

## ¶L-1802. Residence as tax home.

IRS has ruled that a taxpayer's tax home is his residence for the purpose of deducting travel expenses where, because of the nature of his work, he changes work locations frequently and has no principal or regular place of employment. Thus, a construction worker who received temporary assignments from a regional office, but didn't travel to or from that office nor live in the vicinity of that office, could treat his residence as his tax home.<sup>19</sup> However, some courts have held that a taxpayer's residence is his tax home in circumstances that go beyond this IRS rule.<sup>19.1</sup>

<sup>19</sup>. Rev Rul 71-247 , 1971-1 CB 54.

<sup>19.1</sup>. Hundt, Chas, (1961) TC Memo 1961-81, PH TCM ¶¶61081, 20 CCH TCM 368 ; Libby, Charles, (1964) TC Memo 1964-309, PH TCM ¶¶64309, 23 CCH TCM 1902 ; Cowger, David, (1966) TC Memo 1966-95, PH TCM ¶¶66095, 25 CCH TCM 513 ; Hudson, William, (1975) TC Memo 1975-336, PH TCM ¶¶75336, 34 CCH TCM 1462 ; Sullivan, Ben, (1976) TC Memo 1976-218, PH TCM ¶¶76218, 35 CCH TCM 948 ; Schreiner, William v. McCory, (1960, DC NE) 6 AFTR 2d 5545, 186 F Supp 819, 60-2 USTC ¶9677 .

**The Tax Court has held that a taxpayer's residence is his tax home where the taxpayer has a well-established residence and no non-temporary principal place of business away from the vicinity of that residence. It's unreasonable, in that situation, to expect the taxpayer to move his home simply to be near temporary employment.<sup>23</sup> On another occasion, the Tax Court stated the above rule as follows: a taxpayer's permanent residence will be treated as his or her tax home if the taxpayer doesn't have a principal place of employment.<sup>23.1</sup>**

<sup>23</sup>. Linetsky, Yury, (1994) TC Memo 1994-306, RIA TC Memo ¶94306, 68 CCH TCM 8 .

<sup>23.1</sup>. **Johnson, Marin I., (2000) 115 TC 210 .**

**Under this rule, the court found that a taxpayer's personal residence was his tax home, where he was employed as the captain of a merchant ship that sailed worldwide. Here, taxpayer had no principal place of employment, but he was responsible for maintaining the residence, spent significant time there while off duty, and contributed to the household in an indispensable way.<sup>23.2</sup> Similarly, a tugboat captain who worked on the tugboat a total of 307 days during the year had his tax home at the house where he resided.<sup>23.3</sup>**

<sup>23.2</sup>. **Johnson, Marin I., (2000) 115 TC 210 .**

<sup>23.3</sup>. **Westling, Jim L., (2000) TC Memo 2000-289.**

The same court rejected the IRS rule that where an employee is shifted by his employer to a job away from his place of residence for an indefinite period, his expenses at the new place aren't deductible away-from-home expenses. According to the court, the taxpayer's home doesn't shift and the expenses are deductible unless there's a reasonable probability, known to him, that he may be employed for a long period of time at the new station.<sup>29</sup>

<sup>29</sup>. Harvey, John v. Com., (1960, CA9) 6 AFTR 2d 5780, 283 F2d 491, 60-2 USTC ¶9771 .