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Joan Claybrook, President

October 13, 2006

Commissioner Mark Everson
Chief Counsel Donald Korb
Internal Revenue Service
1111 Constitutional Avenue, NW
Washington, D.C. 20224

Complaint Services
Internal Revenue Service
Fresno, CA 93888

Dear Commissioner Everson and Chief Counsel Korb:

Public Citizen is writing to request that the Internal Revenue Service investigate possible violations of the Internal Revenue Code by members of Congress and their staff who have accepted free transportation, lodging, meals, entertainment, and other travel-related in-kind benefits on behalf of spouses, siblings, or other relatives, and did not declare these benefits as income subject to the federal income tax.

Travel expenses paid for by a business entity or other third party are not taxable income for business travelers as long as the travel expenses are for a bona fide business purpose. Similarly, travel expenses paid by taxpayers are largely tax deductible, so long as they serve a bona fide business purpose. [See IRC § 162(a)(2) and IRC § 274] However, additional travel expenses of a spouse or other family member who accompanies a business traveler, where the expenses do not serve a bona fide business purpose, is taxable income to the business traveler if the expenses are paid for by a third party. Similarly, where the business traveler pays for spousal or family travel, those expenses are not a deductible business expense, unless the spousal or family travel serves a bona fide business purpose. [IRC §274(m)(3)]

Members of Congress and their staff frequently travel on official business trips paid for by business interests or other third parties. According to House and Senate ethics rules, payment for official travel by a member or staff person is considered reimbursement to the Congress, rather than to the individual, and thus is not classified as income (or a gift) to individual members of Congress. According to congressional ethics rules, the travel expenses of a spouse or

sibling accompanying a member or staff on official travel may be paid for in whole or in part by the sponsoring business entity or third party.¹

When a member or staff person is accompanied on an official business trip by another individual – who is not an employee of the member, staff person, federal government, or sponsoring business entity, and whose presence does not serve a bona fide business purpose – the payment for that other individual is income to the member or staff person and is subject to federal income tax.

According to an October 13, 2006, news article by Deborah Price of the *Detroit News*, it appears that members of Congress and their staff do not declare such travel benefits for their spouses or siblings as income on their federal tax returns..

Public Citizen requests that the IRS investigate whether members and their staff have reported on their tax returns these kinds of non-reimbursed travel benefits to individuals who accompany them on official travel. If the IRS finds that such in-kind benefits have not been reported as income, the IRS should determine whether the non-reimbursed travel for spouses, siblings, or others served a bona fide business purpose, and seek appropriate remedies, including recovery of unpaid taxes, where the facts and circumstances indicate that no bona fide business purpose was served by the accompanying individual.

Travel by Members of Congress, Staff, and Others

Travel by members of Congress and congressional staff are subject to requirements described in the Rules of the House of Representatives and the Standing Rules of the Senate. Travel regulations are similar for both houses of Congress.

According to the rules, travel expenses usually include transportation, lodging, food, and refreshments, as well as some entertainment or recreational activities. A private source may pay for part or all of such travel expenses if the travel is connected to the individual's official duties,² the private source is not a registered lobbyist or foreign agent,³ and the individual discloses the trip and expenses to the Clerk of the House or the Secretary of the Senate within 30 days after return.⁴

In both the House and the Senate, payment for official travel by a private source is deemed a reimbursement to Congress and is not considered a payment directly to the member or staff person.⁵ Under the ethics rules, a member or staff person may also be accompanied by a single immediate family member, defined as a spouse or sibling, at the expense of a private source.⁶ Additional family members or friends cannot accept free travel, but they may

¹ House Rule 25 5(b)(4)(D); Senate Rule 35 2(d)(4).

² House Rule 25 5(b); Senate Rule 35 2(a).

³ House Rule 25 5(c)(1); Senate Rule 35 3(a).

⁴ House Rule 25 5(b)(1)(A)(ii); Senate Rule 35 2(a)(1)(B).

⁵ House Rule 25 5(b)(1)(A); Senate Rule 35 2(a)(1).

⁶ House Rule 25 5(b)(4)(D); Senate Rule 35 2(d)(4).

accompany the member or staff person at their own expense.⁷ (*See* Attachment A, “Travel Rules for Congress.”)

In 1995, Congress rejected an amendment to its travel regulations that would have more closely conformed to the requirements of the tax code. A bipartisan group of lawmakers attempted to tighten House travel rules regarding travel where the travel of a family member is paid for by a private source.

In the proposal, members would have been required to sign a form for each trip in which a spouse or sibling attended, declaring “that the attendance of the spouse or child is appropriate to assist in the representation of the House of Representatives.” The change to House rules (H.Res. 250) was initially adopted by a roll call vote, but following a House Rules Committee report, an amendment also ratified by a roll call vote deleted that specific provision from the final rules change.⁸

Indeed, rather than tightening to rules to conform to the tax code’s insistence on a bona fide business purpose, another ethics rules change in the House in 2005 sponsored by Rep. Tom DeLay (R-Texas) *loosened* the travel restrictions. Instead of permitting only one “spouse or child” to attend trips paid for by a private source, House rules, but not Senate rules, now allow one “relative” to attend these trips at the expense of a third party.⁹

The congressional travel rules are in stark contrast with the travel rules that apply to executive branch officials. Those rules dictate that a spouse (but not another family member) may accompany an executive branch employee on an official trip paid for by a private source, but only if the spousal participation in the trip is in the interest of the executive branch agency and is pre-approved as such by the agency. The executive branch agency may determine that the spouse’s presence at an event is in the interest of the agency if the spouse:

- Supports the mission of the federal agency or substantially assists the employee in carrying out official duties;
- Attends a ceremony at which the employee will receive an award or honorary degree; or
- Participates in substantive programs related to the agency’s operations.¹⁰

⁷ House Rule 25 5(b)(4)(D); Senate Rule 35 2(d)(4).

⁸ House Committee on Rules, Report Amending the Rules of the House of Representatives to Provide for Gift Reform (Nov. 14, 1995). The committee report reads in part: “Fifth, the Committee believes the rule gives no guidance, nor can we, as to when it would or would not be “appropriate to assist in the representation of the House” to accept expenses for an accompanying family member of other individual when a Member or employee participates at a widely-attended event or a speaking agreement, fact-finding or similar event in connection with one’s duties as an officeholder. We believe that it is generally appropriate to accept an unsolicited offer from a sponsor to cover the costs of one accompanying individual, as is permitted under the current House rule. Therefore, we recommend striking the words “if” through “Representatives” on page 10, lines 9–12, and the words “subject” through “Representatives” on page 14, lines 17–23. H.Amdt. No 901 deleting the travel conditions for spouses and siblings was adopted by a roll call vote.

⁹ H.Res. 5 (January 2005).

¹⁰ 41 CFR §304-3.14.

Although members of Congress and congressional staff are required to report trips and whether they were accompanied by family members, these records are not always complete. A study on privately-sponsored congressional travel by the Center for Public Integrity, American Public Media, and Northwestern University's Medill News Service over a 5 ½ -year period ending in 2005 found that members of Congress and their staff took at least 23,000 trips – valued at nearly \$50 million – financed by private sponsors, usually corporations, trade associations and non-profit groups with business on Capitol Hill.¹¹ Of these trips, one or more companions accompanied the member or staff person at the expense of the private source on 2,988 trips valued at approximately \$4.8 million.

Members have made use of the special provision to be accompanied by their spouse or sibling at the expense of a private source more often than have congressional staff. A spouse or a sibling accompanied members on 2,224 trips at the expense of a private source, valued at approximately \$4.4 million.¹² In addition, the CPI study found over 190 instances in which members of Congress had violated ethics rules by bringing on a trip a relative not permitted by ethics rules or by bringing along more than one family member whose expenses were paid by a private source.

Income Undeclared, Taxes Not Paid

Travel expenses by immediate family members who accompany a member or staff person on trips paid for by a private source, and who serve no bona fide business purpose related to the official mission of the trip, are taxable income to that member or staff person.¹³

The evidence suggests, however, that members of Congress are ignoring the tax implications of a congressional travel policy that permits certain family members to accompany members without paying their own way. Prior to October 3, 2006, according to a *Detroit News* story by Deborah Price, no written or oral policy explained to members of Congress and staff that such travel benefits for family members who do not serve an official function on a trip must be declared as income subject to tax. We have learned that only after repeated questions by Ms. Price did counsel for the House Ways and Means Committee issue a policy on the matter. (See Attachment B, Deborah Price, *Detroit News*).

On October 3, 2006, counsel for the House Ways and Means Committee attempted to rationalize that such non-business-related travel expenses are not income as follows:

Public officials, including Members of Congress, are subject to the same rules as private business executives with respect to the tax treatment of reimbursed, spousal travel expenses. The reimbursed expenses are not taxable if there is a bona fide business purpose for the spousal travel, a

¹¹ Jim Morris, "Privately Sponsored Trips Hot Tickets on Capitol Hill: Study finds almost \$50 million spent on travel for lawmakers, aides" (June 5, 2006).

¹² Data provided by the Center for Public Integrity, telephone conversation and e-mails with Jim Morris (Oct. 12, 2006).

¹³ Treasury Regulations, Subchapter A, Section 1.61-2, ("Compensation for services, including fees, commissions, and similar items.").

determination based on the facts and circumstances. Congressional spouses have an official and public role quite different from the spouses of normal business executives. As a result, they do accompany and participate alongside Members as part of official delegations, fact-finding missions, conferences and similar events. The travel is permitted under the ethics rules on the grounds that it is related to the official duties of the office, essentially the same standard used in determining taxability. To my knowledge, the IRS has never challenged that determination.¹⁴

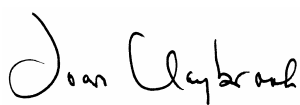
This rationalization presupposes that the spouse or sibling of a member of Congress or congressional staff person enjoys a role and employee status similar to that of the First Lady. Unlike the First Lady, who serves in an official role with the President, a spouse or sibling of a member of Congress or congressional staff person is not employed by the federal government, has no ceremonial title, and is not presumed to serve in any official capacity in the Congress. Even if this explanation for exempting spousal travel from income, regardless of the purpose of the travel or the spouse's activities while traveling, were plausible – which it is not – it would not apply to the travel of a member's children, siblings, or other relatives.

In fact, the same tax rules that apply to spouses or siblings of business executives apply to members of Congress and their staff. Members of Congress and congressional staff are welcome to travel with their spouses or siblings on official trips, and to have a private source pay for that benefit. But as with the rest of us, the “freebies” – the value of transportation, lodging, food, entertainment, and the like – must be declared as income to the member if the accompanying person did not serve a legitimate business function on the trip. Whether a spouse or sibling who accompanied a member or staff person on these trips was in fact an employee, or served a bona fide business purpose relating to the official trip, should be determined by the IRS on a case-by-case basis.

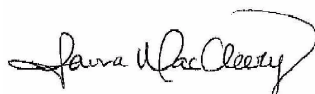
Public Citizen asks that the IRS investigate this matter and take appropriate action to collect any back taxes owed by members of Congress. In addition, we ask that the IRS provide Congress with guidance on the tax implications of future travel benefits and gifts received by members of Congress and congressional staff from third parties.

If we can be of any further service, please do not hesitate to call. Thank you for your consideration.

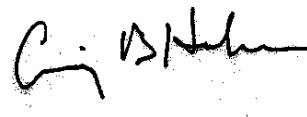
Sincerely,



Joan Claybrook
President
Public Citizen



Laura MacCleery
Director, Congress Watch
Public Citizen



Craig Holman
Legislative Representative
Public Citizen

¹⁴

Deborah Price, *Detroit News* (Oct. 11, 2006)