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.

According to Internal Revenue Code Section 119 – Meals or lodging furnished for the convenience of the employer:

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if -

1. in the case of meals, the meals are furnished on the business premises of the employer,

OR

2. in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

Section 119 offers the following clarification:

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. 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 Service 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, which requires the lodging be on the grounds of the employer's place of business. The two additional tests are clarified 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 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 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 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 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. The employee who chooses to live in State housing, thereby making himself available for emergency calls, does not have an effect on this determination.