§ 1.162–17 Reporting and substantiation of certain business expenses
of employees.

(a) Introductory. The purpose of the regulations in this section is to provide
rules for the reporting of information on income tax returns by taxpayers
who pay or incur ordinary and necessary business expenses in connection
with the performance of services as an employee and to furnish guidance as to
the type of records which will be useful in compiling such information and in
its substantiation, if required. The rules prescribed in this section do not
apply to expenses paid or incurred for incidentals, such as office supplies for
the employer or local transportation in connection with an errand. Employees
incurred necessary business expenses are not required to provide substantiation
for such amounts. The term “ordinary and necessary business expenses”
means only those expenses which are ordinary and necessary in the conduct
of the taxpayer’s business and are directly attributable to such business.
The term does not include nondeductible personal, living or family expenses.

(b) Expenses for which the employee is
required to account to his employer—(1) Reimbursements equal to expenses. The
employee need not report on his tax return (either itemized or in total
amount) expenses for travel, transportation, entertainment, and similar pur-
poses paid or incurred by him solely for the benefit of his employer for which
he is required to account and does account to his employer and which are
charged directly or indirectly to the employer (for example, through credit
cards) or for which the employee is paid through advances, reimburse-
ments, or otherwise, provided the total amount of such advances, reimburse-
ments, and charges is equal to such expenses. In such a case the taxpayer
need only state in his return that the total of amounts charged directly or
indirectly to his employer through credit cards or otherwise and received
from the employer as advances or reimbursements did not exceed the ordi-

nal and necessary business expenses paid or incurred by the employee.

(2) Reimbursements in excess of expenses. In case the total of amounts
charged directly or indirectly to the employer and received from the em-
ployer as advances, reimbursements, or otherwise, exceeds the ordinary and
necessary business expenses paid or incurred by the employee and the em-
ployee is required to and does account to his employer for such expenses, the
taxpayer must include such excess in income and state on his return that he
has done so.

(3) Expenses in excess of reimburse-
ments. If the employee’s ordinary and
necessary business expenses exceed the
total of the amounts charged directly
or indirectly to the employer and re-
ceived from the employer as advances,
reimbursements, or otherwise, and the
employee is required to and does ac-
count to his employer for such ex-

penses, the taxpayer may make the
statement in his return required by
subparagraph (1) of this paragraph un-
less he wishes to claim a deduction for
such excess. If, however, he wishes to
secure a deduction for such excess, he
must submit a statement showing the
following information as part of his tax
return:

(I) The total of any charges paid or
borne by the employer and of any other
amounts received from the employer
for payment of expenses whether by
means of advances, reimbursements or
otherwise; and

(II) The nature of his occupation, the
number of days away from home on
business, and the total amount of ordi-

dinary and necessary business expenses
paid or incurred by him (including those charged directly or indirectly to
the employer through credit cards or otherwise) broken down into such
broad categories as transportation, meals and lodging while away from
home overnight, entertainment ex-

penses, and other business expenses.

(4) To “account” to his employer as
used in this section means to submit
an expense account or other required
written statement to the employer
showing the business nature and the
amount of all the employee’s expenses
(including those charged directly or in-
directly to the employer through credit
cards or otherwise) broken down into such broad categories as transportation, meals and lodging while away from home overnight, entertainment expenses, and other business expenses. For this purpose, the Commissioner in his discretion may approve reasonable business practices under which mileage, per diem in lieu of subsistence, and similar allowances providing for ordinary and necessary business expenses in accordance with a fixed scale may be regarded as equivalent to an accounting to the employer.

(c) Expenses for which the employee is not required to account to his employer. If the employee is not required to account to his employer for his ordinary and necessary business expenses, e.g., travel, transportation, entertainment, and similar items, or, though required, fails to account for such expenses, he must submit, as a part of his tax return, a statement showing the following information:

(1) The total of all amounts received as advances or reimbursements from his employer in connection with the ordinary and necessary business expenses of the employee, including amounts charged directly or indirectly to the employer through credit cards or otherwise; and

(2) The nature of his occupation, the number of days away from home on business, and the total amount of ordinary and necessary business expenses paid or incurred by him (including those charged directly or indirectly to the employer through credit cards or otherwise) broken down into such broad categories as transportation, meals and lodging while away from home overnight, entertainment expenses, and other business expenses.

(d) Substantiation of items of expense.

(1) Although the Commissioner may require any taxpayer to substantiate such information concerning expense accounts as may appear to be pertinent in determining tax liability, taxpayers ordinarily will not be called upon to substantiate expense account information except those in the following categories:

(i) A taxpayer who is related to his employer within the meaning of section 267(b); and

(ii) A taxpayer whose expenses exceed the total of amounts charged to his employer and amounts received through advances, reimbursements or otherwise and who claims a deduction on his return for such excess;

(iii) A taxpayer who is required to account to his employer for his ordinary and necessary business expenses, and who fails to account for such expenses either because he was not required to do so or because he did not do so;

(iv) Other taxpayers in cases where it is determined that the accounting procedures used by the employer for the reporting and substantiation of expenses by employees are not adequate.

(2) The Code contemplates that taxpayers keep such records as will be sufficient to enable the Commissioner to correctly determine income tax liability. Accordingly, it is to the advantage of taxpayers who may be called upon to substantiate expense account information to maintain as adequate and detailed records of travel, transportation, entertainment, and similar business expenses as practical since the burden of proof is upon the taxpayer to show that such expenses were not only paid or incurred but also that they constitute ordinary and necessary business expenses. One method for substantiating expenses incurred by an employee in connection with his employment is through the preparation of a daily diary or record of expenditures, maintained in sufficient detail to enable him to readily identify the amount and nature of any expenditure, and the preservation of supporting documents, especially in connection with large or exceptional expenditures. Nevertheless, it is recognized that by reason of the nature of certain expenses or the circumstances under which they are incurred, it is often difficult for an employee to maintain detailed records or to preserve supporting documents for all his expenses. Detailed records of small expenditures incurred in traveling or for transportation, as for example, tips, will not be required.

(3) Where records are incomplete or documentary proof is unavailable, it may be possible to establish the amount of the expenditures by approximations based upon reliable secondary sources of information and collateral evidence. For example, in connection with an item of traveling expense a taxpayer might establish that he was
in a travel status a certain number of days but that it was impracticable for him to establish the details of all his various items of travel expense. In such a case rail fares or plane fares can usually be ascertained with exactness and automobile costs approximated on the basis of mileage covered. A reasonable approximation of meals and lodging might be based upon receipted hotel bills or upon average daily rates for such accommodations and meals prevailing in the particular community for comparable accommodations. Since detailed records of incidental items are not required, deductions for these items may be based upon a reasonable approximation. In cases where a taxpayer is called upon to substantiate expense account information, the burden is on the taxpayer to establish that the amounts claimed as a deduction are reasonably accurate and constitute ordinary and necessary business expenses paid or incurred by him in connection with his trade or business. In connection with the determination of factual matters of this type, due consideration will be given to the reasonableness of the stated expenditures for the claimed purposes in relation to the taxpayer’s circumstances (such as his income and the nature of his occupation), to the reliability and accuracy of records in connection with other items more readily lending themselves to detailed recordkeeping, and to all of the facts and circumstances in the particular case.

(e) Applicability. (1) Except as provided in subparagraph (2) of this paragraph, the provisions of the regulations in this section are supplemental to existing regulations relating to information required to be submitted with income tax returns, and shall be applicable with respect to taxable years beginning after December 31, 1957, notwithstanding any existing regulation to the contrary.

(2) With respect to taxable years ending after December 31, 1962, but only in respect of periods after such date, the provisions of the regulations in this section are superseded by the regulations under section 62(c) to the extent this section is inconsistent with those regulations. See §1.62-2.


§ 1.162-18 Illegal bribes and kickbacks.

(a) Illegal payments to government officials or employees—(1) In general. No deduction shall be allowed under section 162(a) for any amount paid or incurred, directly or indirectly, to an official or employee of any government, or of any agency or other instrumentality of any government,

(i) In the case of a payment made to an official or employee of a government other than a foreign government described in subparagraph (3) (ii) or (iii) of this paragraph, the payment constitutes an illegal bribe or kickback, or

(ii) In the case of a payment made to an official or employee of a foreign government described in subparagraph (3) (ii) or (iii) of this paragraph, the making of the payment would be unlawful under the laws of the United States (if such laws were applicable to the payment and to the official or employee at the time the expenses were paid or incurred).

No deduction shall be allowed for an accrued expense if the eventual payment thereof would fall within the prohibition of this section. The place where the expenses are paid or incurred is immaterial. For purposes of subdivision (ii) of this subparagraph, lawfulness, or unlawfulness of the payment under the laws of the foreign country is immaterial.

(2) Indirect payment. For purposes of this paragraph, an indirect payment to an individual shall include any payment which inures to his benefit or promotes his interests, regardless of the medium in which the payment is made and regardless of the identity of the immediate recipient or payor. Thus, for example, payment made to an agent, relative, or independent contractor of an official or employee, or even directly into the general treasury of a foreign country of which the beneficiary is an official or employee, may