is the reasonableness of expecting a taxpayer to move his residence to a temporary location, and can be easily distinguished on this basis. In the example, Mr. Smith was a permanent employee who could have easily moved his residence closer to his job, and thereby minimize his daily travel. Since he choose to reside 30 miles from his job the resulting commuting expense was clearly personal and not deductible. Contrawise, Petitioner's commuting was dictated by the exigencies of

[142] See note 131 supra.
[144] 56 T.C. No. 3 (April 8, 1971).
[145] Id.
business. The nature of his employment carried him to distant work sites and he could not reasonably be expected to move his residence to widely scattered "temporary" jobs which lasted no longer than six months.\textsuperscript{147} The dissent in Turner criticized the result of the majority as erroneous on two counts. First, the dissent argued that the Commissioner admitted applicability of the temporary-indefinite test in his brief and therefore the majority's holding was beyond the issues presented. The dissent also objected to the majority's abandonment of "the Commissioner's ... long-standing" recognition\textsuperscript{148} of the temporary-indefinite rule in factual situations similar to that in Turner. The dissent stated the test of deductibility in these situations should remain: "(1) whether the taxpayer's employment was temporary and (2) whether that employment was located outside of the general area of his employment."\textsuperscript{149} The Turner dissent also suggests the deduction could be allowed under either § 162(a) or § 162(a)(2), thereby eliminating the temporary-indefinite rule from the problems created by the courts interpreting United States v. Correll\textsuperscript{150} as applying the "overnight rule" to one-day trip commuting costs.

\textbf{CONCLUSION}

In light of the foregoing it is evident that as a result of the Supreme Court's decision in United States v. Correll,\textsuperscript{160} the "commuting" area has been left confused with respect to one-day trip commuting situations arising under § 162(a)(2). Prior to Correll, the courts had created exceptions to the "commuter rule" under § 162(a)(2) based on logic and fairness to the taxpayer. Correll was not intended to destroy these exceptions but was aimed only at the specific subject of meals. Hopefully, the courts will take cognizance of the actual holding of Correll and structure their decisions in keeping with the Congressional policy of allowing deductions for all business related expenditures. Perhaps the best solution would be for Congress to establish some statutory guidelines to effectuate this policy. Such a solution was

\textsuperscript{147} The Court's rule will also discourage taxpayers from accepting temporary employment when employment in their home area is scarce. Is it better that taxpayer's remain unemployed? Unemployment compensation is tax free income.


\textsuperscript{149} William B. Turner, 56 T.C. No. 3 (April 8, 1971) (Quealy, J., dissenting).


\textsuperscript{160} Id.
proposed in the *President's 1963 Tax Message* which noted the necessity for legislation due to the lack of certainty and uniformity in this area. Briefly, it provided for a 20 mile radius designated as the "duty area" inside of which no commuting would be deductible. This "duty area" would center around the taxpayer's principle post of duty, or in the proper circumstances, around his residence. The proposal also recognized the "temporary" employment exception in situations in which the employment lasted less than one year. Hopefully, as a result of *Correll*, Congress will now take the initiative and provide some relief to the taxpayer who does not wish to spend the night.

*Philip W. Moss*

**LABOR LAW–RAILWAY LABOR ACT § 2 (FIRST) GOOD FAITH PROVISION: ACCOMMODATION OR RETURN TO JUDICIAL POLICY MAKING IN LABOR DISPUTES**

The paramount objectives of the Railway Labor Act [hereinafter RLA] are to avoid any interruption in interstate commerce and to promote harmony between the carriers and their employees by establishing collective bargaining machinery designed to prevent strikes. To effectuate these objectives, Congress, in § 2 of the RLA, set forth

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2 Id. § 151(a) sets forth the general purposes of the RLA as follows:

The purposes of the chapter are:

1. To avoid any interruption to commerce or to the operation of any carrier engaged therein;
2. To forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization;
3. To provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter;
4. To provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions;
5. To provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.