OGC Has Reviewed

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

MEMORANDUM FOR: Acting Deputy Director for Administration

FROM: James H. McDonald
Director of Logistics

Harry E. Fitzwater
Director of Training

25X1A

SUBJECT: Rental Survey -

25X1A

1. Action Requested: Paragraph 4 contains a set of recommendations for your approval.

2. Background:

25X1A

a. Office of Logistics, Real Estate and Construction Division (OL/RECD) completed a rental survey at in August 1975. The rates developed were never implemented, rather was commissioned to resurvey did so in late 1976 and submitted its findings to this Agency in February 1977. Review of the survey revealed that it followed Circular A-45 literally and the recommended rate schedule would result in an average 150 percent increase to occupants. Since that time the affected components have studied the situation intensively to resolve the dilemma of putting the Agency in the posture of complying with 5 U.S.C. 5911 and the resultant Bureau of Budget Circular A-45 while maintaining reasonable rental rates at .

25X1A 25X1A 25X1A 25X1A

b. Part of the problem stems from the ambiguity of the laws and regulations governing the establishment of the rental program. On the one hand agencies are admonished not to set rental rates so low as to "provide an inducement in the recruitment or retention of employees" and follows immediately

UNCLASSIFIED when
separate from
attachment

OL 7 3499a

CONFIDENTIAL

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

25X1A

SUBJECT: Rental Survey [redacted]

by stating that rates "reflecting reasonable value should not operate as a barrier in recruitment or retention of employees . . . ." The key is the term "reasonable value" which is a difficult standard to apply. Consequently, other Government agencies have made very liberal interpretations of the Circular. The Department of Interior, which has some 13,000 rental units, recently completed a study and found that its average basic rent (this excludes utility charges) was $61 per month per unit. It has also been confirmed that Interior employees claim a deduction on their Federal tax return for reimbursements made to the Government for quarters (some IRS districts allow deduction of the total charge while others allow only a deduction for basic rent). Some bureaus within Interior actually provide their employees an annual statement of monies withheld for housing which the employee attaches to his tax return much as they do the W-2 form. You will recall [redacted], advised that such deductions may not be taken for rents paid to the Government. However, in light of new information, this matter will be pursued further.

25X1A

c. It became apparent in recent (July) discussions with Interior and the Federal Aviation Administration (FAA) that these and other elements of the U.S. Government are administering much larger programs than CIA; that they are doing so in a very liberal manner; and that OMB has posed no objections or made any attempt to enforce the strictures of its admittedly outdated Circular A-45. Another example concerns establishment of utility rates. A valid employee objection concerns payment of excessively high utility rates because the assigned quarters are poorly insulated. To solve this type of situation, Interior has adopted a system of charging the employee a flat $50 per month with the Government paying 90 percent of the balance (the employee being liable for the remainder).

d. In light of the above, OL and OTR have determined that the rates proposed in the [redacted] survey do not provide reasonable value to the employee/tenant and further, that imposition of these rates would indeed act as a barrier to the recruitment and retention of the caliber of employee required to accomplish the sensitive training mission assigned to [redacted] The [redacted] survey has been retained to provide a data base. From this base certain reductions have been made both in the basic rent

25X1A

25X1A

25X1A

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

and the utility rate. These reductions average 30-40 percent in both categories. The basic rent was reduced to compensate for the deprivation of liberty which has been fully documented in previous correspondence on the subject (see Attachment 3). Utility rates have been reduced based on a Bureau of Standards study to determine average heat loss/gain of the quarters. It is the intention of the responsible components that as funds become available, the quarters will be individually metered and a program to upgrade the insulation to meet current standards will be undertaken.

c. Attached hereto are the proposed rates and a proposed regulation governing the quarters situation at [redacted] 25X1A Based on discussions with other Government agencies which have deviated drastically from Circular A-45, it is sufficient to submit our rate schedules and policies to the Assistant Administrator for Logistics, OMB. We may also, of course, submit them along with the other data requested at the regularly scheduled OMB Budget Review. A representative at Department of Interior has further advised that OMB has neither the expertise nor the time to undertake a revision of the Circular. Interior has been requested, therefore, to take the lead in preparing a revised circular and the Agency, if it so desires, may participate in the preparatory stage.

3. Staff Position:

a. Both OL and OTR concur in the recommendations contained in paragraph 4 below.

b. In effect, the recommendations have been coordinated in a conceptional sense with several other elements of the U.S. Government, specifically the Department of Interior and the FAA.

CONFIDENTIAL

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

25X1A

SUBJECT: Rental Survey -

4. Recommendations:

a. That you approve the proposed regulation (Attachment 1) as Agency policy.

b. That the RECD rates contained in Attachment 2 (Columns 5, 6 and 7) be approved.

c. That imposition of the new rate be effected on 1 October 1977 and that, due to the magnitude of the increases, collection be spread over a 12-month period with no further increases due until the February 1979 Consumer Price Index.

d. That future year budgets contain funds for meters and upgrading insulation of quarters at , at which time utility charges will be collected on the basis of actual consumption at the prevailing commercial rate.

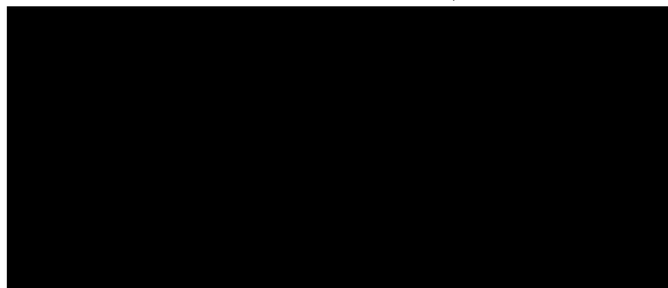
25X1A

e. That OMB be provided copies of the new rent/utility schedules as well as the policy governing habitation of quarters

25X1A

f. That, in light of the tax relief currently afforded other employees of the U.S. Government, the subject of tax deductions for rents/utilities reimbursed by Agency employees be vigorously pursued.

25X1A



CONFIDENTIAL

25X1A
Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

SUBJECT: Rental Survey

25X1A

APPROVED: [redacted] ...ation

DISAPPROVED: ______________________
Acting Deputy Director for Administration

DATE: 29 AUG 1977

Attachments

Orig - OL Official w/atts
2 - A-DDA w/atts
1 - OTR w/atts

CONFIDENTIAL

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

OGC 78-0298

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

MEMORANDUM FOR: Director of Logistics

25X1A

FROM:

SUBJECT: Income Tax Deductions for Rental Payments for Government Quarters

REFERENCE: Memo to C/O&MLD/OGC, fm D/OL, Subj: Income Tax Deductions for Government Quarters Rental Payments, dtd 19 Oct 77

1. Via referent memorandum, you requested that this Office provide a legal opinion on whether the rents paid to the Government by Agency employees for quarters at the [redacted] may be excluded from gross income. It is understood that "[a]ll personnel assigned to [redacted] are required to reside on Base...." OTR Instruction TRI 45-3, 13 September 1977. In addition, pursuant to that determination and 5 U.S.C. 5911(e), you deduct from each employee's gross salary the rental cost of his quarters. Also, we have been asked informally to provide the same guidance with respect to utility payments.

25X1A 25X1A

2. The law applicable to your question is section 119 of the Internal Revenue Code of 1954, as amended, which provides, in pertinent part:

> 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--
>
> * * * *
>
> (2) 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.
>
> In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

OL 8-0238

E2 IMPDET CL BY 035774

SECRET

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

IRS Reg § 1.119-1(b) states further:

> The value of lodging furnished to an employee by the employer shall be excluded from the employee's gross income if three tests are met:
>
> (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.
>
> The requirement of subparagraph (3) of this paragraph that the employee is required to accept such lodging as a condition of his employment means that he be 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 or because the employee could not perform the services required of him unless he is furnished such lodging. If the tests described in subparagraphs (1), (2), and (3) of this paragraph are met, the exclusion shall apply irrespective of whether a charge is made, or whether, under an employment contract or statute fixing the terms of employment, such lodging is furnished as compensation. If the employer furnished the employee lodging for which the employee is charged an unvarying amount irrespective of whether he accepts the lodging, the amount of the charge made by the employer for such lodging is not, as such, part of the compensation includible in the gross income of the employee; whether the value of the lodging is excludable from gross income under section 119 is determined by applying the other rules of this paragraph. If the tests described in subparagraphs (1), (2), and (3) of this paragraph are not met, the employee shall include in gross income the value of the lodging regardless of whether it exceeds or is less than the amount charged. In the absence of evidence to the contrary, the value of the lodging may be deemed to be equal to the amount charged.

3. Most of the cases interpreting section 119 deal with housing being furnished to the employee free of charge. However, in Boykin v. Commissioner, 260 F 2d 249, 254 (CA 8, 1958), it was stated:

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

...[U]nder our interpretation of section 119, we believe that, if the conditions imposed by section 119(2) are fully met, the value of the lodging furnished the taxpayer is excludable from gross income, regardless of whether such lodging constitutes compensation,...

The Internal Revenue Service has acquiesced in this decision, Revenue Ruling 59-307, 1959-2 CB 48:

The Internal Revenue Service will follow the decision of the United States Court of Appeals for the Eighth Circuit in J. Melvin Boykin v. Commissioner, 260 Fed. (2d) 249. In that case, the court held that the rental value of living quarters furnished on business premises by the employer to the employee was properly excludable from the employee's gross income under section 119 of the Internal Revenue Code of 1954 even though the arrangement between them was such that the rental value of the living quarters was considered a part of the employee's compensation and was deducted from his salary. The facts there considered clearly showed that the employee was required, for the convenience of his employer, to accept such living quarters as a condition of his employment.

In cases involving similar facts and circumstances, employees will not be subject to Federal income tax on the amount of their salary or wages which is retained by their employers for lodging furnished on the business premises for their employer's convenience, where the employees are required to accept such lodging in order to perform their duties properly.

4. With respect to the three tests, it is our opinion that test one (the "business premises" of the employer) and test three (the requirement that the employee accept the lodging as a "condition" of his employment) are satisfied and legally defensible. Test two (convenience of the employer) is less settled although not so much as to require an adverse opinion on the excludability of these expenses. Rather, strong and sufficient reasons must exist which can be put forth to counter an IRS challenge which, in our view, will probably result. Almost certainly, the mere uitlization of housing which the Government owns and needs to keep occupied is an insufficient reason. The regulation quoted above uses the words "because the employee is required to be available for duty at all times or...could not perform the services required of him unless he is furnished such lodging."

SECRET

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

5. With reference to the second question presented, the excludability of utility expenses, Revenue Ruling 68-579, 1968, 1968-2 CB 61, provides:

> The term 'lodging,' as used in section 119 of the Code, encompasses items such as heat, electricity, gas, water, and sewerage service. Accordingly, where an employer furnished utilities that were necessary to make the lodging habitable and deducted an appropriate amount form the employees' compensation, the value of such utilities furnished to the employees by the employer (deemed to be equal to the amount charged by the employer in the absence of evidence to the contrary) may be excluded from the employees' gross income, where, as here, the value of the lodging itself is excludable under section 119.

25X1A

6. In conclusion, it is the opinion of this Office that rental payments made by Agency employees assigned to [redacted] as set out above may be excluded from employees' gross income. Utility costs, if purchased in accordance with the facts of Revenue Ruling 68-579, quoted <u>supra</u>, may also be excluded. However, it should be clearly understood by Agency management <u>and</u> by those employees involved, that this OGC opinion is just that, an opinion, and is not dispositive of the question. In any tax question, the IRS is the final arbiter and nothing contained in this opinion shall be construed as providing anyone an entitlement not otherwise available in law.

[redacted]

25X1A

cc: D/OTR

SECRET

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

25X1A

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

Next 6 Page(s) In Document Exempt

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9

NBS Data

Based upon home insulation data obtained from the National Bureau of Standards for the latest [redacted] appraisal, the electric rates for A-5 and A-24 have been reduced 30% and the heating rates have been reduced 35%. Similar rates for the remaining houses have been reduced 30% and 45% respectively.

25X1A

Approved For Release 2001/09/01 : CIA-RDP81-00261R000500070014-9