

### **130.5 Lodging**

If the University provides a residence for an employee, IRC Section 119(a) specifically excludes the value of the housing furnished from gross income if the following three requirements are satisfied:

- the employee is required to accept such housing as a condition of employment;
- the housing is on the business premises of the university/agency; and
- the housing is furnished for the convenience of the university/agency.

All three requirements must be met for the value of the housing to be excluded from taxable income. Failure to meet any one of these conditions will render this exclusion inapplicable, thereby causing the value of the housing to be included in the employee's income. (IRS Treasury Regulation 1.119-1(b)).

#### *Condition of Employment Test*

The "condition of employment" test requires the employee to accept the housing in order to enable him to properly perform the duties of his employment. The University must demonstrate either that the residence is necessary to the performance of the employee's duties or that the residence is necessary for employee availability at all times for University business. The test is generally met if, based on the manner in which the institution conducts its educational activities, the housing is necessary for the employee to be available extended work hours (i.e. on-campus meetings, fund-raising activities, alumni events).

#### *Business Premises of the Employer*

The second test, that the housing must be on the business premises of the employer, is obviously met when the housing is physically located on campus. An issue sometimes arises as to whether off-campus housing meets this test. If the off-campus housing either constitutes an integral part of the University's operations or is a place where the employee performs a meaningful portion of his/her duties, it may qualify as "on the business premises". The duties performed by an employee at off-campus housing must be significant and not merely incidental for the housing to be treated as "on" campus.

*Example:* In a court case (*Winchell v. United States*), a college provided its president with a residence located four miles from the main campus. The president entertained business guests and occasionally held meetings, made telephone calls, and conducted college-related business in the residence. The court held that these infrequent activities did not constitute an adequate portion of employment-related activity to find that the off-campus residence constituted a "business premises" for purposes of the housing exclusion.

#### *Convenience of the Employer*

The convenience of the employer test requires a direct relation between the housing that is furnished to the employee and the business interest of the University. Generally, if the "condition of employment" and the "business premises" tests are satisfied, the courts have concluded that the housing was also furnished for the convenience of the employer. There is no requirement that housing be furnished *primarily* for the employer's convenience, only that convenience to the employer exists.

#### *Cash Payments for Housing*

IRC Section 119 does not cover cash payments of any kind. Thus housing allowances cannot be excluded from taxable income, with the exception of ordained ministers (see Minister Housing Allowance Policy).

If the employee has a choice between living in certain employer-provided housing and receiving a cash allowance in addition to his or her regular salary, then the housing is not excludable from the employee's income even if the employee accepts the housing. (IRS Treasury Regulation 1.119-1(e)).

#### *Partial Exclusion*

A special provision is available that provides a partial exclusion for university -provided housing (IRC Section 119(d)(1)). This provision limits the amount of housing benefits that will be included in an employee's gross income to 5% of the housing's appraised value. A president or other employee of an educational institution will qualify for the 5% limitation if the housing constitutes "qualified campus lodging," which is housing that is "located on, or in the proximity of" the campus and is furnished for use as a residence. Thus, this provision partially alleviates income recognition for off-campus housing that does not meet the "on the business premises" test.

#### *Factors to Consider*

The following factors should be considered to maximize the likelihood of successfully excluding housing from taxable income.

- The residence should be owned or leased by the university.
- A document should exist — preferably an employment contract — requiring the employee to live in the residence and specifying university/agency-related duties expected to be performed there.
- An executive's residence (such as a university president) should contain special facilities, such as an oversized dining room or conference/seminar room, that enhance the ability to perform university duties in the residence. Office facilities are desirable to indicate that university work is performed on the premises but, alone, may be insufficient to demonstrate that the residence is necessary to the performance of the duties.
- The executive should actually perform substantial university duties in the residence. These activities should be documented, however informally. Guest books identifying events and the guests, and social calendars scheduling and detailing various events, will be helpful in documenting the special uses of the residence. The required events must be substantial, regular, and frequent.

#### **Resident Advisors**

Resident advisors (RAs) are typically required to live in the dormitory in which they serve as a resident advisor. As described above, the three requirements for excluding the value of lodging must be met. If the university also compensates the RA, then the compensation must be included in taxable wages. Also note if the RA has an option to receive either additional compensation for the lodging or the lodging itself, then the amount is NOT excludable from wages.