

# NATHO Travel Tax FAQs

March 26, 2019

## *Traveler Version*

### **Disclaimer**

The traveler is advised that the following discussion is general in nature and should not be considered advice for any specific tax situation. As such, National Association of Travel Healthcare Organizations (“NATHO”) hereby disclaims all warranties, expressed or implied. Given the unique circumstances of each traveler’s tax situation, each traveler should consult with a tax advisor familiar with these traveler taxation rules for any specific guidance rather than relying solely on the general discussion herein. Moreover, changes are made periodically to the tax laws, administrative rules, tax releases, tax rates and other materials<sup>1</sup>, which may not be fully incorporated into this FAQ discussion. Also, any general tax discussion below is not intended to be used and cannot be used, by the traveler for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code. The document should not be construed as providing any legal advice, including advice regarding the application of employment laws or regulations.

### **Summary**

Healthcare professionals may qualify for nontaxable *Travel Reimbursements* (stipends, per diems, allowances, subsidies) as long as they and their employers satisfy certain IRS rules and guidance including the traveler maintaining a *Tax Home* and working away from that home temporarily. NATHO members have sought IRS guidance and input on how the rules apply to the temporary healthcare travel industry. While the IRS has provided industry specific guidance to some other industries, the IRS has not provided the healthcare travel industry guidance to some of the nuanced issues specific and unique to our business.

Due to the lack of specific IRS guidance the following discussion provides some practical observations on to the everyday questions that are commonly asked. Healthcare Professionals that fail to follow these federal tax rules put themselves at serious risk of triggering an IRS audit while incurring significant tax liabilities. This FAQ discussion is designed to provide Healthcare Professionals with background on the nature of the IRS rules regarding traveler taxation and how to achieve tax compliance. We strongly encourage you to seek guidance from a tax advisor familiar with temporary assignments, travel taxation rules, multi-state taxation, and your individual facts and circumstances.

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<sup>1</sup> IRS Publication 463 (2017), Travel, Entertainment, Gift, and Car Expenses

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## **Glossary of Terms**

### **Key Definitions**

*Frequently-used terms have been defined below and identified as italicized words with initial letters capitalized throughout the FAQ.*

#### **Agency Provided Housing:**

*Agency Provided Housing* represents agency located and directly paid lodging costs (apartment and furniture rent and utilities) or the agency reimbursement of traveler incurred actual lodging costs.

#### **Away From Home:**

The term *Away From Home* shall mean an assignment far enough away from the employee's *Tax Home* that it is not within *Commuting Distance* of that *Tax Home*. There is a presumption that if the distance is in excess of a reasonable commute that an overnight stay is required. The term is more precisely defined in Section 3.

#### **Commuting or Commuting Distance:**

The term *Commuting* or *Commuting Distance* shall mean the typical travel time and distance between one's *Tax Home* and regular place of work. If deemed to be within *Commuting Distance*, the employee's work assignment would not be considered *Away From Home* to justify the employer's payment of *Travel Reimbursements*. The term is more precisely defined in Section 3.

#### **Housing Allowance:**

A *Housing Allowance* represents a fixed per-day cash payment from the agency to the traveler. It represents the lodging portion of the IRS-provided per diem program. It is also commonly called a "housing stipend" or "living allowance", among other terms. The term is used extensively in Section 5.

#### **Meal Per Diem:**

A *Meal Per Diem* represents a fixed per-day cash payment from the agency to the traveler. It represents the meal or meals & incidental (M&I) portion of the IRS-provided per diem program.

#### **One-Year Limit:**

A traveler is deemed to have satisfied the *One-Year Limit* if they are not expected to, and actually do not work in the travel assignment area for more than one year. See Section 2 for greater detail regarding this limit including the length of a break necessary to restart the *One-Year Limit* period.

**Qualified Traveler:**

A *Qualified Traveler* is an individual who during the course of the traveler's assignment(s) meets the three primary requirements to receive nontaxable *Travel Reimbursements*. Those requirements are the traveler maintains a *Tax Home*, the assignment is not within *Commuting Distance* of that *Tax Home*, and the traveler satisfies the *One-Year Limit* for the current assignment area.

**Tax Home or Tax Home Area:**

The *Tax Home* or *Tax Home Area* is the abode (lodging) in the location of the traveler's regular (not temporary) place of business or employment. However, if the traveler does not have such a regular area of business or employment, the *Tax Home* and *Tax Home Area* is the traveler's abode in a real and substantial sense where the traveler incurs housing-type expenses and returns to and resides often. This critical and sometimes subjective determination is addressed more thoroughly in Section 1.

**Taxable Compensation**

*Taxable Compensation* includes wages and other items that are earned for work performed and treated as taxable. In some circumstances, *Taxable Compensation* could include reimbursements and other nonreimbursable items such as gym memberships, etc.

**Travel Reimbursements:**

The term *Travel Reimbursements* shall mean typical transportation, housing, and meal expenses incurred by an employee for the purpose of performing work for the employer while *Away From Home* on assignment. These amounts could include: 1) *Meal Per Diems*, 2) *Housing Allowances*, and 3) *Agency Provided Housing*. *Travel Reimbursements* could further include transportation costs such as payment for air flights, rental cars, or cents per mile payments.

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## **SECTION 1: Tax Home**

### **1-1: What are the general requirements for a traveler to maintain a *Tax Home*?**

A *Tax Home* is the location of your regular (not temporary) place of business or employment.<sup>2</sup> For most people, this is the metropolitan or commutable area where they regularly work.

If you have more than one regular place of business (employment), your *Tax Home* is the general area of your principal place of business taking into account time spent, level of employment activity, and the significance of your compensation.

If you have no principal or regular place of business your *Tax Home* can be the home at which you regularly live but will be subject to the following three-factor test:

1. You perform a portion of your business in the vicinity of your home and use that home for lodging while doing business in the area.
2. You incur living expenses (mortgage, rent, utilities, etc.) at your home that are duplicated while you are on assignment *Away From Home*.
3. You must meet at least **one** of the following three criteria to meet this third factor:
  - a. You have not abandoned the area in which your historical place of lodging is located;
  - b. A member or members of your family (spouse, children, domestic partners) are living at the location; or,
  - c. You use the home frequently for your own lodging.

If you satisfy all three factors, you are deemed to maintain a qualifying *Tax Home* in the area of your abode. If you satisfy only one or no factors, the IRS considers you to be an *itinerant* worker and your *Tax Home* is where you earn your income. If you are an itinerant worker, you cannot claim a travel expense deduction and any *Travel Reimbursements* paid by a staffing agency should be treated as *Taxable Compensation* because you are never considered to be traveling *Away From Home*.

If you satisfy two factors, you may have a qualifying *Tax Home* at your abode depending on all of the facts and circumstances. Listed below are some relevant facts and circumstances to consider. In general, the following facts and circumstances are relevant to have a *Tax Home*.<sup>3</sup>

1. Your *Tax Home* address is the address of record for filing income tax returns.
2. Your license plates and driver's license are registered at the *Tax Home* address.
3. Your *Tax Home* address is the address of record for your professional license.
4. You are registered to vote in the *Tax Home* precinct.
5. You belong to a church, club, or other associations in the *Tax Home* vicinity.

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<sup>2</sup> *Camarata v. Comm'r*, T.C. Memo. 1979-209, 38 TCM (CCH) 857; *Rosenspan v. U.S.*, 438 F.2d 905 (2d Cir.), *cert denied*, 404 U.S. 864, 30 L. Ed. 2d 108, 92 S. Ct. 54 (1971). IRS Revenue Ruling 73-529

<sup>3</sup> *Scotten v. Comm'r*, T.C. Memo. 1966-206, *aff'd. per curiam*, 391 F.2d 274 (5<sup>th</sup> Cir. 1968).

**1-2: How often can a *Tax Home* be changed?**

No limit exists as to how many times your *Tax Home* may be changed provided the requirements to have a *Tax Home* are met. You must be careful not to abandon your previous *Tax Home* without having a valid business purpose (employment) for your move. (See 3. a. under 1-1 above)

**1-3: If I work multiple years on temporary assignments, can I still continue to maintain a *Tax Home* and qualify for nontaxable *Travel Reimbursements*?**

Yes, but you must continue to be a *Qualified Traveler*, specifically including maintaining a *Tax Home* while complying with the 1-year limitation (Section 2). Additionally, you will need to return to your *Tax Home* and use that home frequently. Informal IRS guidelines suggest that if you return home for 30 or more business/employment and nonbusiness days in a year you may be considered to be using your home frequently. These days do not need to be consecutive.

**1-4: Can a storage unit or PO Box address be used as my *Tax Home*?**

No. Your *Tax Home* must be a physical abode/dwelling where you can eat, sleep, and live.

**SECTION 2: One-Year Assignment Area Limit**

**2-1: Is it true that travelers working at one location for a year or more do not qualify for nontaxable per diems, or other nontaxable benefits such as airfare, rental cars, *Travel Reimbursements*, *Agency Provided Housing*, etc.?**

Yes. Once a traveler has worked in the same general area for a year, the traveler is no longer eligible for nontaxable per diems or nontaxable travel and housing. To be clear, the traveler can still receive these reimbursements, but such amounts would be taxable.

**2-2: When do the per diems and other company benefits become taxable for travelers who are going to work more than a year in one location?**

The per diems and other company benefits become taxable as soon as it is known that the traveler will be working a year or more in a single geographical location. For example, as soon as a traveler signs a confirmation that would have the effect of taking the assignment beyond 52 weeks, the benefits and/or per diems become taxable immediately. Working in multiple facilities within *Commuting Distance* of each other still counts as a single geographic location. As an example, a nurse has been working *Away From Home* at various facilities in Kansas City for 37 weeks. When they complete their current assignment, they will have worked in Kansas City for a total of 39 consecutive weeks. On week 37, they sign an agreement to extend the assignment 14 more weeks, putting them over one year worked in Kansas City. All of the travel and housing benefits and per diems become taxable on week 37 when the traveler knows they will be working beyond one year.

### **2-3: How long does a traveler have to go home or be away from an assignment location to reset the clock for nontaxable per diems and other travel related benefits?**

The IRS has ruled that one month is not sufficient to reset the clock for nontaxable *Travel Reimbursements* and that seven months is a “significant” break, and will almost always “restart the clock”.<sup>4 5</sup>

These limitations exist and are consistent with the definition of a *Tax Home* (See Section 1.1). Since a *Tax Home* is FIRST one’s main area of income before exceptions for those with NO regular place of income, care must be given to ensure that repetitive assignments in the same area, even with breaks, do not create a “main area of income”.<sup>6</sup> For example, if a traveler returns to the same area each year, earns significant income there and the rest of the year works in random locations, that location can be considered the “main area of income” due to its regularity and predictability.

An agency will often rely on the industry standard contract of three months as the minimum break in service. Most agencies have internal policies that screen most travelers adequately, but not every situation lends itself to a one size fits all rule due to the unique facts and circumstances that each traveler presents. With that in mind, a traveler that is considering multiple visits to the same area over a period exceeding 12 months would be wise to consult with a tax advisor before accepting these series of assignments.

### **2-4: What days are included to determine if the *One-Year Limit* has been reached?**

The starting and ending date is not necessarily the first and last day of work, but based on the intentions of the traveler. The traveler’s intentions can be determined by the employment agreements/contract(s). For example, if a traveler has worked in City X for 10 months and then agrees to a 3-month extension, the 12-month limit is not passed on the 365<sup>th</sup> day of work in the area, nor the start date of the original contract, but rather on the day that the extension is agreed upon as that is the date that the traveler has signaled their intention to work in the area for 13 total months. (See also 2-2). A series of contracts in the same area are normally counted as one longer assignment. The fact that each contract is temporary, in a different location of the same facility, or in another facility in the same area does not change the fact that the traveler has continuous employment in the same area.

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<sup>4</sup> Chief Counsel Advice Memorandum 200026025 (three week and seven month rule)

<sup>5</sup> Chief Counsel Advice Memorandum 200020055 (one month rule) and Regulation Section 31.3402(h)(4)-1

<sup>6</sup> See 2017 IRS Publication 463i, Page 4, Middle Column under “Determining temporary or indefinite” (subject to change)

### **SECTION 3: *Commuting vs. Away from Home Traveling***

#### **3-1: How far does a traveler need to live from a facility to qualify for nontaxable per diems or other nontaxable benefits? Should it be based on distance or commute time? Also, should the length of the shift be taken into account?**

The IRS has not provided clear guidance in this area, except that a traveler needs to be far enough from his/her *Tax Home* so that it would be unreasonable to go home, rest and return to work the next day. In considering what is unreasonable, the IRS looks at individual facts and circumstances, paying close attention to travel time, the actual distance and the traveler's intentions. For example, if a traveler lives 34 miles from the worksite location and is only working 8 hour shifts, the IRS will generally take the position that there is sufficient time to go home, rest, and return to work the next day. By the same token, if a traveler lives 100 miles from the worksite location and is working 12 hour shifts, there is probably not enough time to go home, rest, and return to work the next day, even under ideal circumstances. Having said all this, the IRS requires that a traveler be duplicating lodging expenses to qualify for nontaxable per diems and other benefits. If a traveler is *Commuting* from his/her residence for every shift without incurring duplicate lodging expenses, these payments are considered taxable no matter how far the commute is because the traveler is considered to be within a commutable distance due to the fact that they are actually traveling back and forth to their residence.

### **SECTION 4: Wage Recharacterization**

#### **4-1: What is wage recharacterization?**

Reducing wages (taxable income) and replacing them with non-*Taxable Compensation* for the purpose of reducing the amount of taxes incurred could be considered wage recharacterization.

#### **4-2: What is a reasonable wage rate?**

A reasonable wage rate would represent fair market value compensation for traveling healthcare professionals and may vary by geographical area and skill/specialty.

#### **4-3: If wage recharacterization occurs, what risks exist for the traveler receiving lower wages?**

The traveler should consider the following risks:

- 1) Per diems are considered reimbursements, not income. Because of this, financial institutions will not usually consider per diems as income for loan qualification.
- 2) Workers' compensation and state unemployment benefits are based on a percentage of your hourly pay rate.

- 3) Social security benefits could be affected, reducing future retirement or disability benefits you could receive.
- 4) An IRS lifestyle audit could prove that your reported income is not sufficient to support other obligations and/or dependents.
- 5) Wage recharacterization audit by the IRS

## **SECTION 5: Miscellaneous**

### **5-1: How much are penalties and interest if the IRS determines that per diems or other travel benefits should have been taxable?**

If an audit of the traveler determines that reimbursements received by the traveler should be included as taxable wages rather than non-taxable per diems, the IRS will charge interest calculated from the due date of the return. In addition to interest, penalties can also be applied. Penalties include charges for not paying on time, failure to file on time, accuracy, negligence and computing a tax on the return that is significantly lower. Additionally, if the IRS suspects that the taxable income is 25% higher than what is reported on the return, the time in which the IRS can audit the return doubles to 6 years.

Also, when the IRS restates a return, those changes trickle down to the state returns. The states in turn, will possibly charge interest and penalties. Some state and local jurisdictions have become more aggressive in conducting their own audits as well.

Lastly, an agency that has an abusive reimbursement / per diem policy can incur significant penalties and interest as well.

### **5-2: How does sharing lodging accommodations affect the taxation of the traveler's housing benefit?**

*Qualified traveling* spouses, domestic partners and companions (associated travelers) may pose an additional issue when one receives *Housing Allowance* and the other receives *Agency Provided Housing*. The taxability of *Travel Reimbursements* where the associated travelers are traveling together and lodging should be as follows:

- 1) Associated travelers traveling together with the same agency may each receive nontaxable *Meal Per Diems*. They may also receive non-taxable *Housing Per Diems* as each traveler would individually incur lodging expenses had they traveled unassociated and would be entitled to deduct their lodging costs had they split the expenses. Additionally, each associated traveler has a business purpose for their lodging in fulfillment of the duties of their contract. The per diem procedures<sup>7</sup> deem the per diem payment as the substantiated expense in lieu of reimbursing actual expenses. Since each associated traveler would have their individual lodging expense, the per diem payment is the expense deemed substantiated. Some agencies may have stricter policies. The amount of lodging per diem payment

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<sup>7</sup> Revenue Procedure 2011-47 §4.01

should probably be commensurate with the amount of expense that traveler is actually incurring as a result of splitting the costs.

- 2) If the associated travelers are both employees of the same agency and one is receiving *Agency Provided Housing*, then the other employee should not receive a *Housing Allowance* (or it would be treated as taxable) as there is no reasonable expectation that they would be incurring that expense.

If the associated travelers are working through separate agencies, the agency, barring any other contrary evidence, may rely on the representation within the *Tax Home Form, Housing Allowance Representation Form* or other written representation that the traveler is incurring lodging expenses in the assignment

### **5-3: What should I do if I find a staffing company abusing or ignoring the IRS guidelines in this area?**

If the staffing agency is a member of the National Association of Travel Healthcare Organizations (NATHO), call NATHO and provide them with a written complaint and any documentation which may support that concern. Your complaint will be kept in strict confidence. Every NATHO member has agreed to abide by a Code of Ethics and abusing or ignoring IRS guidelines would represent a breach of these guidelines. If a member company is accused of abusing or ignoring those guidelines, it needs to be able to show that the accusation is false. Alternatively, it's also possible that the company made a mistake or series of mistakes in good faith. In such instances, NATHO would work with the company to provide educational assistance to help the company get into compliance as quickly as possible. If the evidence shows that the accusations are valid and that the company willfully abused or ignored the guidelines, the company would need to immediately correct the problem or it would face sanctions including, but not limited to reprimand, probation, suspension or expulsion from [NATHO](#).