

Title 4
ADMINISTRATION
Part V. Policy and Procedure Memoranda
Chapter 41. Taxable Compensation—PPM No. 73

§4101. Purpose And Scope

A. The purpose of this memorandum is to establish a policy for the reporting of all taxable compensation provided to employees, withholding of applicable amounts to meet the employee's tax liability associated with the taxable compensation, to provide guidelines for establishing a value for taxable compensation, and to provide guidelines for inclusion or exclusion of fringe benefits as taxable compensation.

B. All boards, commissions, departments, agencies, institutions, and offices of the executive branch of state government shall comply with this memorandum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:78 and Executive Order Number 85-52.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, LR 15:528 (July 1989), repromulgated LR 20:374 (April 1994), amended LR 25:1406 (August 1999).

§4103. Definitions

A. For purposes of this memorandum the following definitions shall apply.

Compensation Cincludes wages, salaries, bonuses, tips, commissions, fringe benefits, termination or severance pay, commission, per diem, and any and all similar items.

Fair Market Value (FMV) Cthat amount of compensation that would be paid between unrelated third parties to obtain a service or benefit.

Fringe Benefits Cmeals, lodging, allowances, vehicle personal usage, moving expenses, etc.

Inkind Cnoncash compensation, may include meals, lodging, vehicle personal use, moving expenses, etc.

Reimbursed Expenses Citems of expenditure incurred by an employee in the performance of his job.

Tax Liability Cincludes federal and state tax withholding, FICA and Medicaid withholding, and any penalty or interest payment due as a result of noncompliance.

Taxable Compensation Call compensation items not excludable as income under a specific IRS Code Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:78 and Executive Order Number 85-52.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, LR 15:528 (July 1989), repromulgated LR 20:375 (April 1994), amended LR 25:1406 (August 1999).

§4105. Policy

A. It shall be the policy of the state of Louisiana to report all taxable compensation and withhold all applicable taxes for such compensation as required by the Internal Revenue Code on each scheduled pay period.

B. Effective July 1, 1989 for calendar year 1989 and for each calendar year thereafter, all taxable compensation shall be reported and a withhold of applicable taxes shall be processed each pay period. For the period of January 1, 1989 through June 30, 1989 all taxable compensation not reported on a pay period basis shall be included on the employee's Form W-2 Wage and Tax Statement for calendar year 1989.

C. Applicable taxes for taxable compensation received in the form of cash during the period of January 1, 1989 through June 30, 1989 must be withheld during calendar year 1989.

D. Values for state owned housing taxable to the employee should be based on the values provided by the Office of Statewide Reporting and Accounting Policy. Agencies must also include the value of utilities, such as electricity, gas, water and sewerage service, as these costs are not included in the values provided by the Office of Statewide Reporting and Accounting Policy

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:78 and Executive Order Number 85-52.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, LR 15:528 (July 1989), repromulgated LR 20:375 (April 1994), amended LR 25:1406 (August 1999).

§4107. Reporting Requirements

A. Each board, commission, department, agency, institution or office must develop a plan each calendar year delineating those conditions under which an employee shall receive any compensation other than salary, wages, per diem for board members and those benefits provided by the State Employees' Group Benefits Program and the

various retirement systems. The plan must include the specific employee receiving compensation, the valuation method of the compensation, the value of the compensation and any reason the compensation is partially or fully nontaxable to the employee. Such plan shall be submitted for approval to the commissioner of administration by February 1, each calendar year for the immediately preceding calendar year.

B. Department heads who fail to adequately value, report, or withhold applicable taxes for compensation provided employees shall be responsible for payment of any tax liability from the avails of the respective budget units appropriations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:78 and Executive Order Number 85-52.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, LR 15:529 (July 1989), repromulgated LR 20:375 (April 1994), amended LR 25:1406 (August 1999).

§4109. Reimbursed Expenses

A. Payments to employees in accordance with General Travel Regulations CPPM Number 49 for reimbursement of actual business travel expenses shall be treated as a noncompensation item.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:78 and Executive Order Number 85-52.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, LR 15:529 (July 1989), repromulgated LR 20:375 (April 1994), amended LR 25:1406 (August 1999).

§4111. Employment Contracts

A. For purpose of computing taxable compensation, the provisions of an employment contract, or state law fixing the terms of employment cannot be considered in determining if fringe benefits are intended as compensation.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, LR 15:529 (July 1989), repromulgated LR 20:375 (April 1994), amended LR 25:1406 (August 1999).

§4113. Valuation Method

A. The general valuation rule will be FMV. Taxable cash compensation items, regardless of source, are to be reported and withheld at the dollar value paid. Taxable inkind noncash compensation, including fringe benefits, are to be included at FMV of the property transferred, excluding any payment offsets at the time of the transfer, unless excluded or adjusted under a specific Internal Revenue Code Section. There is no taxable compensation if the employee pays 100 percent of the FMV of the benefit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:78 and Executive Order Number 85-52.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, LR 15:529 (July 1989), repromulgated LR 20:375 (April 1994), amended LR 25:1406 (August 1999).

§4115. Evaluation Tests For Exclusion From Taxable Compensation

A. The general rules of evaluation to be used in determining if and when a fringe benefit is exempt from inclusion as taxable compensation are as follows.

1. Meals

a. The value of meals furnished to an employee by and on behalf of the state will be excludable from the employee's gross compensation if two tests are met:

- i. the meals are furnished on the premises of the employer; and
- ii. the meals are furnished for the convenience of the employer.

b. Meals furnished by the state without charge will be considered furnished for the convenience of the employer if the meals are furnished for *substantial noncompensatory business reasons* of the state rather than as a means of providing additional compensation to the employee.

c. On the premises will be interpreted to mean either:

- i. quarters that constitute an integral part of the business property; or
- ii. premises on which the entity carries on some of its business activities.

2. Lodging

a. The value of lodging furnished to an employee by or on behalf of the state will be excluded from the employee's gross income, if three tests are met:

- i. the lodging is furnished on the business premises of the employer;
- ii. the lodging is furnished for the convenience of the employer; and

iii. the employee is required to accept such lodging as a condition of his employment. The third requirement means that the employee must be required to accept the lodging on the business premises in order to enable him to properly perform the duties of his employment, which in turn will mean that 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 was furnished such lodging.

- b. On the business premises will be interpreted to mean either:
 - i. living quarters that constitute an integral part of the business property; or
 - ii. premises on which the entity carries on some of its business activities.
- c. Ownership or control by the state of the premises furnished is not a test criteria.

d. Lodging includes utilities and associated related items such as lawn maintenance, maid service, etc. The value of utilities, etc., furnished to the employee for the convenience of the state is excludable, unless the employee contracts directly with the utility, etc., for the service.

3. Transportation

- a. The value of personal use of a state vehicle must be included as taxable compensation.
- b. The value for use of a state vehicle for commuting purposes shall be a flat \$1.50 per one way commute trip (\$3 per day for round trip) if the following conditions are met:
 - i. the vehicle is owned or leased by the state and is provided for and used for state business;
 - ii. for bona fide noncompensatory business reasons the state requires the employee to commute to and from work in the vehicle;
 - iii. the department, agency, etc., has a written policy which disallows personal use of the vehicle by the employee, or any individual whose use would be taxable to the employee, except for *de minimus* personal use such as a lunch stop between business meetings;
 - iv. neither the employee nor any individual whose use would be taxable to the employee uses the vehicle for any personal purpose other than commuting and *de minimus* personal use; and
 - v. the employee using the vehicle is not a control employee as defined in Temporary Regulation Section 1.61-2T(f)(5),(6).
- c. For valuation of personal use of a vehicle for those employees who use a state vehicle to commute, but do not meet the conditions enumerated above, and those employees who have personal use of other modes of transportation, alternative valuation methods are available in the Internal Revenue Code and Regulations.
- d. the alternative valuation methods, including the cents-per-mile rule or lease valuation method, may be utilized only upon prior approval of the commissioner of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:78 and Executive Order Number 85-52.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, LR 15:529 (July 1989), repromulgated LR 20:375 (April 1994), amended LR 25:1406 (August 1999).

§4117. Parking C Taxable Benefits

A. The Energy Policy Act of 1992 amended the Internal Revenue Code provisions on taxing employer provided transportation benefits. Under these provisions, employer provided parking in a public parking facility valued up to \$175 per month may be excluded from taxable income. Any amounts of \$175 or higher must be considered taxable fringes and are to be included in taxable income, unless the employee pays amounts in excess of the \$175 per month.

B. The value of the parking cost is to be based on the cost an employee would incur in an arm's-length transaction to obtain parking at the same site. If this cost cannot be determined, value should be based on the cost incurred in an arm's-length transaction to obtain other space in the same lot or a comparable lot in the same general area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:78 and Executive Order Number 85-52.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, LR 20:376 (April 1994), amended LR 25:1407 (August 1999).