Division of Accounting
Payroll Compliance Group

Bulletin # 2014_001
State-Owned Housing Fringe Benefit

INTRODUCTION

The Division of Accounting (DOA) is responsible for working with State of Delaware (State) Organizations to ensure appropriate application of regulations associated with fringe benefits offered to State employees.

This bulletin provides guidance on the tax implications of State-owned housing provided to employees to ensure that proper communication is given to the employee at the time of receipt and that the State is in compliance with federal and state tax laws and regulations.

FACTS

Fringe benefits include any compensation other than cash wages. The general rule is that the compensation is taxable; however, the Internal Revenue Code provides exclusions for numerous forms of non-cash compensation provided to employees.

The facts on which this opinion is based are that several State Organizations own or have access to a number of residences/residential facilities throughout the State. The Organization, as landlord, may use these residences/facilities as it deems necessary in the best business interest of the State. There are four employee uses of these residences/facilities which require consideration of housing-related fringe benefits:

1. Assigned to an employee as a condition of employment.
2. Use by employee permitted for the benefit of both the employee and the Organization.
3. Temporary use of a residential facility by an intern or seasonal employee.
4. Offered to employees where housing is not a condition of employment.

In each of the scenarios above, the three criteria below must be evaluated for gross income impact.

According to the IRS Regulation 1.119-1(b) Lodging, the value of housing/lodging furnished to an employee as a Working Condition Fringe Benefit shall be excluded from the employee's gross income if all three of the following criteria are met:

1. The lodging is provided on the business premises of the employer, meaning the place where the employee performs a significant portion of his/her duties. To meet this requirement, the housing must be on the premises, not near the premises.

2. The lodging is provided for the convenience of the employer, meaning that the employer has a substantial non-compensatory business reason to provide housing to the employee. This determination is made on a case-by-case basis.
3. The employee is required to accept such lodging as a condition of employment meaning the employee must accept the housing to properly perform the duties of the job. It is not sufficient that an employee is compelled by the employer to live on the premises. The employee must be required to do so as the onsite housing is indispensable to the proper discharge of assigned duties. An employer must demonstrate and document the need for an employee to live on the premises to satisfy the condition of employment test.

The value of any housing not meeting all three criteria above is regulated by IRS Regulation 1.61-21(b), Valuation of Fringe Benefits. The difference between the Fair Market Value (FMV) of employer-provided housing and the monthly rent paid by the employee/reimbursement amount is included in the employee's gross income as reportable taxable income.

Organizations must follow federal and State housing requirements including performing biannual FMV determinations and timely reporting (monthly) of taxable housing in the PHRST system. Organizations must report the difference between the actual rent/utilities paid by the employee and the FMV of employer-provided housing/lodging/utilities not exempt by IRS criteria.

DEFINITIONS

- **Working condition fringe benefits** include property or services that, if the employee had paid for the property or service, the cost would have been deductible on the employee's individual income tax return. Therefore, if the cost of an item is deductible by an employee as a business expense, it may be excludable from the employee's wages as a working condition fringe benefit, if provided by the employer. *IRC §132(d)*
- **Fair Market Value** – *IRC §1.61-21(b)* defines FMV as the amount which the property would rent for in an open market between a willing lessor and lessee. The Appointing Authority/ Designee is responsible for setting the FMV for each residence. These may be set by asking local realtors for a range of values for similar property in the area and by reviewing advertised rentals. This should give the Appointing Authority/Designee a reasonable range for setting a rental value based on the condition of the property.
- **Fringe Benefit** – The FMV less actual rent paid by the employee equals the taxable and reportable fringe benefit. Example: The department charges $300/month for the employee housing. FMV for the property is $1,000/month. The FMV ($1,000) minus the monthly rent ($300) equals the taxable and reportable fringe benefit amount ($700).
- **Appointing Authority/Designee** – The Cabinet Secretary or Organization Head, as appointing authority, delegates the responsibility of designating those residences filled as a condition of employment to the Division Directors for properties under the control of their Divisions.
- **Condition of Employment** – A test that determines if an item is required as part of an employee's job to properly perform the duties of the job. Condition of employment is determined by the appointing authority/designee.

- **Business Premises** – The location at which the employee performs his/her job duties.
- **Essential Employee** – A full-time State employee who is required, as a condition of employment, to live in State-owned housing located at the employee's official workstation for the convenience of the appointing authority. Housing provided to essential employees is a non-taxable benefit.
- **Non-Essential Employee** – A State employee who is not required, as a condition of employment, to live in State-owned housing located at the employee's official work station for the convenience of the appointing authority. Housing provided to non-essential employees is a taxable benefit valued at the difference between FMV and the actual rent paid by the employee.
- **State-Owned House** – Residential structure designed and approved for habitation located on land owned by the State of Delaware. Housing units include: houses, apartments, dormitories, mobile homes, trailers, mobile home pads, trailer spaces, etc., and utilities when applicable.
- **State-Owned Residential Facility** – Structure owned by or under the custody and control of an Organization of the State of Delaware that can be used for temporary living accommodations. Examples are dormitories used to house camp counselors or group living accommodations on remote areas.
- **Excess Housing** – A State-owned or leased house retained for future use, but not presently determined to be a required residence. The housing may be rented to any interested party, with first consideration given to State employees, and is subject to rental payments by the employee to the State. Employees living in excess housing should be charged FMV rent or be taxed on the difference between FMV and the actual rent paid.
- **Utilities** – Commonly provided services at a residence. Includes, but is not limited to, electrical service, natural or propane gas, telephone and cable.

FINDINGS

Organizations with State-owned properties must (1) establish processes and procedures to biannually assess the fair market value of their properties; and (2) report the employees' taxable income associated with employer-provided housing in the PHRST system.

REGULATORY REFERENCES

In rendering this opinion, we reviewed the applicable Code, Regulations, and laws as cited below.

IRS

Internal Revenue Code, 26 U.S.C. Section 119(a)

IRS Regulation 1.119-1(b) Lodging

IRS Regulation 1.61-21(b), Valuation of Fringe Benefits

Publication 15-B – Employer's Tax Guide To Fringe Benefits
http://www.irs.gov/publications/p15b/ar02.html

General Rules for the Working Condition Fringe Benefit exclusion *IRC §132(d)*

- Must relate to employer's business and be provided so employee can perform his or her job
- Employee would have been entitled to an income tax deduction if paid personally
- Business use must be substantiated with records. *IRC §162; Reg. §1.62-2(c)(1)*

TAX ADVICE DISCLAIMER

Although the opinion provided here is presented in good faith and believed to be correct, it is General in nature and is not intended as tax advice. Furthermore, the facts and regulatory references applicable to this scenario may not be applicable to or suitable for other similar scenarios that may require consideration of other factors.

Additionally, personnel of the Department of Finance do not advise on personal income tax requirements or issues. Use of any information provided by PCG is for general information only and does not represent personal tax advice either express or implied. State employees are encouraged to seek professional tax advice for personal income tax questions and assistance.

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