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Rev. Rul. 68-354

Advice has been requested whether, for Federal income tax purposes, employees of a State mental hospital may exclude from their gross income the value of meals and lodging furnished to them under the circumstances described below.

The hospital employs approximately 1,200 persons to care for 3,200 patients. In the past few years, fires, storms, electrical blackouts, and civil disturbances have caused the hospital functions to be disrupted and endangered the safety of hospital patients and employees. Prior to these emergencies, only essential medical and key administrative personnel resided on the hospital premises. The hospital desired to have a sufficient number of other employees available to meet such emergencies in the future. It therefore advised all other employees that additional personnel were needed to reside on the hospital premises who would be available on 24-hour call. The hospital, in consideration thereof, agreed to furnish meals and lodging without a charge to those volunteering to reside on the hospital premises.

Enough employees responded to the hospital's request, so that the hospital has a sufficient number of employees residing on its premises to cope with future emergencies. Such personnel were given training so they could perform special emergency duties in addition to their regular functions. As agreed, the hospital furnishes, without a charge, meals and lodging on the hospital premises to these employees.

Section 119 of the Internal Revenue Code of 1954 provides, in part, that there shall be excluded from gross income of an employee the value of any meals or lodging furnished to him by his employer for the convenience of the employer, but only if, in the case of meals, the meals are furnished on the business premises of the employer, or, in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

Under the provisions of section 1.119-1(b) of the Income Tax Regulations, the value of lodging furnished to an employee by the employer shall be excluded from the employee's gross income if certain tests are met. Those tests are (1) the lodging is furnished on the business premises of the employer, (2) the lodging is furnished for the convenience of the employer, and (3) the employee is required to accept such lodging as a condition of his employment. Section 1.119-1(b) of the regulations further provides that the third test means that the employee is required to accept the lodging in order to enable him properly to perform the duties of his employment. Lodging will be regarded as furnished to enable the employee properly to perform the duties of his employment when, for example, the lodging is furnished because the employee is required to be available for duty at all times.<Page 61>

Section 1.119-1(a)(2)(i) of the regulations provides, in part, that if the employer furnishes meals to his employee for a substantial noncompensatory business reason, the meals so furnished will be regarded as furnished for the convenience of the employer, even though such meals are also furnished for a compensatory reason.

As to the lodging in the instant case, the "business premises of the employer" test is clearly met. Similarly, since the lodging is furnished because the employees are required to be available on 24-hour call, the "condition of employment" test is met.

In referring to a substantial noncompensatory business reason, section 1.119-1(a)(2)(i) of the regulations, while it concerns meals, sets forth the general meaning of convenience of the employer with regard to lodging. In light of past emergencies, it is reasonable for the hospital to expect that emergencies may occur resulting in the hospital calling on its employees in the instant case to perform special emergency duties or their regular functions. The hospital is furnishing lodging, under such circumstances, for a substantial noncompensatory business reason. See, in this connection, section 1.119-1(a)(2)(ii)(a) of the regulations. Therefore, since lodging is furnished to the employees for a substantial noncompensatory reason, the "convenience of the employer" test is met.

Accordingly, the value of the lodging furnished to the employees under these circumstances is excludable from the employees' gross income under the provisions of section 119 of the Code. Moreover, under section 1.119-1(a)(2)(i) of the regulations, the exclusion applies to the value of the meals since they are furnished without charge on such premises.