



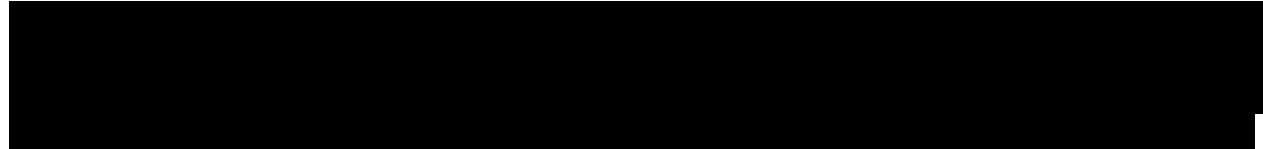
DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

October 25, 2000

Number: **INFO 2000-0298**  
Release Date: 12/29/2000  
119.01-00; 119.05-00

CC:TE/GE:EOEG:ET2  
COR-115310-00



Dear [REDACTED]:

This responds to your request for general information on the issue of whether lodging provided by [REDACTED] to an individual who performs groundskeeping duties at a rural field station owned by the University is excludable from that individual's gross income under section 119 of the Internal Revenue Code (the "Code").

As a general matter, apart from the procedure for issuing a formal opinion, as described in Revenue Procedure 2000-1, 2000-1 I.R.B. 4, the Internal Revenue Service is not able to provide binding legal advice applicable to particular taxpayers. We have enclosed a copy of Revenue Procedure 2000-1 for your reference. In the event that you decide to request formal guidance, such as a private letter ruling, you should follow the procedures set forth in Revenue Procedure 2000-1. In the absence of a request for formal guidance, we are only able to provide general information. Accordingly, in response to your request, we have reviewed the facts provided to us and set forth below general information, which we hope will be helpful to you.

According to the information you provided, the University has an agreement with an individual to perform groundskeeping duties at a rural field station owned by the University. The groundskeeper is required to live on the premises located at the field station. The agreement specifies that in return for providing groundskeeping services, the groundskeeper is provided housing and utilities valued at \$393 per month, and is permitted to use a barn and pasture, valued at \$50 per month. The groundskeeper receives no other remuneration for the services provided.

Section 61 of the Internal Revenue Code (the "Code") provides that, except as otherwise provided, gross income means all income from whatever source derived, including fringe benefits such as employer-provided housing.

COR-115310-00

Section 1.61-2(d)(3) of the Income Tax Regulations (the “Regulations”) provides that the value of living quarters that an employee receives in addition to the employee’s salary constitutes gross income unless it is furnished for the convenience of the employer and meets the conditions specified in section 119 of the Code and the regulations thereunder.

Section 1.61-21(a)(2) of the regulations provides that to the extent a particular fringe benefit is specifically excluded from gross income pursuant to another section of subtitle A of the Code, that section shall govern the treatment of the fringe benefit. Examples of excludable fringe benefits include meals or lodging furnished to an employee for the convenience of the employer under Code section 119.

Section 119(a)(2) of the Code provides that there shall be excluded from the gross income of an employee the value of any lodging furnished to the employee, the employee’s spouse, or any of the employee’s dependents by or on behalf of the employer for the convenience of the employer, but only if the employee is required to accept such lodging on the business premises of the employer as a condition of employment.

Section 1.119-1(b) of the regulations provides that the value of lodging furnished to an employee by the employer is excludable from the employee’s gross income if three tests are met:

- (1) The lodging is furnished on the business premises of the employer;
- (2) The lodging is furnished for the convenience of the employer; and
- (3) The employee is required to accept such lodging as a condition of employment.

With respect to the “convenience of the employer” and the “condition of employment” tests, the courts have held that they are essentially the same. See e.g., Bob Jones University v. United States, 670 F.2d at 167 (Ct. Cl. 1982); Benninghoff v. Commissioner, 71 T.C. 216, 218 (1978), aff’d per curiam, 614 F.2d 398 (5<sup>th</sup> Cir. 1980). These tests are satisfied if the employee is required to accept the lodging in order to enable him properly to perform the duties of his employment. Lodging will be regarded as provided to enable the employee properly to perform the duties of his employment when, for example, the lodging is furnished because the employee is required to be available for duty at all times or because the employee could not perform the services required of him unless he is furnished such lodging. Lodging provided in order to ensure that the employee is available for duty at all times and/or because it is

COR-115310-00

necessary to enable the employee to perform the services required of him will also be regarded as provided for a substantial noncompensatory business reason. See e.g. Rev. Rul. 68-354, 1968-2 C.B. 60.

If the three tests above are not met, Code section 119(d) provides another alternative for exclusion from gross income of the value of "qualified campus lodging" furnished to an employee of an educational institution. Pursuant to section 119(d)(3), the term "qualified campus lodging" means lodging to which subsection (a) of section 119 does not apply (i.e., lodging which does not meet the three tests above), which is located *on, or in the proximity of, a campus of the educational institution*, and which is furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

Pursuant to section 119(d)(2), the fair market value of the qualified campus lodging provided to an employee of an educational institution will not be treated as income to the employee, provided that the employee pays rent for such lodging in an amount that equals or exceeds five percent of the fair market value of the lodging. If the employee does not pay rent of at least five percent of the appraised value he or she receives taxable income in the amount of the difference between the rent paid, and the lesser of five percent of the fair market value of the lodging or the average rental paid by individuals not affiliated with the institution for lodging provided by the institution that is comparable to that provided the employee.

The attorney assigned to this matter is Lynne Camillo (Badge #50-01066). She can be reached at (202) 622-6040.

Sincerely,

Jerry E. Holmes  
Chief, Employment Tax Branch 2  
Office of the Associate Chief Counsel  
(Tax Exempt and Government Entities)