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Deductibility of Expenses for Conventions and Educational Seminars

Philip F. Postlewaite*

The development of discount charter flights and reduced group accommodation rates in recent years has made travel more accessible to more people and has affected the pattern of business meetings, conventions, and educational seminars that businessmen and professionals attend. Groups frequently schedule their conventions in foreign locales or in American cities that are far from their members' residences or unrelated to the group's business activities. Excellent examples are the American Bar Association's 1971 and 1975 conventions in London and Montreal, and numerous state bar association conventions.1 These conventions normally involve programs covering broad topics relevant to the participants' vocation, as well as meetings and discussions by participants concerning their specialties.

The newest vehicle for conducting such activities is the "educational seminar." Generally geared to professional groups, the seminar often consists of a series of meetings spaced over a two to three week period and usually follows one of these formats: (1) the seminar group flies to different locales where local professionals or government officials lecture on various aspects of the participants' general or specialized area of expertise; or (2) the group travels by ship, accompanied by "experts" who period-

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1. The Washington State Bar proposed holding its annual convention in San Francisco, California, but moved it to Vancouver, British Columbia. See Seattle Times, Sept. 11, 1973, at 4, col. 6. The following year's meeting was proposed for Honolulu, Hawaii. A group of Certified Public Accountants from the Washington and Oregon state associations held their annual meeting in San Francisco, California, see [1976] Fed. Taxes (P-H) ¶ 60,341. Numerous other examples of the "remote locale syndrome" could be found by reviewing the convention or seminar sites for established associations for the past five years.

2. Examples of these activities abound, but two familiar to the author will be described in detail. In 1974 a group of attorneys in Washington organized a "People to People" trip for Washington lawyers, judges, and their spouses. The trip was to take 21 days with stops in Budapest, Athens (via Vienna), Moscow, Leningrad, Belgrade, and London. The cover letter soliciting participation stated: "It is anticipated
lically lecture to the participants.\textsuperscript{3} Both formats provide much free time and may include organized sightseeing.

The interest in these professional meetings is frequently based on a desire to combine business with pleasure, coupled with the hope of qualifying the expenses as federal income tax deductions. While promoters of such events may or may not consider and advertise the deductibility of these expenses, the participants, who may lack sufficient knowledge of the federal income tax law, are likely to believe that any business relationship whatsoever will justify a tax deduction. This tax-saving motivation has undoubtedly led to the increased participation in these activities.

The federal executive, judicial, and legislative branches have all expressed concern that the tax laws in this area may be subject to abuse. The Tax Court recently disallowed the expenses of attending a foreign medical seminar.\textsuperscript{4} The Internal Revenue Service then issued a Revenue Ruling involving similar facts and concluded that such expenses were nondeductible personal expenditures.\textsuperscript{5} Most recently, Congress restricted deductions for the expenses of attending conventions and educational seminars held outside the United States.\textsuperscript{6} This legislation limits the number of deductible conventions and the amount of expenses allowable.\textsuperscript{7} This Article will focus on the deductibility of expenses related to both domestic and foreign educational seminars and conventions. The current criteria for deductibility

that approximately 50 percent of our time will be devoted to meetings with our counterparts, their wives, and exploring their legal and judicial facilities. This will be interspersed with sightseeing and free time.” Although not a bar-sponsored trip, permission to promote the trip was sought and received from the Board of Governors.

Another seminar was sponsored by the Texas Medical Association. Members were enrolled in a three-week program providing “professional experiences” in Africa. A number of stops in various African cities were planned, and at each stop professional lectures were presented by local doctors or health officials. Also available to participants were tours of local medical facilities. During “free time” members could participate in organized sightseeing tours, including safaris. See also Esfandiar Kadivar, 32 T.C.M. (CCH) 427 (1973); Rev. Rul. 74-292, 1974-1 C.B. 43, discussed in detail in text accompanying notes 115-21 infra.

4. Esfandiar Kadivar, 32 T.C.M. (CCH) 427 (1973), discussed in text accompanying notes 115-21 infra.
7. See note 133 infra for text of the new legislation regarding deductibility of expenses incurred in attending a foreign convention.
contained in the Regulations will be explored and the historical evolution of the deductibility of such expenditures analyzed. Modern case law, recent administrative pronouncements, and the new foreign convention legislation will also be reviewed. This divergent material will be interpreted and synthesized into a workable test for the deductibility of such expenses.8

I. STATUTORY AND REGULATORY GROUND RULES

Expenses generally incurred in attending a convention or seminar may be categorized as follows: (1) travel to and from the site of the meeting; (2) registration and participation (expenses directly attributable to attendance and participation at meetings, and booklets, outlines, and other similar materials); (3) lodging and meals (those while in transit to and from the site, as well as those while in attendance); and (4) personal expenses (such as sightseeing or nonbusiness entertainment). If any of these expenditures are deductible, the taxpayer's tax liability is reduced. While the dollar value of a tax deduction depends on the taxpayer's bracket, the United States Treasury underwrites a portion of any deductible expense by a concomitant loss of tax revenue. The determination of the circumstances under which these expenses warrant deductibility is thus an important step toward ensuring equitable treatment of the nation's taxpayers.9

With the exception of foreign conventions governed by the new legislation, the Internal Revenue Code does not specifically deal with the expenses of attending a convention or educational seminar. Section 162, however, permits a deduction of "ordinary and necessary" business expenses, which specifically include travel expenses, including meals and lodging.10 If the convention

8. As will be seen, much confusion exists regarding the criteria for deductibility. Various types of expenditures are incurred by a participant attending conventions or seminars, including the costs of registration and educational material (the "educational" portion), and travel. This Article will focus primarily on treatment of these issues in the context of group activity. Numerous opinions on education and travel expense deductibility have involved single taxpayers—for example, a taxpayer returning to college or graduate school for additional education or traveling to meet with a client in a distant place. This Article, however, will be limited to the deductibility of expenditures incurred for group activities of short duration—conventions and seminars.

9. It is clearly unfair to force some taxpayers to subsidize the vacations of others.

10. The Code provides a deduction for "traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business. . . ." I.R.C. § 162(a)(2).
or seminar occurs outside the United States, expenses are further subject to the special allocation rules of sections 274(c) & (h), which theoretically do not come into play until the expenses are first found deductible under section 162. To comply with section 162, the taxpayer must show that he engaged in the activity for business reasons (that is, that the activity was not a section 262 personal expenditure), and that the expense was "ordinary and necessary."

The Regulations appear to assume that the "ordinary and necessary" requirement is obvious, for they do not address that issue. They do deal specifically with some types of expenses that may be deductible, including travel expenses. The Regulations provide generally that the term "travel expenses" includes the costs of transportation, meals, lodging, and related incidental expenditures. If the travel is for personal, nonbusiness purposes, then, consistent with section 262, none of the expenses are deductible; but if the trip is solely for business, all reasonable traveling expenditures are deductible. Most convention and seminar trips, however, include personal and recreational activity as well as business activity, and each case therefore presents a twofold problem: (1) classifying the activities as "business" or "personal," and (2) applying the standards for deductibility to the classified activities.

The Regulations do not provide clear solutions to these problems. Travel expenses incurred on a combined personal and

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11. See notes 12 & 133 infra.
12. "In the case of any individual who travels outside the United States away from home in pursuit of a trade or business . . . . , no deduction shall be allowed under section 162 . . . . for that portion of the expenses of such travel otherwise allowable under such section which . . . . is not allocable to such trade or business . . . ." I.R.C. § 274(c)(1) (emphasis added).
13. I.R.C. § 262 provides: "Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses."
14. Treas. Reg. § 1.162-2(a) (1958) provides:
   Traveling expenses include travel fares, meals and lodging, and expenses incident to travel such as expenses for sample rooms, telephone and telegraph, public stenographers, etc. Only such traveling expenses as are reasonable and necessary in the conduct of the taxpayer's business and directly attributable to it may be deducted. If the trip is undertaken for other than business purposes, the travel fares and expenses incident to travel are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including travel fares, meals and lodging, and expenses incident to travel, are business expenses.
business trip are deductible only if the trip is "related primarily to the taxpayer's trade or business." \(^{15}\) Whether the trip is so related is determined by the "facts and circumstances" of each case. \(^{16}\) The relative allocation of time between the taxpayer's personal and business activities is an "important factor" in the "primarily related" test. \(^{17}\) Since the Regulations discuss no additional factors it appears that, in the Treasury's view, the relative time factor is determinative or, at least, creates a presumption that can be rebutted only by presenting additional factors. This quantitative approach apparently requires a taxpayer to spend a majority of his time in business activities in order to satisfy the "primarily related" test. \(^{18}\)

The Regulations further provide that the deductibility of convention expenses depends upon "whether there is a sufficient relationship between the taxpayer's trade or business and his attendance at the convention or other meeting so that he is benefiting or advancing the interests of his trade or business by such attendance." \(^{19}\) In other words, a sufficient relationship between

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15. Treas. Reg. § 1.162-2(b) (1) (1958) provides:

If a taxpayer travels to a destination and while at such destination engages in both business and personal activities, traveling expenses to and from such destination are deductible only if the trip is related primarily to the taxpayer's trade or business. If the trip is primarily personal in nature, the traveling expenses to and from the destination are not deductible even though the taxpayer engages in business activities while at such destination. However, expenses while at the destination which are properly allocable to the taxpayer's trade or business are deductible even though the traveling expenses to and from the destination are not deductible.

16. Treas. Reg. § 1.162-2(b) (2) (1958) provides:

Whether a trip is related primarily to the taxpayer's trade or business or is primarily personal in nature depends on the facts and circumstances in each case. The amount of time during the period of the trip which is spent on personal activity compared to the amount of time spent on activities directly relating to the taxpayer's trade or business is an important factor in determining whether the trip is primarily personal. If, for example, a taxpayer spends one week while at a destination on activities which are directly related to his trade or business and subsequently spends an additional five weeks for vacation or other personal activities, the trip will be considered primarily personal in nature in the absence of a clear showing to the contrary.

17. See note 16 supra. See also Rev. Rul. 75-120, 1975-1 C.B. 55, 56 (Treas. Reg. § 1.162-2(b) (1)'s distinction regarding allocation between personal and business purposes should by analogy also apply to expenses of seeking new employment when part of the trip is spent on personal activities).

18. The Regulations seem to incorporate a quantitative approach, but a more subjective approach could arguably be used. See text accompanying notes 163-79 infra.

19. Treas. Reg. § 1.162-2(d) (1958) (emphais added). This standard is hereinafter referred to as the "sufficient relationship" test.
the convention and the taxpayer's business must exist before any expenditure is deductible and before any comparison with nondeductible personal expenses can be made. A taxpayer might argue that the convention provision, because of its specificity, should preempt the "primarily related" test, but that would establish an easier standard for deducting travel expenses in a convention context than in other areas. Were that argument accepted, deductions based on a disproportionate nonbusiness time allocation would be condoned, which is contrary to the general travel provisions and clearly an unwarranted interpretation of the Regulations. Consequently, the sufficient relationship test can logically be applied only as a threshold test. If the convention meets that standard, registration expenses and the costs of meals and lodging allocable to business activity at the convention will be deductible, but the expenses of traveling to and from the convention will be governed by the "primarily related" test.

If a taxpayer attends an educational seminar rather than a convention, a natural inquiry is whether the educational expense Regulations require a different result. Deductions for education expenses, as for convention expenditures, are not specifically authorized by statute, but originated in judicial decisions, and eventually appeared in the Regulations in 1958. The general requirements for deducting educational expenses are that the education maintain or improve a taxpayer's business skills or meet an employer's requirements for continued employment. Even expenditures meeting these tests will not be deductible, however, if they qualify the taxpayer for a new trade or business or enable him to meet the minimum educational requirements for his job. Once these prerequisites are met, direct expenditures (for example, tuition and books) for the education are deductible.

20. See Treas. Reg. § 1.162-2(b)(1) (1958), note 15 supra, which provides that even if travel expenditures are not allowable due to their failure to meet the "primarily related" test, "expenses properly allocable" to the taxpayer's business are deductible. Included in this category are meals and lodging for those days during which the convention is in session. If only a portion of the convention is relevant to the taxpayer's business, meals and lodging expenses may be subject to allocation. See notes 158-60 infra and accompanying text.
22. See notes 63-64 infra and accompanying text.
24. Id. §§ 1.162-5(a)(1)-(2).
25. Id. §§ 1.162-5(b)(1)-(3).
As would be expected, however, the Regulations also permit deduction of incidental educational expenses. These provisions are strikingly reminiscent of the "primarily related" travel Regulations. Expenses for travel, meals, and lodging (expenditures covered under the section 1.162-2 travel Regulations) incurred while obtaining a business education are deductible. On the other hand, primarily personal travel expenses are not deductible. As in the travel Regulations, the facts and circumstances of the case determine the taxpayer's primary purpose, and the relative amount of time spent in personal and educational activities receives special emphasis. Furthermore, the travel Regulations are incorporated by reference.

The similarity of the terms, tests, and functions of the education and travel regulations indicate that the same standard should be used to determine the deductibility of travel expenses under both Regulations. Travel that is primarily related to business, as determined by "facts and circumstances" (especially the relative time allocated to business activities), will be deductible under one Regulation or the other depending on the character of the business activity. A more liberal construction of...

26. Id. §§ 1.162-5(e)(1)-(2).
27. The Regulations provide:

Travel away from home. (1) If an individual travels away from home primarily to obtain education, the expenses of which are deductible under this section, his expenditures for travel, meals and lodging while away from home are deductible. However, if as an incident of such trip the individual engages in some personal activity such as sightseeing, social visiting or entertaining, or other recreation, the portion of the expenses attributable to such personal activity constitutes nondeductible personal or living expenses and is not allowable as a deduction. If the individual's travel away from home is primarily personal, the individual's expenditures for travel, meals and lodging (other than meals and lodging during the time spent in participating in deductible education pursuits) are not deductible. Whether a particular trip is primarily personal or primarily to obtain education the expenses of which are deductible under this section depends upon all the facts and circumstances of each case. An important factor to be taken into consideration in making the determination is the relative amount of time devoted to personal activity as compared with the time devoted to educational pursuits. The rules set forth in this paragraph are subject to the provisions of section 162(a)(2), relating to deductibility of certain traveling expenses, and section 274(c) and (d), relating to allocation of certain foreign travel expenses and substantiation required, respectively, and the regulations thereunder.

28. Id.
29. Id.
deductibility standards under the education Regulations would merely encourage taxpayers to re-label conventions as educational seminars and thus would require the development of another set of standards to prevent such abuse. As long as the activity has the requisite relation to the taxpayer's business, the practical differences between a convention and a seminar are not sufficient to warrant different tax treatment.

Thus, regardless of the label affixed, a convention or educational seminar is initially scrutinized under the "sufficient relationship" standard in order to ascertain whether the activity is related to the taxpayer's trade or business. If it is, the registration expense and some portion of the cost of meals and lodging while in attendance will be deductible. Travel expenses to and from the activity will be deductible only if the "primarily related" test, determined by the facts and circumstances, with particular emphasis on the relative time allotted to business and pleasure, is met. If the activity is not sufficiently related to the taxpayer's trade or business, no deduction will be allowed.

This current administrative standard for deductibility, coupled with the author's interpretation of substantial ambiguities, has been presented in order to describe what appears to be ideal administrative practice. Administrative standards, however, are subject to judicial interpretations that often differ significantly from administrative intent. Such interpretations are frequently influenced by the history and evolution of the particular issue or doctrine being scrutinized. Thus, an examination of the history of the deductibility of convention and seminar expenses will provide both a useful comparison of the current law with its origin and an indication of its future evolution.

II. ADMINISTRATIVE AND JUDICIAL BACKGROUND

A. EARLY DEVELOPMENT, 1919-1956

The Treasury initially contested the deductibility of convention expenses, and the issue spawned an early flurry of litigation. Although the revenue act then in effect allowed deduc-
tions for traveling expenses, the Revenue Service, in a cryptic ruling, deemed convention expenses nondeductible: "Amounts expended by a physician for railroad and Pullman fares and hotel bills in attending a medical convention were not ordinary and necessary expenses incurred in the pursuit of his profession and do not constitute allowable deductions in his return." Similarly, a college teacher who had done research that afforded academic and professional recognition, but did not affect his salary, was denied a deduction for travel expenses incurred in attending meetings of scientific societies on the ground that a personal expenditure was involved.

Educational expenditures suffered a similar fate. In a one sentence opinion the Service disallowed educational travel expenditures: "Expenses incurred by doctors in taking post-graduate courses are deemed to be in the nature of personal expenses and not deductible." Taxpayers seeking such deductions had to overcome both the Treasury's previously established position regarding group attendance activities, and its general reluctance to recognize educational expenses as deductions, a problem that was not resolved until the late 1940s and 1950s.

Concomitant with the Service's disallowance of these expenditures, the deductibility of travel expenses became a cause celebre in the Senate. The Revenue Act of 1921 first authorized a deduction for "traveling expenses" for all taxpayers. The provision equalized a previously discriminatory distinction be-

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33. Revenue Act of 1921, ch. 136, § 214(a) (1), 42 Stat. 239 (now I.R.C. § 162(a) (2)).
37. See text accompanying notes 32-34 supra.
38. See text accompanying notes 61-64 infra.
39. Revenue Act of 1921, ch. 136, 214(a) (1), 42 Stat. 239 (now I.R.C. § 162(a) (2)) provides:

That in computing net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity;
between salaried employees and traveling salesmen. Although the Senate Finance Committee report implied that the new provision merely reflected current law, the codification provided a greater degree of certainty and gave taxpayers another basis for maintaining that expenditures incurred in attending conventions were deductible, as long as the "pursuit of a trade or business" requirement could be met.

After this codification of general travel expense deductibility, the issue of travel expenses in connection with conventions and seminars did not arise again until 1925, when the Board of Tax Appeals in Marion D. Shutter held that a clergyman's expenses of traveling to a clerical convention were deductible. Like the earlier cryptic rulings of the Treasury, this decision was devoid of explanation, rationale, or citation of authorities. Travel expenses were allowed, but direct expenses, such as meals and lodging purchased at the convention, were denied because the taxpayer failed to substantiate his claim.

In Everett S. Lain, although disallowing the convention expenses of a physician as inadequately substantiated, the Board discussed a possible justification for such deductions—the "referral theory." Since contacts and acquaintances made at such meetings could financially benefit the taxpayer, the convention could be considered business-related. The Board reasoned that

the partnership to a large extent secures its patients through acquaintances in the medical profession who are general practitioners or specialists in other lines of medicine, and who send to the partnership patients in need of the particular kind of service that the partnership renders. Such acquaintances in the profession are made by the partners by attending meetings and conventions of medical societies.

In its next significant decision, the Board set forth another possible rationale for permitting convention deductions. In Alexander Silverman the convention travel and participation expenses of a scientist were allowed:

As the head of the department of chemistry, it was expected of and incumbent on him as such to keep abreast in his particular

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41. Id.
42. 2 B.T.A. 23 (1925).
43. 3 B.T.A. 1157 (1926).
44. Id. at 1158 (emphasis added).
45. 6 B.T.A. 1328 (1927). See also Joy N. Darling, 4 B.T.A. 499 (1926).
field of work and in touch with other scientists in the same field, which was done among other ways by the preparation and publication of papers, by the reading of technical periodicals, and by the attendance at such conventions where consideration of subjects of a scientific nature were presented and discussed.\footnote{Id. at 1329.}

This decision directly conflicted with the Treasury's position\footnote{See text accompanying note 34 supra.} and was the first to articulate a rationale for the deductibility of convention expenses based on the relationship of the substance of the meeting to the taxpayer's trade or business—the "educational advancement" theory.

Notwithstanding the Board's position favoring deduction of convention expenses, the Service remained intransigent. This stance drew congressional concern in various hearings on the 1926 and 1928 revenue acts.\footnote{See Statement of C.W. Richardson, in Report of House Comm. on Ways and Means, 68th Cong., 2d Sess., Report on Revenue Revision, 1925 part 3, at 147 (Comm. Print 1925); statement of W.C. Woodward, id. at 152. Interestingly, during the debate regarding the 1926 act, members of the Senate expressed concern about the location of conventions and seminars and the possibility that the expense deductions would be used to underwrite exotic vacations. Senator Smoot, responding to an inquiry about expenses connected with a physician's attendance at "special courses of lectures or special courses in hospitals for the development of their professional ability" responded: The committee had this matter under consideration and gave it considerable thought. After looking over the correspondence, they decided that such expenses were not covered, and not only that, but the committee decided that it would be a very unwise thing to comply with the request and include them. If it is done with the doctors, it ought to be done with the attorneys and it ought to be done with every profession. \textit{And where will they go? Will they go to Europe, or where?} 67 Cong. Rec. 3022-23 (1926) (emphasis added).} The Senate Finance Committee proposed an amendment to section 23(a) of the 1928 act which would have allowed expenses "in attending meetings of trades, professional, or business organizations of which the taxpayer is a member."\footnote{Amendments 26-28 to H.R. 1, 70th Cong., 1st Sess. (1928).} The amendment was deleted in conference, however, because the committee, ignoring the rationale advanced in Silverman, concluded that such a provision would authorize "nonbusiness" deductions.\footnote{H.R. Rep. No. 1882, 70th Cong., 1st Sess. 11 (1928).}

Regardless of the congressional failure to expand the scope of deductibility, Silverman and Lain provided ammunition for subsequent taxpayers by establishing the two major bases for deducting convention expenses—the referral and educational theories. The deduction became established notwithstanding these different policy justifications, and despite the Service's con-
tined opposition. In Cecil M. Jack, a physician was allowed a deduction by the Board for the expenses of attending medical conventions. The opinion was devoid of legal reasoning, but it cited Shutter and Silverman as grounds for allowing the deductions. The Jack decision was quickly followed by similar opinions in J. Bently Squier, Wade H. Ellis, Roy Upham, and Robert L. Coffey. While these opinions consistently allowed the taxpayer's traveling expenses to the conventions and those incurred in actual attendance, they did not explain the grounds for the holdings or discuss the policy reasons for permitting such deductions. Rather the cases appeared to assume that such expenses were by definition within the concept of "ordinary and necessary" business expenses. Thus, neither the education nor the referral theory was clearly adopted as the rationale underlying deductibility. At least a partial explanation for the courts' reluctance to expressly rely on the educational theory may be that the deductibility of education expenses per se was not firmly established by the courts until 1950 or by the Regulations until 1958.

Following this series of defeats, the Service revoked its previous position and ruled that "regular members of the association may derive a business advantage from sending a representative to the annual convention. . . . The necessary expenses paid or incurred constitute an allowable deduction for Federal income

51. 13 B.T.A. 726 (1928).
52. 13 B.T.A. 1223 (1928).
53. 15 B.T.A. 1075 (1929), aff'd sub. nom. Ellis v. Burnet, 50 F.2d 343 (D.C. Cir. 1931). The Board's decision in Ellis indicated that the educational aspects of an American Bar Association convention were controlling. The Board allowed deductions for expenses incurred at a domestic convention, but simultaneously disallowed deduction for any expenses incurred on a subsequent trip to Europe, stating that "[t]he purpose of the trip to Europe was not to serve or educate [the taxpayer] but to secure information for the Bar Association." Id. at 1076. The appellate court affirmed the denial of deductions for the foreign travel expenditures, holding that those expenditures "had no tendency to increase [taxpayer's] professional income." 50 F.2d at 344.
54. 16 B.T.A. 950 (1929). The taxpayer maintained that the convention expenses were deductible either under the "ordinary and necessary" test or, because of his position as an officer of the charitable organization sponsoring the convention, as a charitable contribution. The Board appears to have based its opinion on the latter rationale.
55. 21 B.T.A. 1242 (1931).
57. See note 34 supra and accompanying text.
tax purposes. With the issuance of this new interpretation, the Service, without qualification or limitations, withdrew its opposition to classifying convention expenses as "ordinary and necessary" business expenditures. The Service also revoked another early interpretation of convention expense deductibility, expressing its position in such broad language that the issue appeared to be firmly settled, regardless of the subject matter, scheduling, or length of the activity.

In view of the decisions and rulings above cited, it is clear that I.T. 1520 is erroneous in holding that (1) expenditures in connection with the publication of the results of investigation, such as plates and figures for illustrative purposes, (2) depreciation on books and instruments purchased for use in research work, and (3) expenses incurred when traveling for the purpose of attending meetings of scientific societies, are personal expenses. It is also apparent that expenditures (2) and (3) are deductible from gross income. . . . It is the opinion of this office that I.T. 1520 should be expressly revoked in so far as it holds that the expenditures therein discussed are of a personal nature.

Minor litigation involving convention expenditures continued throughout this early period, but educational seminar cases

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58. I.T. 2602, X-2 C.B. 130-31 (1931), revoking I.T. 1369, I-1 C.B. 123 (1922). Contrary to the factual situations represented in the earlier interpretation and in all of the contested Board decisions, the new interpretation dealt with expenses incurred by businesses in sending employee representatives to their sponsored convention. The purpose of sending representatives was to further business interests; thus the new interpretation authorized the deduction of convention expenses incurred by the businesses themselves. Although the interpretation was thus accurate from an employer's standpoint, it was inappropriate for revoking the Service's previous convention-personal expenditure position. Although the activity was analyzed for deductibility under a convention test, the same result could have been upheld on a payment of compensation basis. As noted below in Thomas v. Patterson, 189 F. Supp. 230 (N.D. Ala. 1959), rev'd, 289 F.2d 108 (5th Cir.), cert. denied, 368 U.S. 837 (1961), discussed in text accompanying notes 83-99 infra, and in Rudolf v. United States, 189 F. Supp. 2 (N.D. Tex. 1960), aff'd, 291 F.2d 841 (5th Cir.), cert. granted, 368 U.S. 913 (1961), cert. dismissed, 370 U.S. 269 (1962), discussed in text accompanying notes 100-04 infra, an expense may be deductible to an employer whether or not the activity is deductible to the attending employee. An all expenses paid vacation provided by an employer to an employee is almost invariably a deductible expense, unless it constitutes a gift. However, such expenditures at the recipient-employee level are not necessarily deductible. Therefore, while I.T. 2602 broadened convention expense deductibility to conform with the Board's decisions, it was an inapt method of doing so.


60. Id. (emphasis added).

61. See Charles O. Gunther, Jr., 13 T.C.M. (CCH) 984 (1954) (expenses arising from attendance at accounting convention, producing busi-
were sparse. This is probably both because the deductibility of education expenses per se was unsettled, and because such activities were frequently characterized as "conventions" in light of previous taxpayer success with that approach.⁶²

Nevertheless, one significant decision on educational seminars was rendered during this period. Coughlin v. Commissioner⁶³ concerned an Idaho attorney who handled most of his firm's federal income tax matters and attended a two-week tax seminar in New York City. The Second Circuit, emphasizing the enhancement of the attorney's knowledge in his area of practice, concluded that such expenditures were ordinary and necessary and therefore deductible. The court noted further that the taxpayer had a moral duty to his clientele to keep abreast of new developments. The Regulations' incorporation of the facts of Coughlin attests to the significance of the decision.⁶⁴

B. Developmental Period, 1956-1969

With the basic issue of deductibility settled, the major question became under what circumstances deductions would be allowable. The necessity of drafting regulations under the 1954 Code gave the Service an opportunity to review its position. It expressed revived concern that the deductions might be abused:

Where opportunities exist for personal vacationing in connection with business trips or the attendance of business or professional conventions, and especially where the taxpayer is accompanied by one or more members of his family, it is apparent that examining officers of the Service have a duty to give especially careful scrutiny to deductions taken in returns for the expense involved in order to assure against abuse of the deduction permitted by section 162 (a) of the Code.⁶⁵

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⁶² See text accompanying notes 42-47 & 51-55 supra.
⁶³ 203 F.2d 307 (2d Cir. 1953).
⁶⁴ Treas. Reg. § 1.162-5(e) (2) example (1) (1958). Coughlin was followed in Bristline v. United States, 145 F. Supp. 802 (D. Idaho 1956), which upheld an attorney's deductions of expenses incurred in traveling to and attending a two-week Public Law Institute conference in New York City.
Reconsidering its previous carte blanche acquiescence in the deductions, the Treasury more clearly defined allowable deductions in the 1958 Regulations, which specifically addressed convention expenses, travel expenses, and educational travel expenses. These Regulations, as described previously, were more specific than the statute but did not completely resolve the issue of deductibility, for they interpreted the law in terms that were undefined. Further refinement was left to the Service and the courts.

The Service has made several attempts to define the "sufficient relationship" test promulgated in the 1958 Regulations. Revenue Ruling 59-31668 noted that the proper standard was an objective determination of whether a taxpayer’s trade or business, after taking into account his duties and responsibilities, would benefit from the substantive material to be covered at the convention. This could be determined by comparing the purpose of the meeting as shown by the agenda with the taxpayer's duties, but the Ruling clearly implies that other methods of proof could also be used:

The allowance of deductions for convention expenses as business expenses will depend upon whether the relationship between the taxpayer's trade or business and his attendance at the convention is such that by his attendance he is benefiting or advancing the interests of his trade or business.

One method of determining whether such a relationship exists is to compare the individual's duties and responsibilities of his own position with the purpose of the meeting as shown by the program or agenda. If personal and business purposes are both involved, a proper allocation must be made in accordance with section 1.162-2(b) of the Income Tax Regulations.69

This Ruling reflects the educational theory adopted by the Board in Alexander Silverman. The subject matter covered must have some connection with the taxpayer's duties, although it need not deal exclusively with them. Since this is the only

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67. See notes 15-17 supra and accompanying text.
68. 1959-2 C.B. 57.
69. Id. (emphasis added). Note that the last sentence of this passage indicates that a convention may serve both personal and business purposes and an allocation in accordance with section 1.162-2(b) may therefore have to be made. The reference to the Regulations indicates that the Service does not consider compliance with the sufficient relationship standard alone determinative of the deductibility of all expenses.
70. See text accompanying notes 45-47 supra.
71. Revenue Ruling 59-316 was updated and clarified in Rev. Rul. 63-286, 1963-2 C.B. 88 (emphasis added), which stated:
test specifically discussed, the Service clearly considers it highly important, although not exclusive. The referral theory developed in the early case law might be another way to measure the requisite business relationship, but the absence of any discussion of the theory in this Ruling implicitly questioned the legitimacy of that rationale.

The Service continued to assert its position before the courts and to the public. A Service news release emphasized the agenda test, warning taxpayers to carefully consider educational seminars from a tax standpoint, notwithstanding assurances of deductibility by promoters: "Prospectuses and programs of some of these proposed 'seminars' raise substantial questions as to whether the activities described meet the qualifications for deductible business expenses set forth in the income tax laws and regulations."

Despite the Service's strong preference for the agenda test, taxpayers continued to cite the possibility of re-

It is the position of the Internal Revenue Service that the test for allowance of deductions for convention expenses provided in section 1.162-2(d) of the regulations is met if the agenda of the convention or other meeting is so related to the taxpayer's position as to show that attendance was for business purposes. The clarification was intended to eliminate any implication that the agenda must deal specifically with the taxpayer's business. This concession is a tacit recognition that material presented at a convention, possibly in contrast to educational seminars, may not always deal specifically with a participant's employment.


73. See Musser v. United States, 57-1 U.S. Tax Cas. ¶ 9603 (N.D. Cal. 1957) (upholding the deduction of a professional seminar expense); Richard Seibold, 31 T.C. 1017 (1959); Ralph Duncan, 30 T.C. 386 (1958). In Seibold the taxpayer attended a professional convention followed by a "professional" cruise with his colleagues; the Tax Court employed the Cohan rule, see note 159 infra and accompanying text, disallowing some expenses since there was no showing of the time allotment between business and personal activities, or proof of attendance at seminars. See also DeWitt K. Burnham, 17 T.C.M. (CCH) 249 (1958).

74. I.R.S. News Release No. IR 357, January 30, 1961, [1961] 7 STAND. FED. TAX REP. (CCH) ¶ 6295, the full text of which provided: U.S. Internal Revenue Service today warned taxpayers to consider carefully implications of tax deductibility contained in certain advertising for tours described as professional seminars. IRS said such claims had come to its attention in connection with promotion of trips to luxury resort areas and to places outside the United States. It added:

"Prospectuses and programs of some of these proposed 'seminars' raise substantial questions as to whether the activities described meet the qualifications for deductible business expenses set forth in the income tax laws and regulations. This is par-
ferrals, increased business, and enhancement of reputation as a basis for finding that the activity was related to their business. Shortly after publication of the Service's news release, the Tax Court was faced with this argument in Alexander P. Reed.75

In Reed, a Pittsburgh attorney with a general local practice had joined an organization "devoted to the advancement of international law and peaceful settlement of disputes." As a delegate for the American branch, he went to Yugoslavia for the annual convention that dealt with matters of international particularly true with respect to expenses of spouses of the participants.

"To be tax deductible, expenditures must be ordinary and necessary to the taxpayer's business. A number of Internal Revenue rulings and court decisions have served to define rather closely the acceptable criteria for such deductions."

IRS previously announced it had instructed its examiners to place increased emphasis on the examination of returns involving entertainment, travel, and expenses of a similar nature, including the cost of purported business trips which are, in fact, vacations.

In examining a return, the Internal Revenue Agent will, of course, consider the particular circumstances of a claimed deductible expense, IRS said.

The reference to "luxury resort areas" caused concern among professional groups and the entrepreneurs who provided facilities for such meetings. The Service in a subsequent news release indicated that the location alone would not be determinative. I.R.S. News Release No. IR 394, August 3, 1961, [1961] 7 STAND. FED. TAX REP. (CCH) ¶ 6487 which provided:

Commissioner of Internal Revenue Mortimer M. Caplin recently has received information that businessmen, trade associations and other groups are concerned as to whether under existing law legitimate expense deductions, particularly those for conventions or business meetings, are being disallowed because the location of the activity takes place at a resort area.

There is no reason for such concern, the Commissioner said in reiterating Service policy in this area. He added:

"While it is true that we have intensified our audit activity in the travel and entertainment expense area, there has been no change in the concept of what constitutes a deductible expense. Those expenses which are clearly shown to be for business purposes will continue to be allowable under existing law."

He said an analysis of a large group of cases from all parts of the country involving a variety of travel and entertainment expenses did not reveal that any expenses were disallowed merely because of the site of a convention or meeting. Disallowances were properly made to eliminate wives' and children's expenses, expenses of side trips, vacations purported to be business trips, and for lack of substantiation of expenses incurred.

Commissioner Caplin said: "In order to curb abuses in the travel and entertainment expense area, our examiners must continue to take a good hard look at such deductions. At the same time they must bear in mind that in the absence of a legislative change, the tests for deductibility of these expenses remain the same."

75, 35 T.C. 199 (1960).
law and was attended by lawyers from countries throughout the
world. Petitioner alleged that he joined the International Law
Association in order "to make contacts, enhance his reputation,
and attract clients," but since he failed to factually substantiate
this position, the court did not discuss the merits of this argu-
ment, noting that

such an altruistic motive, commendable as it may be, does not
suffice to meet the statutory prerequisites of section 162 since it
is totally unrelated to petitioner's business. See sec. 1.162-2(d),
Income Tax Regs. We are, moreover, unable to discern any
direct and proximate relationship between the purpose of the
Dubrovnik conference as reflected by its agenda and petitioner's
domestic and local law practice in Pittsburgh. Petitioner testi-
ified that he did not derive any fees in the taxable year in issue
from cases involving international law and he stipulated that he
"realized no income directly or through referrals in 1956 or sub-
sequent years as a result of the Dubrovnik conference." In
short, petitioner has failed to show any actual or potential busi-
ness benefit, economic or otherwise, which resulted or might
proximately result from his attendance at the Dubrovnik con-
ference. 76

The court thus utilized the agenda test to determine whether
a sufficient relationship with the taxpayer's business existed, but
it seemed to recognize the referral argument as a possible alter-
native justification for deductibility.

In addition to promoting the agenda test as the proper mea-
 sure of the relationship between the activity and the taxpayer's
business, the Service sought to refine the standards for deter-
mining the taxpayer's primary motivation for engaging in the
activity. Since business, but not personal expenditures are de-
ductible under the Code, the taxpayer's motivation is the control-
ling factor in determining deductibility. 77 Although the Regulations arguably do not preclude the use of a subjective "but for"
test for assessing motivation—the taxpayer would not have en-
gaged in the activity but for its connection with his business 78 —
the Service has generally relied on the more objective "primarily
related" test.

In Reuben v. Hoover 79 the Service asserted that to show a
business motive the taxpayer had to choose a reasonable means
of achieving his educational objective. The taxpayer, an "ex-

76. Id. at 203 (emphasis added, footnote omitted).
77. See text accompanying notes 163-79 infra.
78. See Klein, The Deductibility of Transportation Expenses of a
Combination Business and Pleasure Trip—A Conceptual Analysis, 18
STAN. L. REV. 1099, 1112 (1966); note 165 infra.
79. 35 T.C. 566 (1961). The setting of Hoover probably gave rise
to I.R.S. News Release No. IR 394, supra note 74.
tremely busy" physician, had enrolled in the "Second Postgraduate Medical Seminar Cruise." Five medical professors of Duke University presented the seminar but it was not officially affiliated with the university. The brochure describing the event mentioned the academic program, but also emphasized the opportunity for recreation and travel. Only practicing physicians and their spouses or relatives attended the seminar. The first class cruise throughout the Mediterranean lasted 18 days, during which several one-hour medical lectures were presented, followed by panel discussions. The ship was not specially equipped for the seminar; no study was required by participants; and non-academic time was unscheduled. The court found that the lectures were important to the taxpayer's work and that he received credit for the course. Nevertheless, it refused to grant a full deduction.

Although the court noted that the taxpayer had engaged in sightseeing and recreational activities, the fact most damaging to the taxpayer's position was the availability of more reasonably priced alternative courses. These courses were four days long and cost an average of $40 per day compared to the $1,881.86 that the taxpayer spent on the cruise. The court agreed with the Service's contention that the recreational activities and personal considerations were the primary reasons the taxpayer decided to participate in the seminar. The court found "it impossible to believe that an extremely busy doctor would spend approximately a month in obtaining information which could have been obtained from the same faculty in four days and at a fraction of the cost of the cruise." The court thus considered efficiency determinative, concluding that since the taxpayer could have acquired the educational benefits more efficiently, his selection of the cruise evidenced a primarily personal intent. Moreover, the informal atmosphere and lack of required study also indicated that his motivation was predominantly nonbusiness. Because some business relationship existed, however, the Tax Court per-

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80. The subject matter lectured upon and discussed was of some value to petitioner in his practice. Some of the information was directly assimilated into his work. Petitioner received a certificate indicating that he had qualified to receive 25 hours postgraduate education credit. This credit in part satisfied the requirements of the Academy of General Practice, of which petitioner was a member.

35 T.C. at 568.

81. Id. at 569.
mitted a deduction of the allocable business portion of the expenses. 82

Particular attention should be directed to the court's determination that the recreational nature of the trip and the taxpayer's prevailing motivation voided the deduction, notwithstanding the seminar's educational value and its relationship to the taxpayer's business. The court made no computation of time spent at lectures, panel discussions, or in educational conversations among participants (which may have been substantial in view of the extensive travel time). Although such an analysis might have revealed that a relatively small portion of time was devoted to business, and thereby yielded the same result, the tenor of the opinion is that inefficiency and unreasonableness were alone sufficient to deny deductibility.

The standards for determining taxpayer motivation were further developed in Thomas v. Patterson 83 and Rudolph v. United States. 84 In Patterson, residents of Alabama claimed a refund after the Service had found that their attending an insurance convention held in Virginia, paid for by their employer, constituted gross income and was not offset by a business deduction. The annual conventions were attended by those insurance representatives who "attained certain standards, evidenced high abilities, and made outstanding contributions to the Company in their chosen field." 85 Although the employer did not require eligible employees to attend, nonattendance would adversely affect future advancement in the company. The district court found that the purpose of the convention was to promote "the professional knowledge, skill, attitude and morale of agents," 86 and concluded that the primary activity was business even though recreational and sightseeing activities were also available. Advancing no reasoning whatsoever for its conclusion and citing no legal authorities on the issue, the court bluntly concluded that either the reimbursements constituted gross income to the taxpayers which were offset by a corresponding deduction under section 162, or that the reimbursements were not gross income. 87

85. 189 F. Supp. at 231.
86. Id.
87. Id. at 232.
Reversing on appeal, the Fifth Circuit substantially supplemented the district court's factual recitation, emphasizing the convention schedule, the taxpayer's lack of control over the program, and the time and place of the meeting. The court held that "in kind" payments constitute income and noted that the taxpayer had not met the requirements for exclusion of income under section 119. Having concluded that the privilege of participation was an "in kind" receipt of income, the court considered whether the Regulations' "primary purpose" test had been met so as to afford a deduction for the constructive expenditure of such amounts. The court emphasized that the employee, rather than the employer, must meet the test, taking the following factors into consideration: (1) the relative amount of time spent in business as opposed to personal activities; (2) the fact that the participants were co-employees; (3) the location of the convention; and (4) the attitude of the sponsor and participants.

The court's initial consideration of the relative time allocation between business and pleasure indicates the importance of this factor. The court found that only "five hours out of the three and one-half days were spent in formal business meet-

88. 289 F.2d 108 (5th Cir. 1961).
89. The court presented the agenda which read as follows:
Wednesday, May 16:
1:30 Arrival
1:30-5:00 "Renewing old acquaintances and making new acquaintances."
6:30 Company dinner and water show.
Thursday, May 17:
7:00-9:30 Breakfast with delegates.
10:00 Meeting (2½ hours)
Afternoon—No planned activity (Taxpayer played golf)
8:30 Movie
Friday, May 18:
7:00-8:30 Breakfast with delegates
9:00 Tour of Williamsburg and Jamestown
8:30 Bingo
Saturday, May 19:
7:00-8:30 Breakfast with delegates
10:00 Meeting (2½ hours)
Afternoon Boat Trip
7:00 President's Banquet and Ball.
Id. at 111.
90. Id. at 112.
91. The court noted that an employer who provides an employee with an all expenses paid vacation has a primary business purpose, that is, increasing the employee's morale, rewarding past performance, and so forth; however, the employee's primary purpose in taking the trip is personal and thereby nondeductible. Id. at 112-13.
92. Id. For a discussion of these factors and their impact on employer conventions, see Keller, Closer I.R.S. Scrutiny of Convention Expenses Is Forecast as Rudolph Dismissal Leaves Doubt, 17 J. Tax. 206 (1982).
Recreational time far exceeded business time, even computing the latter by including the welcoming address. The court acknowledged the "forceful argument" that informal business-related activity, such as educational and contact conversations, occurred during recreational periods, and intimated that such conversations might constitute business time. The three other factors considered, however, precluded finding a business purpose even with a liberal view of the time allocation.

The second factor the court discussed was that the participants were employed by the convention's sponsor, which indicated that the convention was really a form of remuneration. As the court's citation of the Silverman decision suggests, however, this fact should have been treated as immaterial since it emphasizes the employer's intent rather than the employee's purpose in attending. The third factor was the convention's location in a resort area. The court acknowledged that this adverse factor might have been negated by a showing that no other facilities for the group were available, but found the taxpayer's evidence on the point inconclusive. Finally, the court considered the company's attitude, which also should have been treated as irrelevant except with regard to the gross income issue, and imputed the company's purpose for holding the convention to the participants. Various correspondence, including the descriptive brochure sent to participants, emphasized the recreational and sight-seeing activities available and indicated a substantial nonbusiness

93. 289 F.2d at 113.
94. Id. The court noted:
In answer to this point, the taxpayer forcefully argues that, although the schedule reveals much activity of a purely recreational nature, he sought as co-participants in those activities company officials and better salesmen than himself, who might, while "playing," provide him with information on improving his abilities. He testified that much of the conversation on the sight-seeing tour, the boat trip, and his golf game directly concerned his business. Were these the only facts on which the court had to base its judgment, the proper resolution of the issues in this case would be more difficult than we believe they are.

Id.

95. The taxpayer had cited the Silverman decision as authority for his position. See notes 45-47 supra and accompanying text. The Fifth Circuit distinguished Silverman by noting that it did not involve company-sponsored conventions. 289 F.2d at 113. This approach creates a bias in favor of self-employed individuals that the Regulations expressly proscribe. See Treas. Reg. § 1.162-2(d) (1958). Moreover, the remunerative aspect, while relevant to the initial gross income issue, does not show anything about the employee's purpose. The court erroneously emphasized the employer's, rather than the employee's, intent.

96. 289 F.2d at 113.
The court concluded that the four factors, considered together, indicated a primarily personal purpose. It reversed the district court's holding as clearly erroneous and denied a deduction for the travel expenditures. A pro rata share of costs for meals and lodging, reflecting the actual business portion of the trip, was the only deduction permitted.

Rudolph v. United States involved similar facts—a convention of southern insurance salesmen held in New York. The taxpayer’s employer provided an all expenses paid convention trip to New York City to salesmen who sold a requisite amount of insurance. The convention lasted five or six days during which “one morning session was devoted to a business meeting, followed by a business luncheon,” and the remaining portion was for “travel, sightseeing, entertainment, fellowship or free time.” The participants traveled to and from the convention on the same train and thus had ample time for discussion.

Rather than looking to the relative time allocation or other factors, the court focused on the fact that the remote convention site bore no rational relationship to the group and its activities:

97. One piece of correspondence specifically stated that “business was secondary.” This, to say the least, was damaging evidence. Other correspondence to the participants emphasized the “sightseeing activities.”

98. 289 F.2d at 114.

99. Id. The dissent emphasized inter alia that the employee’s participation was compelled, without considering the potential for abuse inherent in such a standard. Would the compulsion be judged on a subjective or an objective basis? This standard would permit employers to give employees “tax free” benefits under the pretext of compulsion.


101. 189 F. Supp. at 3.

102. The court stated:

The recent Alabama case, Thomas v. Patterson, D.C.N.D. Ala., 189 F. Supp. 230, was for attending a convention at Fort Monroe in Virginia. It does not appear where the office of the company is—the insurance company—it does not appear where the territory of the company is. So far as the information is concerned, much of its business might be around and about Fort Monroe. Therefore, selection of that place would be in line with ordinary business economy. In any event, we are concerned with whether plaintiffs in this case must include the value of the trip in their income and if so, whether or not they are entitled to a business expense deduction. We are not concerned with the deductibility of the convention’s cost by the insurance company. It is the purpose of the convention to the taxpayers which governs our action, not the purpose of the insurance company in holding them.

We will assume that the company here has a larger part of its business in Texas and adjoining states. Primarily, the place of the home office would be the place where the agents would be
The court's conclusion is that the holding of these conventions generally, and especially the holding of them at remote places, have the primary purpose of affording a pleasure trip which the agent himself, to enjoy, would have paid out of his own funds if the Company had not given it to him, which is in every way in the nature of a reward that would be a bonus.\textsuperscript{103}

The unreasonableness of selecting a locale that was geographically remote from the participants' residences, the sponsor's home office, and the sponsor's and participants' business surroundings was convincing evidence of a nonbusiness purpose. Although the insignificant amount of time spent on business also evidenced a personal purpose, the decision indicates that deductibility may be limited by an "ordinary and necessary" standard relating simply to the reasonableness of the convention site. The Fifth Circuit affirmed per curiam noting that the case was no different from \textit{Patterson}.\textsuperscript{104}

Although minor litigation on these issues continued,\textsuperscript{105} the only other significant development during this period came from Congress. Prior to 1962, travel expenses were deductible on an "all or nothing" basis under section 162. In that year, however, Congress enacted section 274 as part of the Revenue

\begin{quote}
Suppose there was a lot of business down and around San Antonio. To break the monotony to a degree, the convention might be held in San Antonio, or in Houston, or might be held in Oklahoma City. \textit{But what business reason is there for holding a convention in a place as far away as New York; and certainly, what business reason is there for holding a convention in Havana, Cuba. It was not held down there for educational purposes in insurance.}

Assume that it was to a degree; what was the primary purpose of the trip: It was a reward, or a bonus given to the employees for excellence in service. \textit{If it was purely educational, it might be held here in Dallas and those who did not attain such a high rating might have the benefit of the program at the convention.}
\end{quote}

\textit{Id.} at 4 (emphasis added).

\textsuperscript{103} \textit{Id.}

\textsuperscript{104} Rudolph v. United States, 291 F.2d 841 (5th Cir. 1961). The Supreme Court granted certiorari, 368 U.S. 913 (1961), but subsequently dismissed it as improvidently granted on the ground that resolution of the primary purpose test was factual and subject to the clearly erroneous rule. 370 U.S. 269 (1962) (per curiam). Justice Harlan would have upheld the decision. \textit{Id.} at 270-78. Harlan discussed the Regulations on deductibility, including the primarily related test. He did not employ an independent factor analysis, however, for he concluded that the lower court's findings were not clearly erroneous.

\textsuperscript{105} Most cases were resolved without significant discussion of the rationale for deductibility, or an analysis of the criteria the taxpayer had to satisfy. In \textit{Hier v. United States}, 13 Am. Fed. Tax Rep. 2d 1043 (S.D. Calif. 1964), teachers acquired credit for educational activity on a cruise.
Act of 1962\textsuperscript{106} in an effort to limit the total deductibility of combined business-pleasure trips. This section applied to both domestic and foreign travel and required an allocation of expenses between deductible business activity and nondeductible personal activity.\textsuperscript{107} The provision's legislative history indicates that it was intended to eliminate a subjective "but for" determination of deductibility for travel expenses.\textsuperscript{108} This suggests that, in spite of the 1958 Regulation's objective criteria, a taxpayer's subjective intent was frequently controlling in evaluating deductibility. In 1964, the concern of the domestic resort and entertainment industry led to the repeal of section 274 insofar

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\begin{footnotes}
\item[107] Id. § 4, 76 Stat. 974.
\end{footnotes}
as it applied to domestic travel. This action raised questions concerning the use of the subjective "but for" standard that are still unanswered.

Thus, although general deductibility standards had been clarified during this period—the "sufficient relationship" standard as interpreted by Reed, the "primarily related" test as applied in Patterson and Rudolph, and the overriding efficiency/reasonableness requirement as evidenced in Hoover—important issues remained unresolved.

C. Modern Developments, 1969-Present

The most recent period in the development of the tax laws relating to conventions and seminars has been characterized by the Service's in terrorem public pronouncements and by new congressional efforts to curb the abuse inherent in the travel and convention area.

In mid-1972, the Service announced that it was carefully scrutinizing convention and seminar activities. It noted that "a number of professional, business, or trade organizations and associations have been sponsoring trips and conventions during which only a small portion of the time is devoted to business." Consequently, greater review would be given those situations. Awakened by these pronouncements and prodded by the continued use of such activities to disguise vacations, members of Congress began an effort to limit the abuse.

Congressman James Corman of California, introducing the Tax Equity Act of 1973, which would have disallowed all expenses of attending conventions outside the United States, stated:

This section disallows expenses of travel (including meals and lodging) of an individual in connection with attending a convention held outside the United States. As a general rule, such

110. See text accompanying notes 171-74 infra.
111. I.R.S. News Release No. IR 1224, [1972] STAND. FED. TAX REP. (C.C.H.) ¶ 6729 (June 1, 1972). This release further provided: "Promotional material sent out by the sponsoring organization often emphaizes vacation possibilities and implies that the cost of the trip or convention is tax deductible. . . . As a result some taxpayers may have been misled into deducting the cost of the trip or convention." Id.
expenses are incurred primarily for pleasure rather than business. Thus, expenses of lawyers attending the American Bar Convention in London in 1971 would have been disallowed if the amendment had been in effect.\textsuperscript{113}

Although the amendment would have had only prospective effect, it is not clear whether it was intended merely to codify current law. Corman's reference to the primary purpose test indicates that he felt the proposal was founded on the current Regulations and that under them an unreasonable location should preclude deductibility. The bill was referred to the Ways and Means Committee where no action was taken.\textsuperscript{114}

The only major judicial decision regarding the deductibility of convention-educational seminar expenses was \textit{Esfandiar Kadivar},\textsuperscript{115} also handed down in 1973. The taxpayer had a foreign medical degree and began an internship program to qualify for American practice. He participated in a 14-day "Orient Adventure" trip sponsored by the Southern Medical Association that was intended to combine travel to foreign capitals with one hour medical seminars held in tourist hotels. At the conclusion of the trip, he received a "Certificate for Continuing Education in Medicine." The Tax Court, citing the Regulations and noting the section 274(c) allocation procedure,\textsuperscript{116} concluded perfunctorily that the trip was "primarily for pleasure." Relying on \textit{Patterson}, the court denied the entire deduction. "The few hours spent at brief medical seminars [did] not convert what was in all other respects a vacation into a business trip."\textsuperscript{117} Thus, the court continued to emphasize the formal educational aspects of the trip and relative time allocation.

The Service followed \textit{Kadivar} in Revenue Ruling 74-292.\textsuperscript{118} A physician participated in a 14-day medical association sponsored trip to two foreign countries. A travel agency arranged the trip and provided three two-hour professional seminars in each country. The taxpayer attended all meetings and received a "Certificate of Continuing Education in Medicine." The Ruling stipulated that no cost was attributable to the seminars. After reviewing the Regulations and discussing \textit{Kadivar}, it con-

\begin{itemize}
\item \textsuperscript{113} 119 CONG. REC. H 47 (daily ed. Jan. 6, 1973) (emphasis added).
\item \textsuperscript{114} 119 CONG. REC. H 86 (daily ed. Jan. 6, 1973).
\item \textsuperscript{115} 32 T.C.M. (CCH) 427 (1973). Expenses of attending chiropractic business seminars were allowed in R.O. Watts, [1975] TAX CT. MEM. DEC. (P-H) ¶ 75,131, without substantive discussion.
\item \textsuperscript{116} 32 T.C.M. (CCH) at 429.
\item \textsuperscript{117} Id.
\item \textsuperscript{118} 1974-1 C.B. 43.
\end{itemize}
cluded that the activity was primarily personal and nondeductible.

In the instant case the facts show that (1) the six two-hour professional seminars did not convert what was in all respects a vacation into a business trip; (2) the expenses incurred for travel were not related primarily to the taxpayer's trade or business; and (3) no other expenses were incurred that were directly attributable to the conduct of the taxpayer's trade or business. The participation in some incidental activity by the taxpayer related to his trade or business will not change what otherwise was a vacation trip into a business trip.\(^{119}\)

Interestingly, the Ruling completely ignores the Code's specific foreign travel provision and its allocation provisions.\(^{120}\) The Service's analysis assumes the provision is applicable only if the "primarily related" test is met, but this issue is still unresolved.\(^{121}\)

Congress remained actively concerned with revising the tax laws in this area and in 1974 the House Ways and Means Committee tentatively revived the Corman proposal to disallow all expenses of foreign conventions:

The committee agreed to limit deductions allowable for the expenses of taxpayers attending conventions, educational seminars or similar meetings outside the United States. The general rule agreed to by the committee is that no deduction is allowable for foreign travel expenses (including expenses for transportation, meals and lodging) for an individual with respect to a convention, seminar or similar meeting held outside the United States unless the location is consistent with the activities, purposes and functions of such convention, meeting or seminar.

This rule would not apply to a meeting conducted by an organization which draws from foreign members to the extent the number and location of its foreign meetings are reasonable in light of the number of foreign members and their geographical dispersion. Present law relating to the allocation of expenses would continue to apply in any case where foreign meetings may still be deductible.

This rule also is not intended to apply to the expenses incurred in attending a convention, etc., at a location that is uniquely suited to the purposes of the convention, provided that the attendance at the conference by an individual is related to

\(^{119}\) Id. at 44.

\(^{120}\) I.R.C. § 274. See regulations cited in note 121 infra.

\(^{121}\) Section 274's reference to section 162 implies that the "primarily related" prerequisite of section 162 must be met. See note 12 supra. Various examples under the section 274 Regulations regarding travel, however, indicate merely that if some business activity occurs the expenses will be prorated accordingly. See Treas. Reg. § 1.274-4(g) example (7) (1983). Possibly the taxpayer in the Ruling could not, in view of the minimal business time, fulfill the day allocation requirements. See Treas. Reg. § 1.274-4(d) (2) (1983). See also Ahmed F. Habeeb, [1976] Tax Ct. Mem. Dec. (CCH) 1134 (August 19, 1976) (professor's lecture trip to Egypt entitled him to deduct transportation expenses but other expenses were to be recomputed or disallowed under section 274).
his trade or business. Thus, a deduction will not be allowed in the case of an individual who attends a meeting conducted or sponsored by a domestic organization in all respects (membership and organizational purpose) which meets outside the United States unless there is a compelling reason for meeting outside the United States.\textsuperscript{122}

Apparent\textsuperscript{ly the proposal would have denied deductions for foreign conventions whenever the site selected was unreasonable;\textsuperscript{123}} notably, domestic conventions were not included in the pro\textsuperscript{scription}. Thus, domestic organizations could not convene at a foreign location unless they could show a compelling reason to do so; for example, on-the-spot observation at a foreign locale might be critical to an archeologists' seminar.\textsuperscript{124} Had the proposal been enacted,\textsuperscript{125} the exceptions would probably have been narrowly construed, since the aim was clearly to forestall attempts to bootstrap the deductibility of expenses by creating organizations with token foreign representation. Except in cases of compelling reasons for the selection of a foreign locale, the proposal probably would have required that the foreign members constitute a significant percentage or majority of the total number of participants and that the frequency with which foreign locales were selected reflect the proportion of foreign members.

In late 1975 the Committee retreated from this approach. Although several members of the Committee expressed support for the 1974 position,\textsuperscript{126} the final proposal allowed the deduction of limited expenses of attending two foreign conventions annually. Expenses of all other foreign conventions were nondeductible.\textsuperscript{127}

The 1975 House Committee Report reviewed the current state of the law and discussed some of the standards for deductibility established by the Regulations and case law, but did not discuss

\textsuperscript{122.} COMM. ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES, 93RD CONG., 2D SESS., BRIEF DESCRIPTION OF TENTATIVE DECISIONS FOR DRAFTING PURPOSES ON TAX REFORM PROPOSALS, 7 (Comm. Print Aug. 22, 1974) (emphasis added).

\textsuperscript{123.} The proposal closely approximates the Canadian treatment of conventions discussed at note 230 infra.

\textsuperscript{124.} See Duncan v. Bookwalter, 63-1 U.S. Tax Cas. ¶ 9415 (W.D. Mo. 1963) (deductions allowed for travel expenses incurred in study of alcoholism in locations unique to the subject matter).

\textsuperscript{125.} This provision of the House Ways and Means bill was deleted and not reported to the floor of the House. See H. Rep. No. 93-1502, 93d Cong., 2d Sess. 1 (1974).

\textsuperscript{126.} See First Phase of Tax Reform, Ways and Means Committee Member Selections of Proposals for Consideration, III C, [1975] 9 STAND. FED. TAX REP. (CCH) ¶ 6161.

the geographical reasonableness standard enunciated in *Rudolph*.

The proposed legislation was designed to curb the continued use of conventions as "disguised vacations," during which the participants spend little time on business-related material. The Report also emphasized that the lack of specific guidelines for conventions was an impediment to efficient administration and that the subsidization of such "exotic" activity through loss of federal tax revenues had an adverse effect on taxpayer morale.

The House passed the proposed legislation in 1975. The Senate Finance Committee considered the bill and reported to the Senate floor revised legislation that mirrored the 1974 House proposal requiring a "reasonable" locale. The conference com-

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129. The Committee noted:
   Your committee is concerned that the lack of specific detailed requirements has resulted in a proliferation of foreign conventions, seminars, cruises, etc. which, in effect, amount to Government-subsidized vacations and serve little, if any, business purpose. Your committee is aware that the promotional material often highlights the deductibility of the expenses incurred in attending a foreign convention or seminar and, in some cases, describes the meeting in such terms as a "tax-paid vacation" in a "glorious" location. In addition, your committee has been made aware that there are organizations that advertise that they will find a convention for the taxpayer to attend in any part of the world at any given time of the year. This type of promotion has an adverse impact on public confidence in the fairness of the tax laws.

131. This version of the Act read as follows:

   Sec. 602. DEDUCTIONS FOR ATTENDING FOREIGN CONVENTIONS.
   (a) NONDEDUCTIBILITY OF CERTAIN EXPENSES.—
   Section 274 (relating to disallowance of certain entertainment, etc., expenses) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

   "(h) ATTENDANCE AT CONVENTIONS, ETC.—
   "(1) IN GENERAL.—In the case of any individual who attends a convention, seminar, or other meeting which is held outside the North American area, no deduction shall be allowed under section 162 or 212 for expenses allocable to such meeting unless the taxpayer establishes that the meeting is directly related to the active conduct of his trade or business or to an activity described in section 212 and that, after taking into account the manner provided by regulations prescribed by the Secretary—

   "(A) the purpose of such meeting and the activities taking place at such meeting,
   "(B) the purposes and activities of the sponsoring organizations or groups, and
   "(C) the residences of the active members of the spon-
sorings organization and the places at which other meetings of the sponsoring organization or groups have been held or will be held,
it is more reasonable for the meeting to be held outside the North American area than within the North American area.

"(2) CONVENTIONS ON CRUISE SHIPS.—In the case of any individual who attends a convention, seminar, or other meeting which is held on any cruise ship, no deduction shall be allowed under section 162 or 212 for expenses allocable to such meeting.

"(3) DEFINITIONS.—

"(A) NORTH AMERICAN AREA DEFINED.—For purposes of paragraph (1), the term 'North American area' means the United States, its possessions, and the area lying west of the thirtieth meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any country on the continent of South America.

"(B) CRUISE SHIP.—For purposes of paragraph (2), the term 'cruise ship' means any vessel sailing within or without the territorial waters of the United States.

(4) SUBSECTION TO APPLY TO EMPLOYER AS WELL AS TO TRAVELER.—This subsection shall apply to deductions otherwise allowable under section 162 or 212 to any person, whether or not such person is the individual attending the foreign convention.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) shall apply to trips beginning after June 30, 1976.

(2) EXCEPTION.—The amendments made by subsection (a) shall not apply to any trip which begins before January 1, 1978, if the sponsoring organization establishes (in advance of the beginning of such trip) to the satisfaction of the Secretary of the Treasury or his delegate—

(A) that it was publicly announced before January 1, 1976, that this convention, seminar, or other meeting was to be held, and

(B) that the accommodations necessary for the holding of the convention, seminar, or other meeting were booked before January 1, 1976.


(h) FOREIGN CONVENTIONS.

(1) DEDUCTIONS WITH RESPECT TO NOT MORE THAN 2 FOREIGN CONVENTIONS PER YEAR ALLOWED.—If any individual attends more than 2 foreign conventions during his taxable year—

(A) he shall select not more than 2 of such conventions to be taken into account for purposes of this subsection, and

(B) no deduction allocable to his attendance at any foreign convention during such taxable year (other than a foreign convention selected under subparagraph (A)) shall be allowed under section 162 or 212.

(2) DEDUCTIBLE TRANSPORTATION COST CANNOT EXCEED COST OF COACH OR ECONOMY AIR FARE.—In the
duct the expenses of any two of the foreign conventions he has attended during the taxable year. The deductible expenses, however, are strictly defined. They are divided into two categories, transportation and subsistence, with separate requirements for deductions under each category.

(3) TRANSPORTATION COSTS DEDUCTIBLE IN FULL ONLY IF AT LEAST ONE-HALF OF THE DAYS ARE DEVOTED TO BUSINESS RELATED ACTIVITIES.—In the case of any foreign convention, a deduction for the full expenses of transportation (determined after the application of paragraph (2)) to and from the site of such convention shall be allowed only if more than one-half of the total days of the trip, excluding the days of transportation to and from the site of such convention, are devoted to business related activities. If less than one-half of the total days of the trip, excluding the days of transportation to and from the site of the convention, are devoted to business related activities, no deduction for the expenses of transportation shall be allowed which exceeds the percentage of the days of the trip devoted to business related activities.

(4) DEDUCTIONS FOR SUBSISTENCE EXPENSES NOT ALLOWED UNLESS THE INDIVIDUAL ATTENDS TWO-THIRDS OF BUSINESS ACTIVITIES.—In the case of any foreign convention, no deduction for subsistence expenses shall be allowed except as follows:

(A) a deduction for a full day of subsistence expenses while at the convention shall be allowed if there are at least 6 hours of scheduled business activities during such day and the individual attending the convention has attended at least two-thirds of these activities, and

(B) a deduction for one half day of subsistence expenses while at the convention shall be allowed if there are at least 3 hours of scheduled business activities during such day and the individual attending the convention has attended at least two-thirds of these activities.

Notwithstanding subparagraphs (A) and (B), a deduction for subsistence expenses for all of the days or half days, as the case may be, of the convention shall be allowed if the individual attending the convention has attended at least two-thirds of the scheduled business activities and each such full day consists of at least 6 hours of scheduled business activities and each such half day consists of at least 3 hours of scheduled business activities.

(5) DEDUCTIBLE SUBSISTENCE COSTS CANNOT EXCEED PER DIEM RATE FOR UNITED STATES CIVIL SERVANTS.—In the case of any foreign convention, no deduction for subsistence expenses while at the convention or traveling to or from such convention shall be allowed at a rate in excess of the dollar per diem rate for the site of the convention which has been established under section 5702(a) of title 5 of the United States Code and which is in effect for the calendar month in which the convention begins.
Transportation expenses cannot exceed the cost of “coach or economy air fare.” Thus, a participant traveling first class may deduct only an amount equal to the lowest coach or economy fare available during that month on a commercial airline. The use of other transportation would apparently be permissible, sub-

(6) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) FOREIGN CONVENTION DEFINED.—The term ‘foreign convention’ means any convention, seminar, or similar meeting held outside the United States, its possessions and the Trust Territory of the Pacific.

(B) SUBSISTENCE EXPENSES DEFINED.—The term ‘subsistence expenses’ means lodging, meals, and other necessary expenses for the personal sustenance and comfort of the traveler. Such term includes tips and taxi and other local transportation expenses.

(C) ALLOCATION OF EXPENSES IN CERTAIN CASES.—In any case where the transportation expenses or the subsistence expenses are not separately stated, or where there is reason to believe that the stated charge for transportation expenses or subsistence expenses or both does not properly reflect the amounts properly allocable to such purposes, all amounts paid for transportation expenses and subsistence expenses shall be treated as having been paid solely for subsistence expenses.

(D) SUBSECTION TO APPLY TO EMPLOYER AS WELL AS TO TRAVELER.—This subsection shall apply to deductions otherwise allowable under section 162 or 212 to any person, whether or not such person is the individual attending the foreign convention. For purposes of the preceding sentence, such person shall be treated, with respect to each individual, as having selected the same 2 foreign conventions as were selected by each individual.

(7) REPORTING REQUIREMENTS.—No deduction shall be allowed under section 162 or 212 for transportation or subsistence expenses allocable to attendance at a foreign convention unless the taxpayer claiming the deduction attaches to the return of tax on which the deduction is claimed—

(A) a written statement signed by the individual attending the convention which includes—

(i) information with respect to the total days of the trip, excluding the days of transportation to and from the site of each convention, and the number of hours of each day of the trip which such individual devoted to scheduled business activities,

(ii) a program of the scheduled business activities of the convention, and

(iii) such other information as may be required in regulations prescribed by the Secretary; and

(B) a written statement signed by an officer of the organization or group sponsoring the convention which includes—

(i) a schedule of the business activities of each day of the convention,

(ii) the number of hours which the individual attending the convention attended such scheduled business activities, and

(iii) such other information as may be required in regulations prescribed by the Secretary.
ject to the airline expense standard, notwithstanding the time expenditure involved. The transportation costs so determined are deductible in full if more than one-half of the total days of the trip (excluding transportation days) are devoted to “business-related activities.” If less than one-half of the total days are “business related,” only that portion of the transportation expenses equal to the percentage of business-related activity, computed on a daily basis, is allowable. The critical term “business related activities” is not defined by the statute, and the committee report only obliquely indicates its scope by its discussion of the similar standard imposed with respect to subsistence expenses.134 Apparently the term is intended to encompass sched-

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134. The Conference Committee Summary and Report explains the basic provisions of the legislation but provides no guidance for resolving the more difficult questions raised by the legislation. It provides:

Sec. 602. Deductions for attending foreign conventions.

The conference agreement provides that deductions will be allowed for expenses incurred in attending not more than two conventions, education seminars, or similar meetings outside the United States, its possessions and the Trust Territory of the Pacific. The amount of the deduction for transportation expenses to and from these foreign conventions can not exceed the cost of airfare based on coach or economy class charges. (However, this limitation does not apply to that portion of travel that is within the United States.) Transportation expenses will be deductible in full only if more than one-half of the total days of the trip (excluding the days of transportation to and from the site of the convention) are devoted to business-related activities. If less than one-half of the total days of a trip are devoted to business-related activities, a deduction will be allowed for transportation expenses only in the ratio of the business time to total time. Deductions for subsistence expenses, such as meals, lodging and other ordinary and necessary expenses, paid or incurred while attending the convention will be limited to the fixed amount of per diem allowed to government employees at the location where the convention is held. However, in order to deduct subsistence expenses up to this limitation for a day, there must generally be at least 6 hours of business-related activities scheduled daily (or 3 hours for a deduction for one-half day) and the taxpayer must have attended two-thirds of these activities.

The conference agreement provides that no deduction is to be allowed unless the taxpayer complies with certain reporting requirements in addition to present law substantiation requirements. Under these reporting requirements, the taxpayer must furnish information indicating the number of hours of each day and the total number of days of transportation to and from the place of convention that the taxpayer devoted to business-related activities, attach a program or agenda of the convention activities (and a brochure describing the convention, if available), and furnish any other information required by regulations. In addition, the taxpayer must attach a statement signed by an appropriate officer of the sponsoring organization to his income tax return, indicating the total number of convention days, the number of hours of business-related activities that the taxpayer attended each day, and any other information required by regulations.
uled convention activities, testing their deductibility by a substantive agenda standard computed on an objective time basis, as discussed further below.\textsuperscript{135} The statute does not address the problem of convention attendance that is combined with prior or subsequent business and personal activity. It is unclear whether the foreign convention provisions will apply to non-convention business activity at the convention site or whether such activity will be subject to the general foreign travel standards of section 274. Unfortunately, the committee reports accompanying the Act do not clarify this uncertainty or the others discussed below.\textsuperscript{136}

Subsistence expenses (meals, lodging, and "other necessary expenses for the personal sustenance and comfort of the traveler") are also subject to two limitations. Each specific day is evaluated, and expenses are deductible either totally (a whole day) or in part (a half day) if substantive activities related to a taxpayer's trade or business, calculated according to the agenda standard,\textsuperscript{137} are scheduled and the participant attends two-thirds of the scheduled hours. Notwithstanding the above computation, credit for all full and half days is available if the participant attends two-thirds of the total scheduled activities, provided substantial activities are scheduled on all days.\textsuperscript{138}

A "full day" has more than six hours of activities scheduled,\textsuperscript{139} while a "half day" involves more than three hours.\textsuperscript{140} In order to receive credit, a participant must attend at least two-thirds of the activities scheduled for the day. As noted in the committee report, attendance for two hours of a scheduled six-hour day does not result in a half day deduction, since a full day was scheduled.\textsuperscript{141} The report states that convention schedules in excess of the minimum statutory standards for full or half days will require attendance at two-thirds of the scheduled activity. Time involved in nonscheduled discussions or scheduled

\textsuperscript{135} See text accompanying notes 146-56 & 180-97 infra.

\textsuperscript{136} Other problems with the new legislation are briefly discussed at text accompanying notes 144-45 infra.

\textsuperscript{137} I.R.C. § 274(h) (7) (A) (ii). See note 133 supra.

\textsuperscript{138} Id. § 274(h) (4). See note 133 supra.

\textsuperscript{139} Id. § 274(h) (4) (A). See note 133 supra.

\textsuperscript{140} Id. § 274(h) (4) (B). See note 133 supra.

social activities will not count, apparently notwithstanding the substantive nature of the conversations or potential referrals. Banquets at which speeches or lectures are given will count only if the address is substantively oriented and only time actually spent in the delivery of the speech will be credited. Once the allowable subsistence expenditures are calculated, the total full day or half day expenses may not exceed the per diem rate for that locale established for United States civil servants. The effectiveness of this limitation in restricting extravagant activities will depend on the per diem rate in force.

However well intentioned, the legislation ineffectively limits the abuse inherent in convention and seminar activities, since most taxpayers do not attend more than two foreign conventions annually. The legislation may limit the amount of the deduction, but it will leave the abusive attendance pattern untouched. Furthermore, the reasonableness of the convention site is not considered in the new law and it seems unlikely that it will be construed to include the reasonableness limitation developed in previous case law. Thus, the federal government will continue to subsidize vacations in glorious locations. The new legislation is not without merit, however, since it makes a significant improvement in objectifying the standards for the deductibility of foreign convention expenses. A preferable alternative would be to adopt the 1974 House and Senate proposal regarding reasonable locales, expand it to govern both foreign and domestic conventions, and retain the new objective standards for determining the amount deductible if the locale is reasonable.

III. ANALYSIS OF UNDEFINED STANDARDS FOR DEDUCTIBILITY

As indicated by the developments traced above, the federal government has made continuous efforts to properly define the circumstances under which convention and educational seminar expenses should be deductible. Nevertheless, major issues re-
garding the application of the criteria already developed remain unsettled, making a taxpayer's proper reporting of such expenses uncertain, and impeding effective Service audit procedures. The problem is compounded by the general public belief that any expenditure may be deducted if it has a relationship to one's trade or business.

The major unsettled issues are: (1) which is the proper standard for ascertaining whether the convention or seminar has a sufficient relationship to the taxpayer's business or improves his business skills—the referral theory, the educational/agenda approach, or a combination thereof; (2) how is the taxpayer's primary purpose determined and what are the controlling standards—a Patterson factor analysis approach, or a relative time allocation standard; (3) is the taxpayer's motivation judged by a subjective "but for" test or by objective criteria, and what role is accorded factors other than time; and (4) if the location of the meeting is not consistent with the group's composition, does that result in nondeductibility?

A. THE APPLICATION OF THE "SUFFICIENT RELATIONSHIP" STANDARD—REFERRAL THEORY v. EDUCATIONAL THEORY

Convention expenditures are deductible under the Regulations if sufficiently related to one's business; seminar expenses are similarly deductible if the activity improves one's business skills. Historically, courts have applied, or at least recognized, two doctrines by which to measure the relationship of the activity to the business: the educational relationship test, usually applied objectively by reviewing the agenda, and the referral approach, where the taxpayer proves that new contacts or enhanced reputation may flow from attendance. The Service has emphasized the more objective educational standard, administered by considering the relationship between the taxpayer's business and the convention program described by the agenda, but has implicitly recognized other methods of proof in noting that the agenda standard is only "one method" which can be employed.

The existence of the two doctrines is understandable since early judicial decisions holding that educational expenses constituted nondeductible capital expenditures made the alternative
justification of potential increased income provided by the referral theory appealing. Since the recognition of the deductibility of business education expenses, however, the educational standard has become predominant, with the referral argument cited in desperation only when the taxpayer fails to meet the more objective standard. Use of the educational standard is appropriate since seminars and conventions for all practical purposes constitute the same activity under different labels and it would be anomalous to treat them differently. Educational expenditures are clearly deductible, and the Regulations' maintenance and improvement of skills standard does not recognize a referral doctrine. While the educational standard may not be strictly applied to conventions where numerous topics are discussed, the need to avoid "labeling" abuse would seem to mandate treating each type of meeting similarly. The specificity of the education regulations makes that standard preferable from the standpoint of predictability and ease of application. Therefore, the agenda/educational approach should be the sole criterion for fulfilling the sufficient relationship test.

Decisions recognizing a possible referral and reputation argument may be disregarded either as aberrations forced by the early judicial view of education expenses, or as mere recognitions, and not judicial adoptions, of the taxpayer's position. No recent opinion has upheld a deduction on the referral ground. Moreover, if the referral standard were to suffice for noneducational convention activity, it should logically suffice for any expenditure which could give rise to referrals. This extension of the referral argument, however, has been explicitly rejected. In the analogous area of business entertainment expenses, the Regulations require that the taxpayer have "more than a general expectation of deriving some income or other specific trade or business benefit (other than the goodwill of the person or persons entertained) at some indefinite future time from the making of the expenditure." Similarly, the Tax Court recently rejected the

dozo). See also text accompanying notes 61–62 supra.

151. See text following note 157 infra.

152. Treas. Reg. § 1.274-2(c) (3) (i) (1963). One might argue that since the Regulations establish a more relaxed standard for "associated entertainment" as opposed to "directly related" entertainment, conventions are specifically excepted. However, associated entertainment must further illustrate a clear business purpose, such as "to obtain new business or to encourage the continuation of an existing business relationship." Id. § 1.274-2(d) (2). Further, the convention is merely the requisite nexus, "a substantial and bona fide business discussion," id. § 1.274-2(d) (3) (b), for entertainment expenses, provided the expenses were deductible under section 162. See Treas. Reg. § 1.274-2(d) (3) (i) (a) & (b)
argument in an otherwise compelling situation. In Robert W. Duncan, Jr., a dentist joined a social club in which no other dentist was a member. The court found that he received a substantial portion of his business fees from club members who had become his patients. In denying the deductions for dues and other club expenses, the court noted that the *activity* (joining the club) itself must possess a relationship to the taxpayer's business in order to justify the deduction and differentiate it from a personal expenditure. Under this rationale, attending a convention for referrals alone would not suffice since there must be a business nexus with the activity. This requirement is properly maintained in the convention-seminar area by utilizing the educational standard.

The undesirability of using the referral test is further demonstrated by the evidentiary problems that would arise in attempting to apply it. If the test involved analysis of the taxpayer's subjective intent—whether he initially intended to get referrals by attending the convention—courts and administrators would be forced to evaluate intangible factors such as demeanor and credibility. Even a more objective "reasonable man" standard would create problems, such as the necessity for taking judicial notice of referral practices. If, to cure these problems, the validity of the taxpayer's claim were determined by whether referrals were actually derived, then the standard could easily lead to disparate treatment of similarly situated taxpayers. Assume hypothetically that two tax attorneys, similar to the tax-

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(1963). Thus, the relaxed standard for entertainment expenses regarding convention attendance may be permissible on policy grounds, but the standard for deductibility under section 162 need not be so lax.

153. 31 T.C.M. (CCH) 130 (1972). See Robert Lee Henry, 36 T.C. 879 (1961), involving a tax attorney who purchased a boat which flew a pennant labeled "1040" and attempted to deduct related expenditures as business expenses. The Tax Court denied the expenses, maintaining that a proximate, rather than a remote or incidental, relationship with one's business must exist. See also J. Wade Harris, 34 T.C.M. (CCH) 1192 (1975) (allowing some yacht deductions for entertainment of professional colleagues who had previously referred substantial business); Donald W. Barber, 31 T.C.M. (CCH) 234 (1972) (evidencing judicial reluctance to conclude that outside activities, such as boat racing, qualify for deductibility in spite of "indirect benefit" through publicity).

154. See Irving Eisenberg, 26 T.C.M. (CCH) 174 (1967), in which an attorney traveled to Israel, stating that such a trip would expand his knowledge and enhance his reputation. The court, under the Reed rationale, found no business relationship, noting that no referrals were derived, and intimated that if the referral standard were applied, an objective, reasonable man standard (which the taxpayer did not meet) should control.
payer in Reed, attended an international law "peace" conference. Under the agenda test as fashioned and applied in Reed, neither would qualify for a deduction. Yet one might fortuitously derive referrals and qualify for a deduction under the "actual" referral standard even though his intention, prior to attendance, was identical to that of the other. This is clearly an inequitable result not intended by the Code. Moreover, it would be necessary to resolve the distressing questions of whether referrals must result in fees; whether the fees must exceed the expenditures; and whether any value is attached to the enhancement of one's business reputation and, if so, how it should be measured.

The exclusive use of the objective educational standard will best serve the equitable goals of the tax law and eliminate the confusion which appears inherent in the referral and reputation analysis. The educational standard also comports more clearly with the view of convention expenditure deductibility developed by the judiciary and administrative agencies and incorporated in the new legislation, and eliminates any distinctions between conventions and seminars.

B. THE "PRIMARILY RELATED" TEST—TRAVEL EXPENSES

Once a taxpayer meets the sufficient relationship standard, convention registration and materials expenses qualify for deduction. Thereafter, the convention activity, as well as the entire trip, must be scrutinized under the "primarily related" test. If the convention by itself fails the "primarily related" test, then only those expenses properly allocable to the business portion of the activity are deductible. If the convention meets the requisite standard, yet the trip when viewed in its entirety fails, the expenses of actual convention attendance will be deductible, but those for travel will not.

155. See text accompanying notes 75-76 supra.
156. While the new legislation is applicable to foreign conventions only, it specifically requires the submission of a convention program (agenda) as a prerequisite to deductibility. I.R.C. § 274(h)(7)(A)(ii) & (B)(i). Such a requirement further supports the primacy of the agenda test. See also note 134 supra.
157. This procedure, the double primarily related test, is not clearly enunciated in the Regulations or in many judicial decisions, frequently because the cases involve egregious factual circumstances in which neither could be met. It is submitted, however, that the intent of the Regulations and the evolution of the area's judicial interpretation warrant the use of such an approach.
In applying the agenda test, Reed mandates that mere general subject matter alone will not suffice; the fact that a convention deals with some aspect of the law will not ensure a deduction for a participating attorney. Rather, it must deal with aspects of the taxpayer's profession or trade frequently encountered in his everyday business. Although this standard must be somewhat relaxed with regard to general annual conventions that serve a group function and cannot cover the business interests of all participants, the stated nexus, nevertheless, is that set forth in Reed. Even this seemingly objective standard poses difficult problems, as evidenced by comparison of specialists and generalists and their attendance at different conventions.

A tax practitioner attending a three-day convention dealing exclusively with tax law should definitely be entitled to a deduction for expenses incurred. The same tax practitioner attending a no-fault personal injury insurance convention should not qualify under the Reed approach. A more difficult issue is whether a generalist's attendance at a specialist's convention should be treated differently than a specialist's attendance at a general convention. Drawing the line when the entire convention does not deal specifically with the participant's duties is also difficult. Such a determination could be made quantitatively, that is, a single "relevant" two-hour program in a three-day convention would be insufficient to permit deduction of all convention expenses. An alternative would be to apply the sufficient relationship test qualitatively and thus allow deduction of direct convention expenses, including meals and lodging, and apply the "primarily related" test on a relative time basis determined with reference to the convention's agenda to determine travel expense deductibility.

A taxpayer may find himself in any one of the following situations:

1. He may attend a convention similar to those in Pat- terson or Rudolph, which presents some substantive material relating to his duties, but emphasizes personal activity and fails to satisfy the "primarily related" test. In this case, the taxpayer, probably using the Cohan rule, may deduct only ex-

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158. See text accompanying notes 83-94 & 100-04 supra.
159. Under the Cohan rule, when the evidence indicates that the taxpayer has incurred a deductible expense, but the exact amount cannot be determined, the court "should make as close an approximation as it can, bearing heavily if it chooses upon the taxpayer whose inexactitude is of his own making." Cohan v. Commissioner, 39 F.2d 540, 544 (2d Cir. 1930).
penditures of registration and those for meals and lodging allocable to the business portion of the convention.\footnote{160} 

2. He may attend a convention which is primarily related to his business. All direct expenses are deductible. A second primarily related test is then applied to the trip as a whole. If the participant does not use extra days for personal purposes before or after the convention, then the test for the trip is identical to that for the convention and all expenses qualify for the deduction.

3. He may attend a convention primarily related to his business and engage in personal activities before or after the convention. The actual, direct expenses, that is, meals and lodging while attending the convention, are deductible. The travel expenses to and from the convention (transportation expenses and meals and lodging) must, however, also pass a primarily related test applied to the entire trip to be deductible.\footnote{161}

The major difficulty with the "primarily related" test is that it is not clearly defined. The Regulations emphasize relative time

\footnote{160} See Thomas v. Patterson, 63-1 U.S. Tax Cas. ¶ 9321 (N.D. Ala. 1963); Treas. Reg. §§ 1.162-2(b) (1); 1.162-5(e) (1) (1958).

\footnote{161} This analysis assumes that in the Regulations and judicial opinions, relative time allocation is the controlling standard. As will be discussed below, alternative constructions exist. Assuming such a standard, the three categories can be illustrated as follows: the first category is clearly that of the Rudolph and Patterson decisions in which the business emphasis and allocable time is minimal. In that type of case, the expenditures for meals and lodging allocable to the business portion of the convention are deductible. If, instead, the primarily related test is met, all direct convention expenditures are deductible. Assume a six-day convention in which the activities commence on a Wednesday and extend through the following Wednesday, with no business activities transpiring on the weekend. All other days are totally business oriented with day long attendance. Thus the "primarily related" test, from a relative time standpoint is easily surpassed and all direct expenditures, the meals and lodging expenses, are deductible, notwithstanding the fact that two days were totally personal. As in situation (2) in the text, if arrival and departure occurred on each respective Wednesday, the trip would be "primarily related" as well and travel expenditures to and from the location would also be deductible.

Participants may, however, attend a convention and stay over for other activities. Thus in the Wednesday-to-Wednesday convention hypothetical, if the participant stayed an extra week for solely recreational purposes, the dual "primarily related" test described in situation (3) would be applied. The convention portion (the first week) would meet the "primarily related" standard and insure the deduction of those direct expenditures, but the subsequent week's expenditures would be personal. The trip as a whole (9 days personal and 6 days business) would not be primarily business related; consequently, travel expenditures would be nondeductible.
allocation between personal and business activity.\textsuperscript{162} Yet, they parrot a familiar refrain that the "facts and circumstances" are controlling and seem to indicate that relative time allocation is not the exclusive test. The courts have resolved the issue by balancing various relevant factors. An alternative standard, more difficult for courts to apply, but which finds some support in the evolution of the "primarily related" test, is the taxpayer's subjective intent in participating in the activity.

C. TAXPAYER'S INTENTION AND ITS RELATIONSHIP TO THE "PRI-
MARILY RELATED" TEST

The Regulations are premised on the need to determine the taxpayer's motivation, as indicated by the key language: "If the trip is undertaken . . . for certain specified purposes."\textsuperscript{163} Although the Regulations emphasize objective criteria, it is at least arguable that subjective motivation should be the controlling factor in determining deductibility. This approach, however, involves a number of problems. One can hypothesize numerous situations, for example, in which the participant is motivated by both business and personal concerns—he may plan the trip for business purposes but subsequently decide to include personal activity as well or vice versa. One noted commentator points out another difficulty—many taxpayers actually do not know their "primary" motivation, having made a decision without evaluating the various factors or their respective weights.\textsuperscript{164} From a practical standpoint, use of a subjective standard is far too dependent upon taxpayer honesty; moreover, intent would frequently be decided solely on the basis of self-serving testimony. A mere assertion of business motivation, in theory, would be determinative.\textsuperscript{165} As is true any time subjective intent is at issue, a surrogate standard for analysis (objective criteria indicative of subjective intent) is required.\textsuperscript{166} The Regulations purport to

\begin{itemize}
\item \textsuperscript{162} See Treas. Reg. § 1.162-2(b)(2) (1958).
\item \textsuperscript{163} Id. § 1.162-2(a), reprinted in note 14 supra.
\item \textsuperscript{164} See Klein, supra note 78, at 1110.
\item \textsuperscript{165} Klein notes that a taxpayer would merely state the following to prevail:
  \begin{quote}
  I wanted to go for pleasure but that objective was not quite (though almost) enough to justify the expense. Then I found some business that I could conduct at the place chosen for my vacation. The business was not very important but it was enough to tip the scales. I would not have gone but for the business.
  \end{quote}
  \textit{Id.} at 1112 (emphasis added).
\item \textsuperscript{166} See id.
\end{itemize}
establish such surrogates through the “facts and circumstances” test, while designating relative time allocation as an important factor. The use of such standards, not uncommon in the tax law, is premised on fostering equitable treatment of similarly situated taxpayers and enhancing taxpayers’ morale, on administrative convenience and ease of application, and on avoiding the difficulties of evaluating possibly self-serving testimony.

Despite the difficulties of applying a subjective “but for” test, however, various commentators and some legislative history regarding income tax measures indicate that such a test has been previously articulated and applied. The Regulations proposed in 1956 apparently intended to implement a subjective approach, although the 1958 Regulations’ “primarily related—facts and circumstances” test established more objective criteria.

The legislative history of the enactment and repeal of section 274 provides additional support for the “but for” test. It could be argued that the partial repeal of section 274 in 1964 was intended to reinstate the test with regard to domestic but not foreign travel. Congress, however, in considering the repeal was apparently concerned not with the “but for” test, but with section 274’s complexity and the fact that “it served little purpose.” The explicit rejection of the “but for” test when the section was originally enacted, coupled with the fact that Congress did not expressly reject the more objective approach of the 1958 Regulations under section 162, may have indicated an intent to upgrade...
the standard (from a "but for" to a "relative time" test), while requiring only minimum business time (51 percent) to achieve a total deduction.

Further support for the continuing vitality of the "but for" test can be found in portions of the Regulations under section 274 that utilize "but for" language and imply its applicability to section 162. Such language, however, may be consistent with section 162. The "sufficient relationship" test of section 162 requires a nexus similar to the "but for" standard. If the taxpayer's convention activity meets this standard, his domestic travel expenses will be subject to the "all or nothing" approach of section 162, while section 274's allocation rules will govern foreign travel. Since these sections use two different formulas for determining the amount deductible, use of two different deductibility standards is appropriate. Thus section 274, although requiring compliance with the "but for—sufficient relationship" test of section 162, may not require the taxpayer to satisfy the "primarily related" test. Therefore, the "but for" examples may not

175. Treas. Reg. § 1.274-4(g), examples 6 & 7 (1963) (emphasis added) read:

Example (6). F, a self-employed professional man, flew from New York to Copenhagen, Denmark, to attend a convention sponsored by a professional society. The trip lasted 3 weeks, of which 2 weeks were spent on vacation in Europe. F generally would be regarded as having substantial control over arranging this business trip. Unless F can establish that obtaining a vacation was not a major consideration in determining to make the trip, the disallowance rules of this section apply.

Example (7). Taxpayer G flew from Chicago to New York where he spent 6 days on business. He then flew to London where he conducted business for 2 days. G then flew to Paris for a 5-day vacation after which he flew back to Chicago, with a scheduled landing in New York for the purpose of adding and discharging passengers. G would not have made the trip except for the business he had to conduct in London. The travel outside the United States away from home, including 2 days for travel en route, exceeded a week and the time devoted to non-business activities was not less than 25 percent of the total time on such travel. The 2 days spent traveling from Chicago to New York and return, and the 6 days spent in New York are disregarded for purposes of determining whether the travel outside the United States away from home exceeded a week and whether the time devoted to nonbusiness activities was less than 25 percent of the total time outside the United States away from home. If G is unable to establish either that he did not have substantial control over the arranging of the business trip or that an opportunity for taking a personal vacation was not a major consideration in his determining to make the trip, 5/9th (5 days devoted to nonbusiness activities out of a total 9 days outside the United States away from home on the trip) of the expenses attributable to transportation and food from New York to London and from London to New York will be disallowed (unless G establishes that a different method of allocation more clearly
be inconsistent. The Regulations were intended to provide an allocation formula to avoid abuse, and although one may maintain that the section 274 allocation formula is applicable only after a "primarily related" test based on time has been met, it would appear that the section 274 formula eliminates the "primarily related" standard. Moreover, since the Regulations were adopted prior to the partial repeal of section 274, it cannot be maintained that the legislature intended the "but for" test to apply to domestic travel under section 162.177

Although some courts have acknowledged the "but for" test,178 it is submitted that because of the great potential for abuse, attendance at conventions and seminars should not be judged by that standard. Not only does the test involve the many proof problems inherent in any subjective standard, but it is inappropriate to give such great weight to the taxpayer's subjective intent in the context of educational improvement of one's business skills. Unlike situations such as business dealings in which client demands require a trip, conventions and seminars generally lack the urgency and compulsion envisioned by the "but for" test.179 The "primarily related" standard, employing a factor analysis or a time analysis alone, is the better approach for scrutinizing taxpayers' convention expenditures.

D. Relative Time Allocation as Determinative of the "Primarily Related" Test

The major focus of judicial decisions, the Regulations, administrative pronouncements, and the new legislation in determining whether attendance at a convention or seminar satisfied the "primarily related" test is the relative time allocation between business and personal pursuits.180 Although other factors are deemed important, as a practical matter they probably become significant only when the time allocation is borderline. The

reflects the portion of time outside the United States away from home which is attributable to nonbusiness activity).

trend in this area has been to emphasize objective rather than subjective criteria. As one commentator stated, "[t]his approach seems about as objective, as easily administrable, and apparently as fair a surrogate test as one can imagine." Even under this objective test, however, questions arise regarding the requisite percentage of business time and the standard for quantifying business time.

The Regulations hypothesize a six-week trip—five of which are personal and one business. Under any standard such a trip would clearly be primarily personal. Unless a "but for" standard were applicable, deduction of such travel expenditures would be unjustified. In more realistic situations, the requisite percentage of business time is more difficult to determine. The term "primarily" may connote "more than majority"—51 percent (a mere preponderance)—or, instead, may dictate some greater or lesser percentage. No clear standard has been developed for resolving this issue, but it would seem that a preponderance of business time, greater than 50 percent, should suffice. No case as yet has involved such a close allocation, probably because of administrative policy-making and the small amounts of tax involved. Were deductibility of travel expenditures not an all or nothing proposition, the resolution of the issue would not be so critical, but the harshness of the rule may itself constitute a reason for its lax enforcement. In view of the repeal of the fairer allocation standard of section 274 for domestic travel, a preponderance of business time should satisfy the Regulation's relative time allocation criteria. Further, this stand-
ard should be controlling notwithstanding other factors (as in the Patterson factor analysis approach), since it is the key to resolving the "primarily related" issue. Finally, business time should be determined with reference to the trip, convention, or seminar, disregarding travel time if the taxpayer employs the quickest or most direct mode of transportation. If, however, transportation that affords sightseeing or recreational opportunities is used, then this time also should be included in computing the relative time allocation.

The method of computing the time percentage is a more difficult issue. The percentage could be computed on an hourly basis (with the attendant problem of selecting the appropriate base—24-hour day, 8-hour day), a daily basis, or by some other method. This difficulty is further highlighted when one observes the specific, generous rules of section 274. Section 274 requires an allocation based on a per day basis for foreign travel. If section 162 required an hourly determination, anomalous results could occur when the convention or seminar was held outside the United States. The 1976 legislation modifying section 274, however, in effect utilizes an hourly standard for computing half days and full days, and thus any potential conflict or anomaly is minimized.

As evidenced by the recent legislation and judicial and administrative use of this approach, an hourly allocation standard is sound, for it guards against convention scheduling that em-

1.274-4(d) (2) utilize a per day time standard, but provide that a taxpayer may establish and utilize a different method of allocation "which more clearly reflects" the time usage.

185. See text accompanying notes 91-99 supra.

186. See I.R.C. § 274(h), set forth at note 133 supra.

187. Any anomaly with the foreign travel Regulations that may remain when an hourly test is used for the primarily related test can be justified as an administrative decision to facilitate audits and taxpayer computation of deductible amounts.

188. The Fifth Circuit used an hourly comparison in Patterson v. Thomas, 289 F.2d 108 (5th Cir.), cert. denied, 368 U.S. 837 (1961). See also Esfandiar Kadivar, 32 T.C.M. (CCH) 427 (1973); Rev. Rul. 74-292, 1974-1 C.B. 43.

189. That is not to say that the hourly standard is without problems. On remand in Patterson v. Thomas, 63-1 U.S. Tax Cas. ¶ 9321 (N.D. Ala. 1963), the district court, in determining the allocable amount of indirect expenses incurred while attending the convention, concluded that fifty hours of a total of ninety hours were spent in business activities (thirty-two of the fifty hours were for sleep). This apparently contradicts the Fifth Circuit's statement that "at the most five hours out of the three
phrases recreation and sightseeing under the guise of regular business functions. A convention's agenda of three morning sessions during a four-day period, for example, would qualify under a daily test, yet fail the hourly standard. The more rigorous hourly approach thus provides greater protection against potential abuse, and should continue to be used.

In computing the relative time allocation on an hourly basis, the convention's agenda should govern, based on an eight-hour work day. Attempts to justify additional hours by counting personal contacts and business conversations should not succeed. Although the Patterson court indicated that a showing of business related contacts would have made its decision more difficult, this factor should be discarded as too dependent upon a subjective state of mind and too prone to distortion by fortuitous circumstances.

Additionally, the generous rules for time computation set out in section 274 should be ignored in applying the "primarily related" test. One technique that is subject to abuse in convention scheduling is the "intervening weekend." If the convention period includes a weekend during which no business is scheduled, the days would be classified as "business" under the section 274 travel Regulations. Under the "primarily related" standard, however, weekend hours should be deemed personal and enter the formula accordingly, especially when such intervals are specifically scheduled to maximize time for recreation.

An additional prerequisite to deducting such expenditures should be proof of the taxpayer's actual attendance at the sched-

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and one-half days were spent in formal business meetings," 289 F.2d at 113. The discrepancy can perhaps be explained as a more liberal hourly standard applied to direct expenditures—including sleep time as business time—than that employed under the "primarily related" test for incidental expenditures.

190. See also Halperin, supra note 30, at 921; Rev. Rul. 62-180, 1962-2 C.B. 52, in which "sleep" time is used in computing the disallowed, personal amount. However, it should be noted that the new section 274(h) utilizes a six hour day.

191. 289 F.2d at 113.

192. See also Peoples Life Ins. Co. v. United States, 373 F.2d 924, 926 (Ct. Cl. 1967), noting the "cross-fertilization" of ideas intended by the convention sponsors.

193. For example, no allocation is required if duration is less than one week, and classification as a "business day" is permitted if the taxpayer's presence is required even though nonbusiness time exceeds business time. See Treas. Reg. § 1.274-4(d) (2)(ii) (1963).

uled meetings and programs. The proposed standard for deductibility would obviously be circumvented if a mere presentation of the convention's agenda sufficed. Conventions are plagued by poor attendance at afternoon sessions or pre-weekend, final day sessions. Proof of actual attendance, such as sign-in sheets or notes taken during the sessions, should be required for allowance of a deduction; a representation of attendance is required under the new legislation.

E. Location of the Convention or Seminar

Although relative time allocation is the most important, if not determinative, factor in deciding whether the convention is primarily related to business, the courts and the Service frequently pay lip service to the importance of the convention's location. Location is the aspect of convention activity most subject to abuse. As previously mentioned, conventions and seminars are sometimes held in places far from the participants' residences or places of business, and an individual's decision to attend may be heavily influenced by the location. Location can thus constitute an objective indication of the taxpayer's motivation.


196. Obviously, no disallowance would be made if a participant attended only specific topics applicable to his trade or business, provided his arrival and departure were properly timed. The problem area concerns those cases where the participant considers only two of the three days relevant, and the irrelevant day straddles the relevant days. While in some factual situations the use of the general standard may appear less fair, the desirability of objective criteria and avoiding disputes with regard to every session or portion thereof requires the application of this standard to all. Additionally, nonbusiness time will not result in disallowance unless it constitutes a preponderance of time and thus should seldom create hardships. With regard to the abusive attendance pattern, see Seattle Times, August 14, 1974, at 2, col. 6, describing the problem of achieving quorums for meetings on Presidential impeachment issues during the 1974 American Bar Association meeting in Honolulu, Hawaii. Apparently, the conventioners were more occupied with the scenic and recreational pleasures of the Hawaiian beaches than attending scheduled meetings.

197. See I.R.C. § 274(h) (7) (B) (ii).


199. See note 1 supra and accompanying text.
The frequent citation and discussion of locale is usually no more than additional justification for the result reached by the trier of fact, for in most cases the relative time factor alone has dictated the result. The locale factor would probably become significant only in cases where time spent on business approached 50 percent. Cases considering locale in a factor analysis, however, must be distinguished from the cases in which the location was so unreasonable as to be inconsistent with the "ordinary and necessary" test of section 162. Under the latter doctrine, the expenditures may be denied entirely, notwithstanding favorable time allocation and other positive factors.

The Patterson and Rudolph decisions generated concern about possible loss of business in the entertainment, hotel, and restaurant industries. This prompted the Service to issue a news release which stated: "[A]n analysis of a large group of cases from all parts of the country involving a variety of travel and entertainment expenses did not reveal that any expenses were disallowed merely because of the site of a convention or meeting." A resort location need not necessarily result in a disallowance of expenditures or even be an adverse objective factor. A resort, for instance, may be the only location capable of accommodating the number of participants. It may also be the site most conducive to maximum efficiency (a quiet, reflective environment) or the facility most centrally located to the participants' residences. Technological facilities or specialized equipment unavailable at other locations may also be present.

Nevertheless, the news release should not be interpreted to mean that any location whatsoever will suffice or that it may not be a negative factor in the analysis. If the site selection cannot be justified, the availability of recreation and entertainment may well indicate personal, rather than business, motivation. And, while even a "negative" location may not override a favorable time allocation in a factor analysis, it may be an overriding limitation under the "ordinary and necessary" test discussed be-


201. See text accompanying notes 79-82 & 88-97 supra.

202. IRS News Release, supra note 198. See also Osborn, supra note 195.

In short, the fact that the Service found no case that held a resort locale alone sufficient to deny the deduction of expenditures does not mean that such a case could not arise.

F. ADDITIONAL FACTORS

If a Patterson factor analysis is used to ascertain whether a trip was primarily related to business, other minor factors, besides time and locale, may be considered. The "facts and circumstances" of each case are controlling and only in borderline situations with minimally adverse or favorable time allocations might these minor factors sustain or deny a deduction. Frequently, they are discussed and cited merely as additional support for the court's conclusion.

One of these factors is whether a spouse or other family member accompanies the participant, since this may indicate that the educational or business purpose is not the primary reason for attending. If the participant is an employee, his employer's motivation for authorizing and underwriting the activity may indicate the convention's basic purpose and whether the employer has concluded that it has educational value. A participant's previous attendance may also be relevant, if the taxpayer has long been a member of the organization yet only attends conventions at desirable locations, an inference that his motivation is personal may be drawn. Finally, the means of transportation employed, the taxpayer's familiarity with the locale, and the time of year, in view of the location, during which the convention is held, may constitute objective criteria by which to evaluate the taxpayer's intent.

G. LOCALE—"ORDINARY AND NECESSARY" TEST AS A PREREQUISITE TO THE APPLICATION OF A PATTerson FACTOR ANALYSIS

A prerequisite to the application of the "primarily related"
standard, recognized by some judicial opinions, is whether the convention site selected bears any relation whatsoever to the organization's membership and purposes. If it does not, then the "ordinary and necessary" test of section 162 is not met, and the expenditures should be denied, notwithstanding any other favorable factors.

Both the courts and the Service have frequently ignored or failed to articulate this premise. Location may be only a factor if it is "reasonable." If totally unreasonable (in contrast to "too recreational"), however, the locale should preclude deductibility. Surely all would agree that expenses of an annual convention of the Iowa Certified Public Accountants in the Virgin Islands, should not be deductible even if a great deal of business is conducted, if no business purpose for choosing that location can be shown.

The Fifth Circuit in Patterson considered the convention's locale as only one factor in resolving the deductibility issue. However, the district court in Rudolph v. United States, citing the lower court's favorable Patterson decision, noted that the location of the convention involved in Patterson may have been related to the insurance company's business:

> It does not appear where the office of the company is—the insurance company—it does not appear where the territory of the company is. So far as the information is concerned, much of its business might be around and about Fort Monroe. Therefore, selection of that place would be in line with ordinary business economy.

Thus the Rudolph court implied that the location selected for the Patterson convention may have met the "ordinary or necessary" standard of section 162.

The Rudolph court, however, found no such relationship in the case before it and specifically held, based solely on locale, that the participant's endeavors were personal. The court concluded that the inappropriate site selection was prima facie evidence of personal motivation:

> We will assume that the company here has a larger part of its business in Texas and adjoining states. Primarily, the place of the home office would be the place where the agents would be called to as a business proposition to receive instructions and to be taught.

211. See, e.g., text accompanying notes 213-20 infra.
213. Id. at 4 (emphasis added).
Suppose there was a lot of business down and around San Antonio. To break the monotony to a degree, the convention might be held in San Antonio, or in Houston, or might be held in Oklahoma City. But what business reason is there for holding a convention in a place as far away as New York; and certainly, what business reason is there for holding a convention in Havana, Cuba. It was not held down there for educational purposes in insurance.

Assume that it was to a degree; what was the primary purpose of the trip: It was a reward, or a bonus given to the employees for excellence in service. If it was purely educational, it might be held here in Dallas and those who did not attain such a high rating might have the benefits of the program at the convention.214

Other courts dealt with the reasonableness of a locale in a similar manner. The courts in Hoover215 and Kadivar216 (by implication) disallowed seminar expenses because the taxpayer could have acquired the educational benefits by more rational means. The major indication of the "irrationality" of the means utilized was the unreasonable location of the seminars. The courts concluded that this irrationality was evidence of a personal motivation that precluded deductibility. While this approach is consistent with the Code and the Regulations, it necessitates making a judgment about the taxpayer's subjective intent that a more direct approach would avoid.

This more direct approach rests simply on the fundamental requirement of deductibility that an expense be an "ordinary and necessary" business expense.217 The courts have struggled to define and apply this phrase in accordance with congressional intent, and have concluded that the section 162 phraseology includes a reasonableness limitation.218 The Sixth Circuit held:

Such payments are made proper deductions by the statute, but with respect to them there is no express statutory provision limiting them to a reasonable amount, as is the case of payments of compensation for personal services. However, the element of reasonableness is inherent in the phrase "ordinary and necessary."219

An unreasonable expense should thus be completely disallowed since it would not comply with the "ordinary and necessary"

214. Id. (emphasis added).
215. See text accompanying notes 79-82 supra.
216. See text accompanying notes 115-17 supra.
218. United States v. Haskel Eng'r & Supply Co., 380 F.2d 786 (9th Cir. 1967).
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standard. Although one case indicates the contrary and would allow the "reasonable portion of the expenditure,"\textsuperscript{220} this approach appears improper, for the statutory language and accompanying Regulations on conventions and seminars dictate an all or nothing approach.

When applied to conventions and seminars, this limitation requires that some rational connection between the site selected and the organization must exist. Unreasonable locale should not merely make a deduction suspect, but should result in automatic disallowance. The requisite connection with the organization may vary—the usual test would be whether the convention site was close to the participants' homes or businesses or centrally located to accommodate members from different areas. When a particular location uniquely serves the organization's purposes, however, the fact that none of its members reside there should not be controlling. Historians visiting historical sites, for example, or population control experts researching socio-economic data would fall within this exception. The focal point should be whether the locale is an \textit{essential and indispensable} aspect of the meeting's purpose. Employee conventions sponsored by the employer could logically be held near the sponsor's business offices or corporate headquarters or possibly in an area in which it conducts a \textit{substantial} portion of its business.\textsuperscript{221}

There is some support for the argument that location is not an overriding limitation on convention deductibility in certain broad language in administrative rulings and judicial opinions regarding education expenses. In Revenue Ruling 60-97\textsuperscript{222} the Service stated that an individual "will not be denied a deduction solely because attendance at the institution of his choice resulted in greater [travel] expenditures that he would have made if he had attended another institution."\textsuperscript{223} Were this

\textsuperscript{220} See United States v. Haskel Eng'r & Supply Co., 380 F.2d 786, 788-89 (9th Cir. 1967).

\textsuperscript{221} Certain portions of the Regulations and some administrative and judicial statements in the educational area may arguably undercut such a reasonableness limitation on convention locale, but upon close analysis, these positions are distinguishable. A hypothetical example in the section 274 Regulations, for example, describes a foreign professional convention, and could be liberally interpreted to indicate the Treasury's lack of concern for location. A more realistic interpretation of the example, however, is that the issue of locale was simply not addressed. See example 6, note 175 \textit{supra}.

\textsuperscript{222} 1960-1 C.B. 69.

\textsuperscript{223} Id. at 75.
statement applied to convention site selection, it would seem to indicate that any site would suffice if the convention's agenda were properly related to the taxpayer's business. In *John C. Ford*\(^2\)\(^2\)\(^4\) the Tax Court permitted a deduction for the expenses of attending a Norwegian university. The court maintained that "[i]t is inconsequential that the petitioner chose to acquire the additional education to improve his skills by attending a university in a foreign country rather than one in the United States."\(^2\)\(^2\)\(^5\) Again, if this were applied to conventions, site would appear to be virtually irrelevant in determining deductibility.

Educational seminars and conventions, however, can be readily distinguished from the activity considered in the Ruling and in *Ford*. The time spent at conventions and seminars is short, and where the location is exotic or remote, the taxpayer may be simply indulging in a vacation. Long-term, educational activities do not present the same opportunity and, moreover, the Service is most hesitant, on policy grounds, to dictate site selection criteria on such a personal issue as the choice of an educational institution.

A further distinction between an individual's choice of an educational institution and a group's selection of a convention or seminar site is the purpose that the locale serves. The convention site is normally a mere gathering place for the membership. Thus, subject to the exceptions discussed above,\(^2\)\(^2\)\(^6\) many locales will suffice and a "reasonableness" requirement is sensible. But an individual selects an academic institution because it is peculiarly suited to his needs. This subjective determination more closely resembles the exceptions than the general rule, articulated above.

Self-employed taxpayers might argue that the *Rudolph* and *Patterson* decisions\(^2\)\(^2\)\(^7\) are limited to conventions and seminars sponsored by an employer and the unreasonable locale analysis for professional groups should neither be applicable nor determinative. The Regulations, however, under both sections 162 and 274 stipulate that self-employed individuals' convention deductions are to be scrutinized in the same manner as those of employees.\(^2\)\(^8\) Moreover, although the *Rudolph* and *Patterson* taxpayers

\(^{224}\) 56 T.C. 1300 (1971).
\(^{225}\) Id. at 1307.
\(^{226}\) See notes 220-21 supra and accompanying text.
\(^{227}\) For a discussion of *Patterson* and *Rudolf*, see text accompanying notes 84-99 & 100-04 supra.
maintained that their attendance was compulsory, the Fifth Circuit held that the analysis should focus on the employee's motivation in attending, that is, whether he had satisfied the "primarily related" test. The employer's intention was irrelevant. Thus, although a self-employed participant in a non-employer-sponsored convention might argue that the "reasonable locale" rule should not apply to him because he did not participate in the site selection, his situation is clearly less compelling than that in Patterson and Rudolph. There should be no difference in treatment. Additional responses to a participant's argument that he had no control over the locale are: (1) as a member of that group, he elects the officers or representatives who select the sites and thus an agency relationship exists; and (2) similar to the Patterson factor analysis, the association or group is analogous to an employee's employer, and the reasonable locale test should be applied accordingly.

Thus, a clear limitation on the deductibility of convention and seminar expenses should be that the activity be reasonably carried out. Even if the taxpayer satisfied the Regulation's "primarily related" and "sufficient relationship" tests, the expense deduction may be disallowed under the general "ordinary and necessary" rules if the activity is conducted in some extraordinary fashion. Regardless of the educational benefits derived from a convention, it is uncommon and unreasonable for taxpayers to travel to distant places to enhance their business skills. In Richard Seibold, for example, the court noted that although the taxpayer's school awarded required credits for his European travel, the fact that the ordinary or accepted method for teachers to fulfill such requirements was by attending summer school sessions precluded his deducting the expenses of his trip.

As a general standard, deductibility of conventions or seminars held at distant locales should be limited to situations in which the location has direct substantive and geographical connection to the meeting and its membership. Distant educational or convention experiences, when directly related to the participant's

231. 31 T.C. 1017 (1959).
field of expertise or when first-hand observation is required and not attainable closer to home, would support a deduction. Even these exceptions, however, should be closely scrutinized. For many organizational meetings, it would be more sensible to bring experts to a reasonably located convention site rather than to take the entire group to the experts' distant locale. Allowing individual taxpayers to deduct their expenses on the ground that the organization chose the location should not be tolerated. Unless a compelling reason can be adduced for choosing a site, the expenses may be disallowed as not within the "ordinary and necessary" test.

IV. CONCLUSION

Business conventions and educational seminars have become not only commonplace but essential in modern business society. The judiciary and the Treasury department have recognized their importance and formulated various standards for the deductibility of expenditures incurred in attending. While the validity of deductibility is no longer contested, the standards governing deductibility are still vague and uncertain.

Convention activities and educational seminars which are similar in nature should be governed by the same standards for deductibility to prevent mere labels from dictating disparate tax consequences. The Regulations require that a "sufficient relationship" exist between the activity and the taxpayer's trade or business. In the past, deductions for convention and seminar activities have been grounded on the educational theory, the referral theory, or a combination of the two. The educational benefit that the participant derives from the activity is generally emphasized; it is determined by evaluating the relationship of the agenda to the taxpayer's business, and is based on sound tax policy. When this standard has been met, the taxpayer is entitled to deduct the direct expenditures—convention registration and materials expenses—incur...
an objective standard to determine whether the participant’s motivation for attending was “primarily related” to his business. In order to minimize uncertainty and reduce evidentiary difficulties, the preferable approach, which also has the greatest judicial and administrative support, is the objective standard. As reflected by the Patterson decision, this requires an analysis of various factors that may indicate motivation—including the relative time allocation between business and personal activities, the location of the activity, the presence of the participant’s family, opportunities for vacationing, and so on. Notwithstanding the innumerable factors which might be relevant to the issue, the primary and determinative factor should be the relative time allocation, calculated on an hourly basis. Because the potential for abuse in these areas is great, this standard, which is the most objective factual analysis available, is warranted and other factors should be considered only in close cases. The resolution of the “primarily related” test with regard to both the convention and the trip as a whole will determine the deductibility of the total travel expenses.

An overriding limitation on these activities, founded upon the “ordinary and necessary” standard of section 162, however, is that they be held at reasonable locations that are consistent with members’ residences or the organization’s purposes. Unless such a relationship can be shown, the location should be deemed unreasonable and no deductions at all should be allowed. Judicial authority exists for this proposition, and some recent legislative proposals reflect it. A codification of this limitation, applicable to domestic as well as to foreign activity, should be enacted to add certainty and clarity to the tax law. If the government is to subsidize educational seminars and conventions by allowing taxpayers to deduct their expenses, it must insist that such activities be conducted in a reasonable manner, thereby insuring that public funds are not squandered on taxpayers’ vacations.