

DETERMINING TAXABILITY OF MAINTENANCE DEDUCTIONS

These rules are to be used by payroll officers in determining whether the maintenance charges deducted from employee wages are classified as taxable or non-taxable for payroll purposes. The State, as the employer, has a responsibility to report these amounts properly to the taxing authorities.

Section 119 of the Internal Revenue Code states that all of the following conditions must be met before meals and/or lodging charges can be classified as non-taxable and, therefore, excludable from gross income:

1. The meals or lodging are provided at the employer's place of business, **and**
2. The meals or lodging are provided at the employer's convenience, **and**
3. For lodging, but not meals, the employee is required to accept the lodging as a condition of his or her employment.

The following is a further clarification and explanation of these conditions. Additional clarification and details can be found in the appropriate Internal Revenue Service regulations.

A. Meals

1. Meals Furnished Without Charge

If meals are furnished for the employer's convenience without charge to an employee at the employer's place of business, the value of such meals will generally be non-taxable. The meals must be furnished for a non-compensatory purpose, such as:

Having the employee available on site for emergency call during the meal period

OR

Due to the nature of the business, the employee must be restricted to a short meal period and cannot be expected to eat elsewhere.

2. Meals Furnished With a Charge (Deduction)

If an employer provides meals which an employee **may or may not** purchase, the meals will not be regarded as furnished for the convenience of the employer and, therefore, the maintenance deduction is taxable.

B. Lodging

All **three** tests of Section 119 of the Internal Revenue code must be met for an employee's maintenance deduction for lodging to be classified as non-taxable. In general, most employees occupying State owned housing would meet the first test of Section 119, that the lodging be on the grounds of the employer's place of business. The two additional tests are discussed below.

1. **Convenience of Employer**

To meet this test, the employer must furnish the lodging to the employee so that the employee may properly perform his or her duties. Acceptable evidence to support meeting this test would include a job requirement that the employee be on-call to serve in emergencies. Two examples provided in Federal regulations include:

The provisions of lodging to an employee because he or she is required to be on duty at all times.

The provisions of lodging in order to have the employee available for an emergency call.

2. **Condition of Employment**

To meet the condition of employment test, the employee must have been **required** to accept the lodging **at the time** he or she was hired. In determining if this condition was met, satisfactory evidence must be available to show that if the employee did not accept the lodging, he or she would not have been employed. The agency must be able to demonstrate that the job specifications and/or requirements used to solicit applicants for the position clearly spelled out this condition of employment. If the employee had an option to either live in State housing or not live in State housing, the third test is not met and any maintenance charge **must** be classified as taxable. That employees choose to live in State housing, thereby making themselves available for emergency calls, does not have an effect on this determination.



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BUDGET POLICY AND REPORTING MANUAL

TRANSMITTAL NOTICE NO. 61

April 10, 1998

Attached for inclusion in the Budget Policy and Reporting Manual are:

- Revised Item B-300, entitled: Employee Maintenance Policy and Charge Schedule, adjusted to reflect increases in the rates charged for employee housing and meals, pursuant to collective bargaining agreements.
- A revised section B Table of Contents (Item B-000).

NOTE: Enter receipt of this notice in Manual Item A-004 and file the notice itself after that item. Please supply copies to all interested officials and employees in your department or agency at all appropriate locations.

BUDGET POLICY AND REPORTING MANUAL

<i>date</i> 4/10/98	<i>subject</i> TABLE OF CONTENTS	<i>item</i> B-000
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B-075	Agency Program Structures	4/1/73	12/1/76
B-100	Payment of Vendors, Contractors, and Not-For- Profit Organizations	3/27/89	
B-200	Special Services	4/10/84	
B-205	New York State Statistical Yearbook	5/15/84	
B-210	Guidelines for Agency Publications	4/10/84	
B-220	Administration of Local Grant Awards	12/11/92	
B-300	Employee Maintenance Policy and Charge Schedule	4/10/98	4/18/97
B-350	Internal Control Imple- mentation, Certifica- tion, and Reporting	10/30/89	
B-360	Schedule of State Agencies Required to Establish and Maintain an Internal Audit Unit	5/13/92	
B-400	Availability, Inter- Changeability and Transferability of Appropriations	9/21/87	
B-410	Guidelines for Reviewing OSC Audit Reports	10/16/92	
B-505	Travel Guidelines	4/10/84	
B-515	Air Conditioning Policy	9/1/71	

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B-600 Implementation of Public
Employee Safety and Health
Act for State Occupied
Workplaces 4/3/87

BUDGET POLICY AND REPORTING MANUAL

<i>date</i> 4/10/98	<i>subject</i> EMPLOYEE MAINTENANCE POLICY AND CHARGE SCHEDULE	<i>item</i> B-300
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Purpose and Scope

The Employee Maintenance Policy and Charge Schedule was established by the Director of the Budget pursuant to Section 135 of the Civil Service Law, and subdivision seven of Section 44 of the State Finance Law. Pursuant to collective bargaining agreements, this Item sets forth the rates charged to State employees for living quarters and meals.

LIVING QUARTER RATES

Fair values of living quarters are established according to location, type, size and quality of accommodations. Agencies are responsible for applying location and quality classifications as defined in this section. However, classifications which have been previously established shall not be revised without prior approval of the Director of the Budget. Exceptions are made only by the Director of the Budget.

(a) Location Classification

Rents vary depending in part on the location of the residence. The four location classifications to be used in computing rents are defined as follows:

- Metropolitan - New York City and all residences and State properties classified as urban/suburban within Rockland, Westchester, Nassau and Suffolk Counties.

- Urban/Suburban - Residences located in or within 10 miles of communities with over 50,000 population, as determined by the latest Federal census.

- Town/Village - Residences in or within 10 miles of communities with 50,000 population or less, as determined by the latest Federal census.

- Rural - Residences located more than 10 miles from any community.

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(b) Quality Rating

Rents also depend in part on their quality. Residential quality is identified by one of the following four classifications:

<u>Quality Rating</u>	<u>Definition</u>
Excellent	The residence provides privacy and comfortable living in all major respects.
Good	The residence has some limitations on privacy or provides comfortable living in most major respects.
Fair	The residence has substantial limitations on privacy or fails to provide comfortable living in only some respects.
Poor	The residence lacks a minimal amount of privacy or fails to provide comfortable living in most major respects.

The location of a residence is not considered in determining the quality rating as it affects the privacy of the occupants.

(c) Monthly Room Rates

By applying the location classification and the quality rating noted above, the monthly room rate for a particular residence can be obtained from the following table:

MONTHLY ROOM RATES EFFECTIVE APRIL 1, 1998
(July 1, 1998 for State University Professional Services
Negotiating Unit Employees)

<u>Location Classification</u>	<u>Quality Rating</u>			
	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>
Metropolitan	\$179.27	\$160.12	\$139.58	\$119.07
Urban/Suburban	153.28	134.11	116.32	98.54
Town/Village	127.26	110.84	95.80	82.11
Rural	98.55	86.22	73.91	64.32

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The monthly room rate is the base amount from which all other computations are made in determining the rental rate of residences, given their particular size and characteristics. The monthly room rate includes charges for heat and utilities.

No additional charge is made for furniture that may have been provided by the State. Similarly, the State neither charges for nor provides personal furnishings such as drapes or carpets. The State does not provide linens, towels, soap, or other similar household items to staff houses or apartments. The State does provide stoves and refrigerators for such residences.

(d) Multi-room Rates

The rates for houses, apartments and suites are computed as follows:

First room.....	100 percent of monthly room rate.
Second room..... (when there is no kitchen)	Add 75 percent of monthly room rate.
Third to tenth rooms inclusive, for excellent quality residences.....	Add 50 percent of monthly room rate per room.
Third to seventh rooms inclusive, for good, fair, and poor quality residences.....	Add 50 percent of monthly room rate per room.
(There are no charges for rooms in addition to the above seven and ten rooms.)	
Kitchen.....	Compute as 100 percent of the monthly room rate and count as the second room.
Kitchenette.....	Compute as 50 percent of the monthly room rate and do not count as a room.
Full bathroom.....	Compute as 50 percent of the monthly room rate per bathroom.
Half bathroom.....	Compute as 20 percent of monthly room rate.

Maximum charges for full and half bathrooms are: two and one-half baths for residences classified as excellent, one and one-half baths for residences classified as good, and one bath for residences classified as fair and poor.

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(e) Rate Adjustments for Apartments and Houses

Once the full monthly rental for the residence has been determined, based on (c) and (d) above, the following reductions are made only where applicable to apartments and houses:

- Heat not provided..... Subtract 15 percent of full rental rate.
- Electricity not provided..... Subtract five percent of full rental rate.
- Gas or cooking fuel not provided..... Subtract five percent of full rental rate.
- Stove and refrigerator not provided..... Subtract five percent of full rental rate.
- Interior running water supply not provided..... Subtract five percent of full rental rate.

(f) Single Room Rates

The rates for single rooms, except those in a dormitory housing three or more employees, are computed as follows:

- Single room with shared bathroom..... 100 percent of monthly room rate.
- Single room with wash basin..... 110 percent of monthly room rate.
- Single room with toilet..... 110 percent of monthly room rate.
- Single room with private bath..... 150 percent of monthly room rate.

Rents for two-room suites are computed based on (c) and (d) above. The State usually provides furnishings for single rooms and two-room suites.

(g) Shared Residences

- (1) Rates for Dormitories. The rent charged to an individual where three or more employees reside in a dormitory room are 60 percent of the full monthly room rate. This rate is charged to each occupant of a dormitory unit, with no charge for additional facilities.
- (2) Rates for Two or More Employees. Where any residence is shared by two or more employees, each employee pays 75 percent of the full rental rate. This provision does not apply when employees are members of the same family, in which case 100 percent of the full rent rate is charged. This provision also does not apply to units in a dormitory where three or more employees reside.

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(3) Guest Rooms. Rooms other than those regularly assigned and charged to the host employees which are occupied by non-official guests visiting employees with the approval of the head of the institution are charged at a daily rate of one-thirtieth of the full rent for the residence.

(h) Residences Rented for Employees from Private Parties

Employees occupying residences rented by the State from private parties are charged at the actual cost to the State for such residences. These charges include any facilities or utilities provided or paid for by the State. Charges for such rented residences are computed on the basis of the actual cost to the State even where the charges exceed full rents as computed in accordance with (a) through (g) above.

(i) Rental Responsibility

No reduction in rent is allowed for any absence. If resident employees are off the State payroll, they continue to be responsible for the rental charge, until they officially give up their assigned quarters and vacate the premises of all their personal property.

FOOD RATES

It is the policy of the State to charge for employee meals at cost. Effective April 1, 1998 (July 1, 1998 for State University Professional Services Negotiating Unit employees), the monthly rates for employee meals are as follows:

MONTHLY MEAL RATES

<u>Breakfast</u>	<u>Lunch</u>	<u>Dinner</u>	<u>Total for Three Meals</u>
\$59.35	\$84.94	\$96.19	\$240.48

These rates are based on cafeteria-type meals, with limited menus and no individual table service. Staff-type meals, with more extensive menus, individual table service, and more privacy, may be served only with the approval of the Division of the Budget which sets charges for these meals.

Facilities that serve the largest meal of the day over the noon hour charge employees for that meal at dinner rates. Such facilities charge the lunch rate for the evening meal.

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Special Meal Adjustments:

- (i) For Employees on Rotating Tours of Duty. Nonresident employees taking one or two meals each tour of duty and whose tours of duty rotate through the three meals and employees who are subject to periodic shifts of tours of duty are charged at average monthly meal rates: \$79.67 effective April 1, 1998 if such employee takes one meal each day (July 1, 1998 for State University Professional Services Unit employees) and \$160.30 effective April 1, 1998 if they take two meals each day (July 1, 1998 for State University Professional Services Negotiating Unit employees).
- (ii) For Official Absences from Duty. An employee, resident or nonresident, absent from all meals for a period of seven or more consecutive days during vacation, holidays, accumulated pass days and other protracted absence from duty such as sick leave, is not charged for meals during that period of official absence. Arrangements for this allowance must be made in advance of absence. Sick leave and absence without pay may not be combined to produce seven or more days for this allowance, either with each other, or with vacations, holidays and personal leave days. Exceptions to this provision are made only with the approval of the head of the facility.
- (iii) For Non-Official Guests. Charges for meals from facility dining rooms furnished to non-official guests (adults or children) visiting individual officers or employees, with the approval of the head of the institution, are charged at the following rates:

INDIVIDUAL MEAL RATES EFFECTIVE APRIL 1, 1998
(July 1, 1998 for State University Professional Services Negotiating Unit Employees)

<u>Breakfast</u>	<u>Lunch</u>	<u>Dinner</u>	<u>Total for three meals</u>
\$2.06	\$2.81	\$3.21	\$8.07

If the largest meal of the day is served during the noon hour, non-official guests are charged at dinner rates. Such facilities charge for the evening meal at the lunch rate.

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CHILDREN'S MEALS

Meals served in or provided from facility dining rooms and kitchens for minor children are charged at the following rates for each age group:

CHILDREN'S MONTHLY RATES FOR THREE MEALS

EFFECTIVE APRIL 1, 1998

(July 1, 1998 for State University Professional
Services Negotiating Unit Employees)

<u>Under 2 Yrs.</u>	<u>2-7 Yrs.</u>	<u>Over 7 Yrs.</u>
\$44.82	\$119.52	\$239.01

Exceptions

The restrictions and limitations contained in this Schedule may be waived pursuant to provisions of law by the Director of the Budget whenever she/he determines that strict adherence to the rules would be detrimental to the sound and orderly administration of State government.