

## ***Determining Taxability of Maintenance Deductions***

These rules are to be used by payroll officers to determine whether the maintenance charges deducted from employee wages are classified as taxable or non-taxable for payroll purposes. As the employer, the State has a responsibility to report these amounts to the taxing authorities.

According to Internal Revenue Code Section 119 and the Internal Revenue Service 2017 Publication 15-B (Employer's Tax Guides to Fringe Benefits) (<http://www.irs.gov/pub/irs-pdf/p15b.pdf>), in-kind meals and lodging for the convenience of the employer are not income. "In-Kind" refers to payments made in something other than cash. Meals or lodging paid in the form of cash equivalent do not qualify for this exclusion.

### **Meals**

For the value of employer-furnished meals to be excludable from an employee's gross income and not subject to federal income tax withholding, FICA or FUTA, the meals must be provided:

- on the business premises of the employer; and
- for the convenience of the employer.

#### **"On the business premises"**

The "business premises" of the employer means the employee's place of employment. For example, meals furnished to a domestic worker in the employer's home would be considered on the business premises. Similarly, meals furnished to construction workers while working at a construction site would be considered as having been furnished on the employer's business premises.

Meals must be served **on** the business premises. For example, meals served at a restaurant nearby the motel that an employee managed were not served on the business premises of the employer, even if the employer owned the restaurant where the meals were served. For the value of meals to be excludable from gross income, the meals must be provided either at a place where the employee performs a significant portion of duties or on the premises where the employer conducts a significant portion of business.

#### **"Convenience of the employer"**

To be considered as a convenience to the employer, meals must be furnished only on working days and during working hours.

Meals provided before or after working hours are not for the convenience of the employer unless the meal is furnished to a restaurant or other food service employee.

If duties prevent the employee from taking a meal until immediately after work hours, then the meal is considered a convenience of the employer.

If the employer would have furnished a meal during working hours for a substantial non-compensatory business reason but the employee's duties prevented him from eating at that time, a meal served immediately after working hours will maintain its non-compensatory nature.

“Substantial non-compensatory business reason” refers to the intention not to provide additional pay for the employee.

For example, meals served to elementary school teachers in the cafeteria may qualify as “for the convenience of the employer” however that determination depends on facts and circumstances such as:

- if workers need to be on call for emergencies during the lunch period, however evidence that emergencies occur must be maintained
- the nature of the business requires short lunch periods
- eating facilities are not available at the area of work

### **Optional Meals**

If an employer provides an optional meal that an employee can choose to purchase and the meal is not for the convenience of the employer, the value of the meal less any amount charged by the employer is included in the employee’s wages. For example, if the employee has the ability to bring a bag lunch, however chooses to eat at the cafeteria, the meal is considered a wage. If the fair market value of the meal is \$6.00 and the employee purchases the meal for \$3.00, the subsequent \$3.00 should be considered a wage.

### **Lodging**

The value of employer-provided lodging is excludable from an employee's gross income and not subject to federal income tax withholding, FICA and FUTA only if:

- the lodging is furnished on the business premises of the employer;
- the lodging is furnished for the convenience of the employer; and
- the lodging must be accepted by the employee as a condition of employment.

If these three criteria are met, the value of the lodging is excludable and not subject to withholding regardless of whether a charge is made or whether the lodging is furnished as compensation under an employment contract or State statute fixing the terms of employment.

#### **"On the business premises"**

The considerations for this definition are similar to the section above regarding meals. "Business premises" generally means the place of employment of the employee. The lodging must be **on** the business premises and not simply near them. Lodging one mile away from where the employee works does not fit the "on the premises" test.

If the lodging is not on the employer's premises, the value of the lodging must be included in the employee's gross income and, consequently, subject to federal income tax withholding, FICA and FUTA.

#### **"Convenience of the employer"**

Specifically, lodging provided so that an employee is available for duty 24 hours a day in case of an emergency is furnished for a substantial non-compensatory business reason and thus, is furnished for the convenience of the employer.

### **"Condition of employment"**

The requirement means that the employee is required to accept the lodging to be able to properly perform the duties of the job. It is not sufficient that the employee is compelled by the employer to live on company premises. The on-site lodging must be indispensable to the proper discharge of the employee's duties.

The lodging must be a necessary and practical necessity for the proper performance of his duties by the employee. A declaration that the on-site lodging is a condition of employment is not sufficient. It must be shown that a need exists for the employee's living on the business premises in order for the condition of employment to exist.

For example, an employee of an institution is given the choice of residing at the institution free of charge or residing elsewhere and receiving a cash allowance in addition to regular salary. If the employee elects to reside at the institution, the value of the lodging will be included in the employee's gross income and subject to withholding because his residence at the institution is not required in order for the employee to properly perform the duties of his job.