

COMMERCIAL REAL ESTATE INSIGHT & NEWS

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Employer-Provided Housing – Tax Free?

BY SCOTT C. CASHMAN • AUGUST 25, 2016

Employer-provided housing can be an important tool to attract highly valued employees. In a secondary school or university setting, housing can be a valuable recruitment tool as well as an opportunity for faculty to spend time on campus and enrich the campus experience.

As a general rule, in order to be excluded from an employee's income ("tax free"), lodging furnished to the employee must satisfy all three of the following tests.

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

Whether a housing arrangement meets each of these three tests is based on the facts and circumstances of each case. There is no bright line rule that is followed and a provision in an employment contract is not determinative. Therefore, each employee arrangement must be reviewed to see whether it meets these requirements.

Business premises – this is generally the employer's place of business. In the context of a school it would typically be the main campus area, though housing off the main campus could qualify, depending on the facts, if there was a connection between the off-campus housing and the duties of the employer. For example, a teacher's house off the main campus that was regularly used for school activities may qualify. The business premises would include property owned or leased.

Convenience of employer – housing for the convenience of the employer and as condition of employment are typically considered together. The convenience of the employer cannot be solely for purposes of compensation. A recitation in an employment contract regarding convenience or condition of employment would not be determinative. Actual facts and circumstances would control.

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Condition of employment – the employee must be required to accept the lodging in order to properly perform his or her duties. The relationship between the lodging and the duties to be performed must be sufficiently direct. For example, a school Headmaster or President who was expected to reside on school grounds and regularly use his or her on-campus residence for fundraising and other school functions.

There is no bright line rule for tax-exempt employee housing, and the facts and circumstances of each arrangement control. Factors that are often considered included proximity of the housing to central campus, the extent to which student and school activities actually took place in the housing, the extent the school required the administrative and teaching staff to perform services in their homes, the extent meetings were actually held in their homes and, in the case of the maintenance staff, the extent to which living on campus was necessary for emergency maintenance and how often the employee was actually called in to provide emergency maintenance.

Employer-provided housing can provide a valuable recruitment tool and in some cases provide tax free compensation to a school employee. However, tax considerations warrant a case-by-case review of not only the housing location, but also the reasoning behind the employer-provided housing prior to offering tax-free, employer-provided housing to prospective employees.

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