

Table of Contents

38.04.05 - Rules Governing the Management of State-Owned Dwellings

000. Legal Authority.	2
001. Title And Scope.	2
002. Written Interpretations.	2
003. Administrative Appeals.	2
004. Citation.	2
005. -- 009. (Reserved)	2
010. Definitions.	2
011. -- 099. (Reserved)	3
100. Authority Of The Department.	3
101. Acquisition Of State-Owned Dwellings.	3
102. -- 120. (Reserved)	3
121. Permissible Uses Of State-Owned Dwellings.	3
122. -- 130. (Reserved)	3
131. Income Tax Implications Relating To Employer-Furnished Lodging.	3
132. -- 140. (Reserved)	4
141. Employer Determination Of Fair Rental Value Of Furnished Lodging.	4
142. -- 150. (Reserved)	4
151. Agency Responsibilities Regarding Furnished Lodging.	4
152. -- 160. (Reserved)	4
161. Employee Responsibilities Regarding Furnished Lodging.	4
162. -- 170. (Reserved)	4
171. Agency Recordkeeping Responsibility.	4
172. -- 180. (Reserved)	5
181. Furnished Lodging Agreement.	5
182. -- 999. (Reserved)	5

**IDAPA 38
TITLE 04
CHAPTER 05**

38.04.05 - RULES GOVERNING THE MANAGEMENT OF STATE-OWNED DWELLINGS

000. LEGAL AUTHORITY.

In accordance with Section 67-5707A, Idaho Code, the Administrator for the Division of Public Works hereby promulgates the following rules implementing the provisions of Chapter 57, Title 67, Idaho Code pertaining to the procedure governing the management of state-owned dwellings. (7-1-98)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38.04.05, "Rules Governing the Management of State-owned Dwellings." (7-1-98)

02. Scope. These rules constitute the procedures which govern the manner by which the various state agencies shall be required to manage the acquisition, rental, tax status and recordkeeping of state-owned dwellings. (7-1-98)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, an agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost in the office of the agency. (7-1-98)

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for administrative appeals of the procedures set forth in this chapter. (7-1-98)

004. CITATION.

The official citation of this chapter is IDAPA 38.04.05, Section 000 et sequence. For example, this section's citation is IDAPA 38.04.05, Section 004. (7-1-98)

005. -- 009. (RESERVED)

010. DEFINITIONS.

01. Agency. All officers, departments, divisions, bureaus, boards, commissions and institutions of the state, but excluding the legislative and judicial branches of government. (7-1-98)

02. Division. The Division of Public Works of the Department of Administration as established by Idaho Code Section 67-5705. (7-1-98)

03. Employee. A person in the employ of the state of Idaho or an agency thereof who is paid a salary or wages. (7-1-98)

04. Employer. The agency that employs the employee. (7-1-98)

05. Fair Rental Value. The amount at which the dwelling would rent or lease as between a willing lessor and a willing lessee, neither being under any compulsion to rent or lease and both having reasonable knowledge of the relevant facts. (7-1-98)

06. Furnished Lodging. An employer's provision of a state-owned dwelling to an employee in connection with his employment. Furnished lodging also may include such items as necessary utilities (heat, water, electricity and sewage services). (7-1-98)

07. IRC. The most recent enactment of the Internal Revenue Code, as amended. (7-1-98)

08. IRS. The Internal Revenue Service, an agency or office of the federal government. (7-1-98)

09. Lease. A contract or agreement for the use of property under which the state, in its capacity as lessee or tenant, obtains exclusive possession and use of real or personal property for a determinate period of time. (7-1-98)

10. Lease Purchase Option. A lease that provides an option for the state to purchase the property at a predetermined price or fair market value during or at the end of the lease period. (7-1-98)

11. State. The state of Idaho including each agency therein unless the context clearly implies another state of the United States. (7-1-98)

12. State-Owned Dwelling. Any house, duplex, apartment, manufactured housing, trailer/mobile home pad or other structure, or any part thereof, owned, purchased, leased or operated by an agency of the state which is used for the purpose of furnishing lodging to a state employee in connection with his employment. (7-1-98)

011. -- 099. (RESERVED)

100. AUTHORITY OF THE DEPARTMENT.

In accordance with Section 67-5707A, Idaho Code, the Department of Administration, by and through the Division, is authorized to adopt the procedures to be followed by each state agency in managing the acquisition, rental, tax status and recordkeeping of state-owned dwellings. (7-1-98)

101. ACQUISITION OF STATE-OWNED DWELLINGS.

The state or an agency thereof may acquire a state-owned dwelling by purchase (including installment purchases), lease, lease purchase option, exchange, gift or in any other manner which affords the state or agency the exclusive use and possession of the dwelling. In addition to complying with those requirements set forth in these rules, the state or any agency must comply with all other statutes and rules regarding the acquisition of state property or state land. (7-1-98)

102. -- 120. (RESERVED)

121. PERMISSIBLE USES OF STATE-OWNED DWELLINGS.

At its sole and absolute discretion, an agency may furnish a state-owned dwelling to an employee subject to these rules. An employee who is furnished with a state-owned dwelling shall only be entitled to use the dwelling as lodging for himself and his immediate family and for the conduct of state business. An agency may require an employee to accept and reside in a state-owned dwelling as a condition of his employment. (7-1-98)

122. -- 130. (RESERVED)

131. INCOME TAX IMPLICATIONS RELATING TO EMPLOYER-FURNISHED LODGING.

The matter of whether the value, or a portion thereof, of employer-furnished lodging will constitute income to an employee will be determined in accordance with federal law (IRC) and regulation. The IRC and related regulations establish standards which an agency shall apply to determine whether the value of the furnished lodging must be included in the employee's income. (7-1-98)

01. General Standard. Section 119 of the IRC and the related federal regulations as promulgated by the IRS state that the value of lodging furnished to an employee, his spouse and his dependents shall be excluded from his gross income for tax purposes if: the lodging is furnished on the business premises of the employer; the lodging is furnished for the convenience of the employer; and if the employee is required to accept the lodging as a condition of his employment. The factual circumstances surrounding each instance of employer-furnished lodging dictate the applicable income tax treatment. If the circumstances of the furnished lodging do not satisfy the stated standards, the fair rental value of the furnished lodging shall be included in the amount of the employee's gross income for both federal and state income tax purposes as well as for purposes of other payroll deductions or withholdings based upon amounts of gross income. (7-1-98)

02. Business Premises of the Employer. For purposes of the federal standards, the business premises of the employer has been defined generally to mean the place of employment of the employee. (7-1-98)

03. Lodging Furnished for the Convenience of the Employer. For purposes of the federal standards, lodging is considered to be furnished for the convenience of the employer when a direct nexus exists between the lodging furnished to the employee and the business interests of the employer which are being served or advanced. (7-1-98)

04. Employee Required to Accept Lodging as a Condition of Employment. For purposes of the federal standards, the requirement that an employee be required to accept lodging as a condition of employment means that the employee must accept the lodging in order to enable him to properly perform the duties of his employment. (7-1-98)

05. Payment of Fair Rental Value of Furnished Lodging by the Employee. If the factual circumstances associated with the furnished lodging do not qualify for the income tax exclusion, the agency is encouraged to collect rent from the employee in the fair rental value of the furnished lodging. At an agency's discretion, an employee who is furnished lodging which does not qualify for the income tax exclusion may be afforded a rent discount. However, in such instance, the difference between the fair rental value and the amount of the rent actually paid by the employee shall be income to the employee. (7-1-98)

132. -- 140. (RESERVED)

141. EMPLOYER DETERMINATION OF FAIR RENTAL VALUE OF FURNISHED LODGING.

01. Determination of Fair Rental Value. The determination of the fair rental value of furnished lodging shall be the responsibility of the agency. An agency shall review the fair rental value of each furnished lodging at least every five (5) years or sooner if the relevant market conditions or the employee's terms of employment have changed. To determine fair market rental value of a furnished lodging, the agency may utilize comparable dwelling rent information. (7-1-98)

02. Treatment of Utilities. If the employee does not directly pay the cost of necessary utilities in connection with the furnished lodging, the value of such necessary utilities should be included in the fair rental value of the furnished lodging. If the value of the furnished lodging is excludable from the employee's income in accordance with the IRC, any furnished necessary utilities will be excluded from the employee's income. (7-1-98)

142. -- 150. (RESERVED)

151. AGENCY RESPONSIBILITIES REGARDING FURNISHED LODGING.

If the state-owned dwelling is owned by the agency, the agency (employer) shall be responsible for all repairs and improvements to the dwelling. If the state-owned dwelling is leased by the agency from a third party, the lease agreement should provide that the dwelling's owner (lessor) is obligated to insure the dwelling and to undertake all repairs and improvements to the dwelling. (7-1-98)

152. -- 160. (RESERVED)

161. EMPLOYEE RESPONSIBILITIES REGARDING FURNISHED LODGING.

Generally, the employee shall be responsible for the general upkeep and maintenance of the furnished dwelling and associated grounds. Whether or not the employee pays directly for necessary utilities, the employee shall be responsible for the payment of all utilities which are not necessary utilities (television cable, etc.). The employee shall be responsible for insuring all personal property located within or upon the furnished lodging. An employee who fails to abide by the terms of a furnished lodging agreement shall not be allowed to continue to reside in a state-owned dwelling. (7-1-98)

162. -- 170. (RESERVED)

171. AGENCY RECORDKEEPING RESPONSIBILITY.

Each agency having state-owned dwellings shall provide, annually, the Division with a list which identifies the location of each dwelling, its general characteristics, approximate value and fair rental value. Each agency shall maintain all information relied upon in determining the fair rental value of any state-owned dwelling. Each agency

shall maintain records regarding the cost of repair, maintenance, improvement or upkeep of each state-owned dwelling. (7-1-98)

172. -- 180. (RESERVED)

181. FURNISHED LODGING AGREEMENT.

Every agency is strongly advised to enter into a written agreement with any employee being furnished lodging. Such written agreement should delineate the employee's responsibilities regarding such matters as the payment of rent and maintenance of the state-owned dwelling. (7-1-98)

182. -- 999. (RESERVED)

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Subject Index

A

Acquisition Of State-Owned
Dwellings 3
Agency Recordkeeping
Responsibility 4
Agency Responsibilities Regarding
Furnished Lodging 4
Authority Of The Department Of
Administration 3

D

Definitions, IDAPA 38.04.05 2
Agency 2
Division 2
Employee 2
Employer 2
Fair Rental Value 2
Furnished Lodging 2
IRC, Internal Revenue Code 2
IRS, The Internal Revenue
Service 2
Lease 3
Lease Purchase Option 3
State 3
State-Owned Dwelling 3

E

Employee Responsibilities Regarding
Furnished Lodging 4
Employer Determination Of Fair Rental
Value Of Furnished Lodging 4
Determination of Fair Rental
Value 4
Treatment of Utilities 4

F

Furnished Lodging Agreement 5

I

Income Tax Implications Relating To
Employer-Furnished Lodging 3
Business Premises of the
Employer 3
Employee Required to Accept
Lodging as a Condition of
Employment 4
General Standard 3
Lodging Furnished for the
Convenience of the
Employer 4
Payment of Fair Rental Value of
Furnished Lodging by the
Employee 4

P

Permissible Uses Of State-Owned
Dwellings 3