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**Issue Contents**

**Bankruptcy**

- General
- Avoidable liens **115**
- Exemptions
- Rural homestead **115**
- Chapter 12
- Dismissal **115**
- Federal taxation
- Automatic stay **115**

**Federal Agricultural Programs**

- Crop insurance **115**
- Dairy recourse loan program **116**
- Farm program handbooks **116**
- Jurisdiction **116**
- PACA **116**
- Pseudorabies **116**

**Federal Estate and Gift Tax**

- 1999 Tax Bill **116**
- Gift **116**
- Transfers with retained interests **116**
- Valuation of stock **117**

**Federal Income Taxation**

- 1999 Tax Bill **117**
- Charitable deduction **117**
- Corporations
- Definition **117**
- Depreciation **118**
- IRA **118**
- Installment sales **118**
- Interest **118**
- Meal and entertainment expenses **118**
- Offers in compromise **118**
- Rental property **118**
- Returns **119**
- Revenue bulletins **119**
- Safe harbor interest rates
- August 1999 **119**
- S corporations
- Election **119**
- Inadvertent termination **119**
- Targeted jobs tax credit **119**
- Trade or business **119**

**State regulation of Agriculture**

- Wetlands **119**

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## MEALS AND LODGING “ON THE BUSINESS PREMISES”

— by Neil E. Harl\*

The exclusion from income of meals and lodging provided for employees has always been an important feature of employee status in farm and ranch operations.<sup>1</sup> The statutory enactment making employee meals fully deductible as a *de minimis* fringe benefit effective in 1998<sup>2</sup> has made meals provided to employees an even more valuable employee benefit. Moreover, if more than one-half of the employees to whom meals are provided on an employer's premises are provided for the convenience of the employer, then all of the meals are treated as furnished for the convenience of the employer.<sup>3</sup>

Thus, if the requirements are met, the cost of meals and lodging is fully deductible (except for some employees of S corporations)<sup>4</sup> and the amounts involved are excludible from the employees' incomes.<sup>5</sup>

### Meaning of “on the business premises”

To be excluded from income, meals must be furnished “on the business premises” of the employer;<sup>6</sup> for lodging, the employees must be required to accept the “lodging on the business premises of his employer.”<sup>7</sup> Thus, both meals and lodging must be provided on the business premises.<sup>8</sup>

The regulations specify that “business premises of the employer” generally means the place of employment of the employee.<sup>9</sup> The regulations go on to state—

“For example, meals and lodging furnished in the employer's home to a domestic servant would constitute meals and lodging furnished on the business premises of the employer. Similarly, meals furnished to cowhands while herding their employer's cattle on leased land would be regarded as furnished on the business premises of the employer.”<sup>10</sup>

In *Dole v. Commissioner*,<sup>11</sup> “on the business premises” for purposes of the lodging exclusion meant living quarters constituting an integral part of business property or premises on which the employer carries on some of its business activities.<sup>12</sup> In that case, no exclusion was allowed—the houses in question were located approximately a mile from mills where the taxpayers were employed.<sup>13</sup>

In *Commissioner v. Anderson*,<sup>14</sup> the court pointed out that, to be excluded, meals or lodging must be provided either at the place where an employee performs a significant portion of the duties or on premises where the employer conducts a significant portion of the business.<sup>15</sup> In that case, the residence was “two short blocks” from the motel

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managed by the taxpayer for the employer so the exclusion was not available.<sup>16</sup> In accord with that view, in *McDonald v. Commissioner*<sup>17</sup> entertainment and use of the telephone on the premises were not sufficient to meet the test of “on the business premises.”<sup>18</sup>

In general, mere employer ownership of the residence is not sufficient.<sup>19</sup> In *Benninghoff v. Commissioner*,<sup>20</sup> government ownership of a home was not sufficient to prove the home was “on the business premises.”<sup>21</sup> The court ruled that there must be a “direct, substantial relationship” between the lodging and the interests of the employer.<sup>22</sup> That relationship was not present in the *Benninghoff*<sup>23</sup> case so the value of the lodging was not excludible.<sup>24</sup> By contrast, in *Boykin v. Commissioner*, the rental value of quarters provided on the grounds of a Veterans Administration Hospital was excludible from the taxpayer-physician's gross income.<sup>26</sup> In *Lindeman v. Commissioner*,<sup>27</sup> a residence on the employer's premises met the test; a significant portion of the employee's duties was performed in the residential quarters.<sup>28</sup>

### Farm and ranch cases

In most of the farm and ranch cases decided to date, whether the meals and lodging were provided “on the business premises” has not been an issue.<sup>29</sup> In *Peterson v. Commissioner*,<sup>30</sup> the value of a home provided to the president of a poultry breeding corporation adjacent to the corporation's poultry farm was not excluded from income. The court acknowledged that “the facility in question was on the *business premises* of the employer” but the court held that the taxpayer was not required to live on the premises as a condition of employment<sup>31</sup> and the taxpayer failed to show that the housing was furnished for the convenience of the employer.<sup>32</sup>

### In conclusion

It is clear that care should be exercised in acquiring housing for employees if it is anticipated that the value of lodging and meals is to be excludible from income.<sup>33</sup> Recent action to make meals provided under I.R.C. § 119 a *de minimis* fringe benefit and thus fully deductible by the employer adds to the incentive to handle the issue carefully.

### FOOTNOTES

<sup>1</sup> See generally Harl, *Agricultural Law* § 57.03[2] (1999); Harl, *Agricultural Law Manual* § 7.02[4][c] (1999). See also Harl, “Meals and Lodging in S Corporations,” 5 *Agric. L. Dig.* 105 (1994); Harl, “Renting a Residence to a Corporation,” 9 *Agric. L. Dig.* 81 (1998).

<sup>2</sup> I.R.C. § 132(e)(2). The Ninth Circuit Court of Appeals has reached the same conclusion in a 1999 decision. *Boyd Gaming Corp. v. Comm'r.*, T.C. Memo. 1997-445, *rev'd*, 99-1 U.S. Tax Cas. (CCH) ¶ 50,530 (9th Cir. 1999) (casino operator exempt from 80 percent cap on deductibility (50 percent after 1993); meals were *de minimis* fringe benefit).

<sup>3</sup> I.R.C. § 119(b)(4).

<sup>4</sup> I.R.C. § 280A(a), (c). *Proskauer v. Comm'r.*, T.C. Memo. 1983-395.

<sup>5</sup> I.R.C. §§ 119(a), 132(e)(2).

<sup>6</sup> I.R.C. § 119(a)(1).

<sup>7</sup> I.R.C. § 119(a)(2).

<sup>8</sup> I.R.C. § 119(a).

<sup>9</sup> Treas. Reg. § 1.119-1(c).

<sup>10</sup> Treas. Reg. § 1.119-1(c)(1).

<sup>11</sup> 351 F.2d 308 (1st Cir. 1965), *aff'g*, 43 T.C. 697 (1965).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 371 F.2d 59 (6th Cir. 1966), *rev'g*, 42 T.C. 410 (1964).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 66 T.C. 223 (1976).

<sup>18</sup> *Id.*

<sup>19</sup> See *Bornstein v. Comm'r.*, T.C. Memo. 1978-278 (apartment occupied by taxpayer and supplied by employer not located at employer's place of business; not excludible).

<sup>20</sup> 614 F.2d 398 (5th Cir. 1980), *aff'g*, 71 T.C. 216 (1978).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See n. 20 *supra*.

<sup>24</sup> *Id.*

<sup>25</sup> 260 F.2d 249 (8th Cir. 1958).

<sup>26</sup> *Id.*

<sup>27</sup> 60 T.C. 609 (1973).

<sup>28</sup> *Id.*

<sup>29</sup> See *Wilhelm v. United States*, 257 F. Supp. 16 (D. Wyo. 1966) (value of food and lodging provided by ranching corporation excluded from income of shareholder-employees); *J. Grant Farms, Inc. v. Comm'r.*, T.C. Memo. 1985-174 (value of lodging and cost of utilities of farm manager/sole shareholder excludible from income); *Denny L. Johnson v. Comm'r.*, T.C. Memo. 1985-175 (fair rental value of corporation-owned residence located on premises excludible). See also *Caratan v. Comm'r.*, 442 F.2d 606 (9th Cir. 1971) (lodging owned by closely-held farm corporation on business premises); *Greene v. Kanne*, 38-1 U.S. Tax Cas. (CCH) ¶ 9206 (D. Hawaii 1938) (value of quarters provided to plantation manager excludible); *Renton v. Kanne*, 38-1 U.S. Tax Cas. (CCH) ¶ 9207 (D. Hawaii 1938) (same). Compare *Roberts v. Comm'r.*, 17 P-H Tax Ct. Mem. 516 (1948) (rental value of corporate-owned farm house occupied by sole shareholder of farm corporation was taxable income).

<sup>30</sup> T.C. Memo. 1966-196.

<sup>31</sup> I.R.C. § 119(a)(2).

<sup>32</sup> I.R.C. § 119(a).

<sup>33</sup> See I.R.C. § 119(a).