

§ 1.118-1 Contributions to the capital of a corporation.

In the case of a corporation, section 118 provides an exclusion from gross income with respect to any contribution of money or property to the capital of the taxpayer. Thus, if a corporation requires additional funds for conducting its business and obtains such funds through voluntary pro rata payments by its shareholders, the amounts so received being credited to its surplus account or to a special account, such amounts do not constitute income, although there is no increase in the outstanding shares of stock of the corporation. In such a case the payments are in the nature of assessments upon, and represent an additional price paid for, the shares of stock held by the individual shareholders, and will be treated as an addition to and as a part of the operating capital of the company. Section 118 also applies to contributions to capital made by persons other than shareholders. For example, the exclusion applies to the value of land or other property contributed to a corporation by a governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community, or for the purpose of enabling the corporation to expand its operating facilities. However, the exclusion does not apply to any money or property transferred to the corporation in consideration for goods or services rendered, or to subsidies paid for the purpose of inducing the taxpayer to limit production. See section 362 for the basis of property acquired by a corporation through a contribution to its capital by its stockholders or by nonstockholders.

§ 1.119-1 Meals and lodging furnished for the convenience of the employer.

(a) *Meals*—(1) *In general*. The value of meals furnished to an employee by his employer shall be excluded from the employee's gross income if two tests are met: (i) The meals are furnished on the business premises of the employer, and (ii) the meals are furnished for the convenience of the employer. The question of whether meals are furnished for the convenience of the employer is one of fact to be determined by analysis of

all the facts and circumstances in each case. If the tests described in subdivisions (i) and (ii) of this subparagraph are met, the exclusion shall apply irrespective of whether under an employment contract or a statute fixing the terms of employment such meals are furnished as compensation.

(2) Meals furnished without a charge.

(i) Meals furnished by an employer without charge to the employee will be regarded as furnished for the convenience of the employer if such meals are furnished for a substantial noncompensatory business reason of the employer. If an employer furnishes meals as a means of providing additional compensation to his employee (and not for a substantial noncompensatory business reason of the employer), the meals so furnished will not be regarded as furnished for the convenience of the employer. Conversely, 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. In determining the reason of an employer for furnishing meals, the mere declaration that meals are furnished for a noncompensatory business reason is not sufficient to prove that meals are furnished for the convenience of the employer, but such determination will be based upon an examination of all the surrounding facts and circumstances. In subdivision (ii) of this subparagraph, there are set forth some of the substantial noncompensatory business reasons which occur frequently and which justify the conclusion that meals furnished for such a reason are furnished for the convenience of the employer. In subdivision (iii) of this subparagraph, there are set forth some of the business reasons which are considered to be compensatory and which, in the absence of a substantial noncompensatory business reason, justify the conclusion that meals furnished for such a reason are not furnished for the convenience of the employer. Generally, meals furnished before or after the working hours of the employee will not

be regarded as furnished for the convenience of the employer, but see subdivision (ii) (d) and (f) of this subparagraph for some exceptions to this general rule. Meals furnished on non-working days do not qualify for the exclusion under section 119. If the employee is required to occupy living quarters on the business premises of his employer as a condition of his employment (as defined in paragraph (b) of this section), the exclusion applies to the value of any meal furnished without charge to the employee on such premises.

(ii) (a) Meals will be regarded as furnished for a substantial noncompensatory business reason of the employer when the meals are furnished to the employee during his working hours to have the employee available for emergency call during his meal period. In order to demonstrate that meals are furnished to the employee to have the employee available for emergency call during the meal period, it must be shown that emergencies have actually occurred, or can reasonably be expected to occur, in the employer's business which have resulted, or will result, in the employer calling on the employee to perform his job during his meal period.

(b) Meals will be regarded as furnished for a substantial noncompensatory business reason of the employer when the meals are furnished to the employee during his working hours because the employer's business is such that the employee must be restricted to a short meal period, such as 30 or 45 minutes, and because the employee could not be expected to eat elsewhere in such a short meal period. For example, meals may qualify under this subdivision when the employer is engaged in a business in which the peak work load occurs during the normal lunch hours. However, meals cannot qualify under this subdivision (b) when the reason for restricting the time of the meal period is so that the employee can be let off earlier in the day.

(c) Meals will be regarded as furnished for a substantial noncompensatory business reason of the employer when the meals are furnished to the employee during his working hours because the employee could not other-

wise secure proper meals within a reasonable meal period. For example, meals may qualify under this subdivision (c) when there are insufficient eating facilities in the vicinity of the employer's premises.

(d) A meal furnished to a restaurant employee or other food service employee for each meal period in which the employee works will be regarded as furnished for a substantial noncompensatory business reason of the employer, irrespective of whether the meal is furnished during, immediately before, or immediately after the working hours of the employee.

(e) If the employer furnishes meals to employees at a place of business and the reason for furnishing the meals to each of substantially all of the employees who are furnished the meals is a substantial noncompensatory business reason of the employer, the meals furnished to each other employee will also be regarded as furnished for a substantial noncompensatory business reason of the employer.

(f) If an employer would have furnished a meal to an employee during his working hours for a substantial noncompensatory business reason, a meal furnished to such an employee immediately after his working hours because his duties prevented him from obtaining a meal during his working hours will be regarded as furnished for a substantial noncompensatory business reason.

(iii) Meals will be regarded as furnished for a compensatory business reason of the employer when the meals are furnished to the employee to promote the morale or goodwill of the employee, or to attract prospective employees.

(3) *Meals furnished with a charge.* (i) If an employer provides meals which an employee may or may not purchase, the meals will not be regarded as furnished for the convenience of the employer. Thus, meals for which a charge is made by the employer will not be regarded as furnished for the convenience of the employer if the employee has a choice of accepting the meals and paying for them or of not paying for them and providing his meals in another manner.

(ii) If an employer furnishes an employee meals for which the employee is charged an unvarying amount (for example, by subtraction from his stated compensation) irrespective of whether he accepts the meals, the amount of such flat charge made by the employer for such meals is not, as such, part of the compensation includible in the gross income of the employee; whether the value of the meals so furnished is excludable under section 119 is determined by applying the rules of subparagraph (2) of this paragraph. If meals furnished for an unvarying amount are not furnished for the convenience of the employer in accordance with the rules of subparagraph (2) of this paragraph, the employee shall include in gross income the value of the meals regardless of whether the value exceeds or is less than the amount charged for such meals. In the absence of evidence to the contrary, the value of the meals may be deemed to be equal to the amount charged for them.

(b) *Lodging.* 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 em-

ployment, such lodging is furnished as compensation. If the employer furnishes 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 subparagraph (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.

(c) *Business premises of the employer—*
 (1) *In general.* For purposes of this section, the term "business premises of the employer" generally means the place of employment of the employee. 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.

(2) *Certain camps.* For taxable years beginning after December 31, 1981, in the case of an individual who is furnished lodging by or on behalf of his employer in a camp (as defined in paragraph (d) of this section) in a foreign country (as defined in § 1.911-2(h)), the camp shall be considered to be part of the business premises of the employer.

(d) *Camp defined—*(1) *In general.* For the purposes of paragraph (c)(2) of this section, a camp is lodging that is all of the following:

- (i) Provided by or on behalf of the employer for the convenience of the employer because the place at which the employee renders services is in a remote area where satisfactory housing is not available to the employee on the open market within a reasonable commuting distance of that place;

(ii) Located, as near as practicable, in the vicinity of the place at which the employee renders services; and

(iii) Furnished in a common area or enclave which is not available to the general public for lodging or accommodations and which normally accommodates ten or more employees.

(2) *Satisfactory housing.* For purposes of paragraph (d)(1)(i) of this section, facts and circumstances that may be relevant in determining whether housing available to the employee is satisfactory include, but are not limited to, the size and condition of living space and the availability and quality of utilities such as water, sewers or other waste disposal facilities, electricity, or heat. The general environment in which housing is located (e.g., climate, prevalence of insects, etc.) does not of itself make housing unsatisfactory. The general environment is relevant, however, if housing is inadequate to protect the occupants from environmental conditions. The individual employee's income level is not relevant in determining whether housing is satisfactory; it may, however, be relevant in determining whether satisfactory housing is available to the employee (see paragraph (d)(3)(i)(B) of this section).

(3) *Availability of satisfactory housing—(i) Facts and circumstances.* For purposes of paragraph (d)(1)(i) of this section, facts and circumstances to be considered in determining whether satisfactory housing is available to the employee on the open market include but are not limited to:

(A) The number of housing units available on the open market in relation to the number of housing units required for the employer's employees;

(B) The cost of housing available on the open market;

(C) The quality of housing available on the open market; and

(D) The presence of warfare or civil insurrection within the area where housing would be available which would subject U.S. citizens to unusual risk of personal harm or property loss.

(ii) *Presumptions.* Satisfactory housing will generally be considered to be unavailable to the employee on the open market if either of the following conditions is satisfied:

(A) The foreign government requires the employer to provide housing for its employees other than housing available on the open market; or

(B) An unrelated person awarding work to the employer requires that the employer's employees occupy housing specified by such unrelated person.

The condition of either paragraph (d)(3)(ii) (A) or (B) of this section is not satisfied if the requirement described therein and imposed either by a foreign government or unrelated person applies primarily to U.S. employers and not to a significant number of third country employers or applies primarily to employers of U.S. employees and not to a significant number of employers of third country employees.

(4) *Reasonable commuting distance.* For purposes of paragraph (d)(1)(i) of this section, in determining whether a commuting distance is reasonable, the accessibility of the place at which the employee renders services due to geographic factors, the quality of the roads, the customarily available transportation, and the usual travel time (at the time of day such travel would be required) to the place at which the employee renders services shall be taken into account.

(5) *Common area or enclave.* A cluster of housing units does not satisfy paragraph (d)(1)(iii) of this section if it is adjacent to or surrounded by substantially similar housing available to the general public. Two or more common areas or enclaves that house employees who work on the same project (for example, a highway project) are considered to be one common area or enclave in determining whether they normally accommodate ten or more employees.

(e) *Rules.* The exclusion provided by section 119 applies only to meals and lodging furnished in kind by or on behalf of an employer to his employee. If the employee has an option to receive additional compensation in lieu of meals or lodging in kind, the value of such meals and lodging is not excludable from gross income under section 119. However, the mere fact that an employee, at his option, may decline to accept meals tendered in kind will not of itself require inclusion of the value thereof in gross income. Cash allowances for meals or lodging received by

an employee are includible in gross income to the extent that such allowances constitute compensation.

(f) *Examples.* The provisions of section 119 may be illustrated by the following examples:

Example (1). A waitress who works from 7 a.m. to 4 p.m. is furnished without charge two meals a work day. The employer encourages the waitress to have her breakfast on his business premises before starting work, but does not require her to have breakfast there. She is required, however, to have her lunch on such premises. Since the waitress is a food service employee and works during the normal breakfast and lunch periods, the waitress is permitted to exclude from her gross income both the value of the breakfast and the value of the lunch.

Example (2). The waitress in example (1) is allowed to have meals on the employer's premises without charge on her days off. The waitress is not permitted to exclude the value of such meals from her gross income.

Example (3). A bank teller who works from 9 a.m. to 5 p.m. is furnished his lunch without charge in a cafeteria which the bank maintains on its premises. The bank furnishes the teller such meals in order to limit his lunch period to 30 minutes since the bank's peak work load occurs during the normal lunch period. If the teller had to obtain his lunch elsewhere, it would take him considerably longer than 30 minutes for lunch, and the bank strictly enforces the 30-minute time limit. The bank teller may exclude from his gross income the value of such meals obtained in the bank cafeteria.

Example (4). Assume the same facts as in example (3), except that the bank charges the bank teller an unvarying rate per meal regardless of whether he eats in the cafeteria. The bank teller is not required to include in gross income such flat amount charged as part of his compensation, and he is entitled to exclude from his gross income the value of the meals he receives for such flat charge.

Example (5). A Civil Service employee of a State is employed at an institution and is required by his employer to be available for duty at all times. The employer furnishes the employee with meals and lodging at the institution without charge. Under the applicable State statute, his meals and lodging are regarded as part of the employee's compensation. The employee would nevertheless be entitled to exclude the value of such meals and lodging from his gross income.

Example (6). An employee of an institution is given the choice of residing at the institution free of charge, or of residing elsewhere and receiving a cash allowance in addition to his regular salary. If he elects to reside at the institution, the value to the employee of

the lodging furnished by the employer will be includible in the employee's gross income because his residence at the institution is not required in order for him to perform properly the duties of his employment.

Example (7). A construction worker is employed at a construction project at a remote job site in Alaska. Due to the inaccessibility of facilities for the employees who are working at the job site to obtain food and lodging and the prevailing weather conditions, the employer is required to furnish meals and lodging to the employee at the camp site in order to carry on the construction project. The employee is required to pay \$40 a week for the meals and lodging. The weekly charge of \$40 is not, as such, part of the compensation includible in the gross income of the employee, and under paragraphs (a) and (b) of this section the value of the meals and lodging is excludable from his gross income.

Example (8). A manufacturing company provides a cafeteria on its premises at which its employees can purchase their lunch. There is no other eating facility located near the company's premises, but the employee can furnish his own meal by bringing his lunch. The amount of compensation which any employee is required to include in gross income is not reduced by the amount charged for the meals, and the meals are not considered to be furnished for the convenience of the employee.

Example (9). A hospital maintains a cafeteria on its premises where all of its 230 employees may obtain a meal during their working hours. No charge is made for these meals. The hospital furnishes such meals in order to have each of 210 of the employees available for any emergencies that may occur, and it is shown that each such employee is at times called upon to perform services during his meal period. Although the hospital does not require such employees to remain on the premises during meal periods, they rarely leave the hospital during their meal period. Since the hospital furnishes meals to each of substantially all of its employees in order to have each of them available for emergency call during his meal period, all of the hospital employees who obtain their meals in the hospital cafeteria may exclude from their gross income the value of such meals.

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§ 1.120-1 Statutory subsistence allowance received by police.

(a) Section 120 excludes from the gross income of an individual employed as a police official by a State, Territory, or possession of the United