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 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. Also if the employee is charged for the meal, and chooses not to accept, the deduction will be regarded as 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 as follows.

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 condition of the employment was included in the job specifications and/or requirements used to solicit applicants for the position. 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.