

## **Meals and lodging provided by an employer may be excludable from the employee's income**

Under general tax principles, the value of meals and lodging you provide for your employees as part of their compensation package would be taxable as any benefit is unless excluded from income under the tax rules. The Code provides an exclusion for meals and lodging that are provided "for the convenience of the employer" on the "business premises." For lodging, an additional requirement is that the employee must be required to accept it as a condition of employment.

Under the "convenience of the employer" test, the primary reason for providing the meals or lodging must be to benefit the employer, i.e., to enable the employee to do his job (although a special rule applies the exclusion to all employees being furnished meals where more than half of the employees who are furnished meals are done so for the convenience of the employer). For example, a hospital's employees, if more than half of them must be on call at all times, can be furnished a meal in the hospital because keeping them on the premises allows them to satisfy work-related obligations. Similarly, a motel manager who must be on the premises at all times can be furnished lodging at the location to enable him to perform his duties. For the lodging to qualify for the exclusion the employee's acceptance of the lodging must be a "condition of employment," i.e., the lodging must be necessary for the employee to perform his duties. Note that the exclusion only applies for meals and lodging that is provided in kind: not for cash allowances for such items.

A question sometimes arises as to what are the "business premises" of the employer. This term has been interpreted to include a location at which the employee performs significant duties or the employer conducts significant business activities, even if away from the main business location. It has also been held that it need not be employer-owned property.

The "convenience of the employer" test and the business premises requirement may be difficult to apply to particular circumstances. Please don't hesitate to call so I can help you determine if you can qualify for this tax benefit.

How to benefit from the exclusion. For planning purposes, if excludable benefits can be provided to your employees, you should be able to structure an employee benefit package at a reduced cost to take advantage of the employee's tax savings. For example, if Employee A is spending \$1,000 on meals at work he would need to be paid roughly \$1,380 in taxable salary to cover this cost (assuming a 27.5% income tax bracket in 2001). But if the \$1,000 in meals qualify as excludable under the rules discussed above, you can provide the meals directly and offer \$1,380 less in salary while maintaining the employee's economic position.

From the employee's perspective, the excludable meals should be viewed as a benefit worth more in equivalent salary than their actual value. Again, citing the above example, the employee should consider \$1,000 in meals the equivalent of \$1,380 in salary.

If you can structure benefit packages for your employees which include excludable meals or lodging you should provide the employees with information on the effective value of the benefit. Please call if you would like me to assist you in drafting such a memo or in assessing potential benefits to you and your employees from tax-free meals or lodging.

As a final note, the IRS's acquiescence in the *Boyd Gaming Corp. v. Comm.* case, whose result was favorable to employers that provide meals to their employees, may make it easier for your company to pass the "convenience of the employer" test. IRS's position on this has opened up planning opportunities that your company may be able to benefit from.