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RENTING A RESIDENCE TO A CORPORATION
— by Neil E. Harl*

The costs of lodging furnished to an employee for the convenience of the employer are deductible and the value is not taxable income to the recipient.\(^1\) For the value of lodging to be excluded from the employee’s income, the employee must be required to accept the lodging on the premises as a condition of employment.\(^2\)

The lodging must be provided in-kind.\(^3\) In a 1997 private letter ruling,\(^4\) a cash housing allowance provided to employees was not excludible from income. Cash allowances for lodging (and meals) are includible in gross income to the extent the allowance constitutes compensation.\(^5\)

**Rental of residence to corporation**

In the event a residence is owned by a shareholder of a C corporation, rented to the corporation at a fair rental and occupied by the shareholder-owner as employee, can depreciation and other expenses (other than interest, property taxes or a casualty loss)\(^6\) be claimed on the residence?\(^7\) Section 280A of the Internal Revenue Code specifies that no deduction can be claimed in the case of a taxpayer who is an individual or S corporation except to the extent the residence is exclusively used on a regular basis as the principal place of business and is for the convenience of his employer.\(^8\) Moreover, the value of lodging is excluded from income if for the convenience of the employer.\(^9\)

In a 1998 Tax Court case,\(^10\) involving an S corporation, the court denied depreciation and other deductions for a shareholder-owner residence rented to the corporation. The residence in question was on a five acre tract abutting the S corporation farming operations. The corporation paid the shareholder (who was the manager of the corporate farm operation) $1,000 per month for use of the tract. The five acre site was used for various purposes in addition to providing the dwelling. IRS disallowed the deduction under the provision specifying that the business purpose exception does not apply to any item which is attributable to the rental of the dwelling unit (or any portion thereof) by the taxpayer to his employer during any period in which the taxpayer uses the dwelling unit (or portion) in performing services as an employee of the employer.\(^11\)

Therefore, the rental expenses were not deductible by the shareholder-employee who owned the tract containing the residence. The $1,000 per month received by the corporation for business use of the tract was income to the shareholder-employee.

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The opinion recites that neither party raised the issue of whether the value of the lodging was excluded from income on the grounds the employer was required to accept the lodging as a condition of employment.12

Special treatment of S corporations

It is clear from the statute13 that S corporations cannot claim a deduction for the use of a dwelling unit used as a residence. It is also clear that a taxpayer is considered to have used a dwelling unit for personal purposes if used for personal purposes by any shareholder of the S corporation.14

But S corporation shareholders are not specifically precluded from excluding the value of lodging from income if the employee is required to accept the lodging on the premises as a condition of employment.15 As noted,16 that issue was not raised by the parties to the recent case involving an S corporation.

FOOTNOTES
2 I.R.C. § 119(a)(2). See Ltr. Rul. 8826001, Oct. 14, 1987 (value of housing provided by employer included in employees’ income where housing not provided at work site and not provided in one camp but scattered within housing generally available to public); Ltr. Rul. 9126063, March 29, 1991 (value of off-premises lodging and utilities include in gross income).
4 Id.
5 Treas. Reg. § 1.119-1(e).
6 I.R.C. § 280A(b).
7 See I.R.C. § 280A(a).
8 I.R.C. § 280A(c).
9 I.R.C. § 119(a).
11 I.R.C. § 280A(c)(6).
13 I.R.C. § 280A(a).
16 See n. 12 supra.

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-ALM § 13.03.4

EXEMPTIONS

HOMESTEAD. The debtors, husband and wife owned two residences, with each debtor residing in one residence after their separation. The properties were owned in joint tenancy. The debtors filed a joint bankruptcy case which was not consolidated. Each debtor claimed a homestead exemption for their residence. The court held that, because the cases were not consolidated, two bankruptcy estates were created, entitling each debtor to a homestead exemption. However, the court also held that, because the properties were held in joint tenancy, the debtors had only a one-half interest in their respective residence, with the remaining one-half interest passing to the bankruptcy trustee. Therefore, the trustee was entitled to one-half of the exemption amount in each property. In re Pastrana, 216 B.R. 948 (Bankr. D. Colo. 1998).

CHAPTER 12-ALM § 13.03[8].

PLAN. The debtor operated a dairy farm, cattle ranch, trucking company and grain farm. The debtor’s Chapter 12 plan projected increased revenues and decreased expenses without changing the current operation of the businesses. The debtor did not provide any support for the change in revenues and expenses other than the debtor’s own testimony. The court found that the operations had produced losses in each of the three previous years and that the projected increase in cattle prices was not based on any evidence. The court held that the plan was not confirmable because the operations would not produce revenues to pay the plan payments. The court granted the creditors’ motion to terminate the automatic stay because the debtor was unable to show a reasonable possibility of a successful reorganization. In re Tate, 217 B.R. 518 (Bankr. E.D. Tex. 1997).

CHAPTER 13-ALM § 13.03.5

DISPOSABLE INCOME. When the debtor originally filed for Chapter 13, the debtor owed alimony to a former spouse. When the spouse died the debtor amended the bankruptcy schedules to remove the monthly alimony payment and increased the debtor’s other monthly expenses. The court found that some increases were allowed because the original figures were inaccurate; however, the court held that the increase of monthly costs of veterinary and feed costs for several elderly horses and dogs was not reasonable. The court allowed only a small increase in the monthly animal expenses. The court also denied the debtor’s request to pay attorney’s fees directly, holding that all attorney’s fees had to be first approved by the court. Matter of Wyant, 217 B.R. 585 (Bankr. D. Neb. 1998).

FEDERAL TAXATION-ALM § 13.03[7].

AUTOMATIC STAY. The IRS had filed pre-petition tax liens against the debtor’s property, including property which the debtor claimed as exempt in the bankruptcy case. The lien covered taxes owed from 1984. During the case, the IRS offset the debtor’s claim for refund for 1994 against the 1984 taxes. The debtor received a discharge in May 1995, but in April 1997, the IRS offset the debtor’s claim for refund for 1995 against the taxes owed.

*Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.