

## ***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 2019 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"**

You furnish the meals to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay.

Meals you furnish during working hours so an employee will be available for emergency calls during the meal period. You must be able to show these emergency calls have occurred or can reasonably be expected to occur, and that the calls have resulted, or will result, in you calling on your employees to perform their jobs during their meal period.

Generally, meals furnished before or after working hours of an employee are not considered as furnished for your convenience. However, meals you furnish to an employee immediately after working hours are furnished for your convenience if you would have furnished them during working hours for a substantial non-compensatory business reason but, because of the work duties, they were not obtained during working hours.

“Substantial non-compensatory business reason” refers to the intention to provide the meal for a reason other than to provide additional pay to the employee.

### **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 would be 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 would be considered a wage. If the fair market value of the meal is \$8.00 and the employee purchases the meal for \$4.00, the remaining \$4.00 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. 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, is 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"**

This 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 the employee's duties. A declaration that the on-site lodging is a condition of employment is not sufficient. To meet this requirement, it must be shown that living on the business premises is required to properly perform the duties of the position .

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 would be included in the employee's gross income and subject to withholding because his residence at the institution is not required in order to properly perform the duties of his job.