My dear Mr. Chairman:

Reference is made to the request to this office to furnish the Committee information with respect to the application of the provision of Public Law 471, 82d Congress, which reads as follows:

"Th*t for the two taxable years beginning after December 31, 1952, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, Territory, or possession which he represents in Congress shall be considered to be his home for the purposes of section 23(a)(1)(A) of the Internal Revenue Code, but amounts expended by such Member within each such taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000."

Section 23'(a)(1)(A) of the Code referred to in the above Act provides, in part, that in computing net income there shall be allowed as deductions:

"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 *

It appears that the above provision of Public Law 471 has two basic purposes, both of which relate to the application of section 23(a)(1)(A) of the Internal Revenue Code: first, to provide that for the two taxable years beginning after December 31, 1952, a Member of Congress shall be considered to be in a travel status while in the Washington area and away from the district which he represents in the Congress; and second, that the deductions of such Member for "living expenses" within each such taxable year shall not exceed $3,000.

The legislative history of the provision indicates that the purpose of Congress in designating the place of residence of a Member
within the area which he represents in Congress as his "home" was to permit the deduction of certain expenses while discharging his congressional duties in Washington, and that Congress intended the $3,000 limitation to apply only to that portion of a Member's traveling expenses which constitutes "living expenses" in the Washington area while so discharging his congressional duties. Accordingly, it is the position of the Bureau that the $3,000 limitation was not intended to restrict the over-all deduction of traveling expenses by Members of Congress (some of which may be incurred other than in the Washington area while away from "home"), and that traveling expenses incurred outside the Washington area which are reasonable and necessary in the discharge of the Member's congressional duties are deductible to the same extent and under the same rules applicable to taxpayers generally. It is the position of the Bureau that the term "living expenses" comprehends only that portion of traveling expenses which consists of the cost of the Member's meals and lodging, together with items incident thereto, while in the Washington area in the discharge of his official duties.

The cost of meals includes the actual cost of food and expenses incident to the preparation and serving thereof. The cost of lodging includes rental, care of premises, household laundry, and utilities, together with interest, taxes, insurance, and depreciation on household furnishings owned by the Member. In the case of a Member who lives in a house owned by him in the Washington area (away from his "home"), cost of lodging also includes interest, taxes, insurance, and depreciation on such house. In any subsequent determination of the basis of the property for tax purposes, proper adjustment should be made for such depreciation.

If a Member's family lives with him in the Washington area, it will be necessary for such Member to determine the portion of the expenditures for meals and lodging (including depreciation) attributable to himself as distinguished from other members of his family with whom he resides. This determination should be made on the basis of a reasonable allocation.

The "living expense" category does not include items which would not otherwise qualify as deductible traveling expenses, such as the cost of clothing, personal laundry, medical expenses, charitable contributions, and the cost of meals and lodging attributable to family members other than a Member of Congress. However, charitable contributions and medical expenses are deductible to the extent provided under sections 23(o) and 23(x) of the Code, respectively, provided the standard deduction is not claimed. Other items which are not includible in the "living expense" category are business expenses (other than the cost of meals and lodging in the Washington area) which are deductible under section 23(a). This would include expenses such as those incurred by a Member for mailing or additional clerk hire.
Since "living expenses" constitute a portion of a Member's traveling expenses, they may be deducted in computing adjusted gross income and do not prevent the allowance of the optional standard deduction in lieu of actual deductions in computing net income. Interest and taxes, to the extent they are not deducted as a part of "living expenses," are deductible under sections 23(b) and 23(c) of the Code in computing net income provided the Member does not claim the standard deduction.

The $3,000 limitation applies to "living expenses." It is construed as a limitation on the deduction for "living expenses" incurred by a Member while he is officially in the Washington area away from his "home" in his congressional district.

To substantiate the deduction for "living expense," the Bureau will accept a certification, signed by the Member and attached to his return, that (1) he was in a travel status in the Washington area (away from "home") in the performance of his official duties as a Member of Congress for _____ days; and (2) his deductible "living expenses" while in such travel status amounted to $__________ (not to exceed $3,000). In any case in which the claimed deduction for "living expenses" includes interest, taxes, or depreciation, the statement should indicate the amount of each such item.

Very truly yours,

/s/ T. Coleman Andrews

Honorable Eugene D. Millikin
Chairman, Committee on Finance
United States Senate
Washington 25, D. C.