EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations, Sections 926-3, 926-4, and 926-5

TAXABLE VALUE OF MEALS AND LODGING

Text of Proposed Amendments

NOTE: Language to be repealed is shown in strikeout format; language to be added is shown in underline format.

AMEND SECTION 926-3 TO READ:

§ 926-3. Taxable Value of Board and Lodging.

(a) Board, lodging, or any other payment in kind, received by an employee in addition to, or in lieu of cash wages, shall be taxable on the basis of a reasonably estimated cash value to the employee, as determined or approved by the department as hereinafter provided:

(1) The reasonably estimated cash value of meals, lodging, or other payment in kind to an employee shall not be deemed less than:

(A) The bona fide value stipulated in a union agreement or contract of employment; or

(B) The value established as a basis of compliance with any applicable law governing minimum wages.

(2) Meals. In those cases where subdivision (a)(1) is not applicable, the department shall consider the following scale to be calculate annually and publish in the DE 44 California Employer’s Guide and the EDD website (www.edd.ca.gov), a reasonably estimated cash value of meals to employees:

For the calendar year 2011 and thereafter except as modified herein in accordance with the following provisions of this subdivision The meal valuations for the calendar year 2012 are as follows:

Three meals per day.......................................................................................... $ 40.30 10.55

Individual meals:

Breakfast........................................................................................................ $ 2.25 2.30
Lunch.............................................................................................................. $ 3.45 3.20
Dinner............................................................................................................. $ 4.90 5.05

A meal not identifiable as either breakfast, lunch, or dinner.................... $ 3.60 3.65
The meal valuations for the calendar year 2013 are as follows:
Three meals per day: $10.85

Individual meals:
Breakfast: $2.35
Lunch: $3.30
Dinner: $5.20
A meal not identifiable as either breakfast, lunch, or dinner: $3.80

Whenever the average of retail prices of foods in California cities during the twelve months of any fiscal year ending on June 30 varies from the average of prices during the same months ending on June 30, 1969, by 10 percent or more, according to the cost of living indexes published by the United States Department of Labor, Bureau of Labor Statistics, the director shall by authorized regulation modify the 2011 scale for meals upward or downward in substantially the same ratio for the ensuing calendar year.

If, however, it can be shown to the satisfaction of the department in any case that the scale as determined herein exceeds 120 percent of the cost of the raw materials used in preparing meals for employees, the department shall consider 120 percent of the cost of such raw materials to be the basis for a reasonably estimated value of meals to employees.

(A) For calendar year 2014, and annually thereafter, the department shall calculate the meal valuations according to the following steps:

Step 1. Retrieve the Consumer Price Index – Urban Wage Earners and Clerical Workers, unadjusted data for Food for the Los Angeles Metropolitan Area by navigating to the United States Department of Labor, Bureau of Labor Statistics website at http://data.bls.gov/cgi-bin/srgate, and entering the series number: CWURA421SAF1. After entering the series number, then select the applicable state fiscal year (SFY) period of data to retrieve. The SFY that should be selected will be the SFY immediately preceding the calendar year for which rates are being calculated. For example, for calendar year 2014, the SFY will be July 2012 – June 2013. The data for each month (July – June) is added together and divided by 12 to obtain an average. The average will be rounded to the 3rd decimal point.

Step 2. The average calculated above is then divided by the average for Food for the Los Angeles Metropolitan Area for the SFY 1972-1973 (which is 42.633) to produce a computed index. The computed index will be rounded to the 3rd decimal point.

Step 3. The computed index is then multiplied by each of the 1974 meal valuations figures, which are:
(i) Three meals per day: $1.95
(ii) Breakfast: $0.40
(iii) Lunch: $0.60
(iv) Dinner: $0.95
(v) A meal not identified as either breakfast, lunch, or dinner: $0.70
Step 4. Each of the five calculated meal values will be rounded to the nearest nickel. The meal values for breakfast, lunch, and dinner will be adjusted as needed as their total must equal the value for three meals per day, which is also rounded to the nearest nickel.

(3) Lodging.
(A) As a general rule, in those cases where subdivision (a)(1) is not applicable, the department shall consider a reasonable estimated cash value of lodging to an employee, for the calendar year 2011 and thereafter except as modified in accordance with this subdivision, to be 66 2/3 percent of the ordinary rental value to the public, but not in excess of $1,193.00 per month or less than $38.70 per week less than the minimum per week valuation or in excess of the maximum per month valuation.

The department shall calculate the minimum and maximum lodging valuations annually and publish them in the DE 44 California Employer’s Guide and the EDD website (www.edd.ca.gov).

The lodging valuations for the calendar year 2012 are as follows:
- Minimum per week: $39.10
- Maximum per month: $1,206

The lodging valuations for the calendar year 2013 are as follows:
- Minimum per week: $39.90
- Maximum per month: $1,224

(B) For calendar year 2014, and annually thereafter, the department shall calculate the lodging valuations according to the following steps:

Step 1. Retrieve the Consumer Price Index – Urban Wage Earners and Clerical Workers, unadjusted data for Rent of Primary Residence for the Los Angeles Metropolitan Area by navigating to the United States Department of Labor, Bureau of Labor Statistics website at http://data.bls.gov/cgi-bin/srgate, and entering the series number: CWURA421SEHA. After entering the series number, then select the applicable SFY period of data to retrieve. The SFY that should be selected will be the SFY immediately preceding the calendar year for which rates are being calculated. For example, for calendar year 2014, the SFY will be July 2012 – June 2013. The data for each month (July – June) is added together and divided by 12 to obtain an average. The average will be rounded to the 3rd decimal point.

Step 2. The average calculated above is then divided by the average for Rent of Primary Residence for the Los Angeles Metropolitan Area for the SFY 1972-73 (which is 43.367) to produce a computed index. The computed index will be rounded to the 3rd decimal point.

Step 3. The computed index is then multiplied by each of the 1974 minimum and maximum lodging valuations figures, which are:
   (i) Minimum per week: $6.00
   (ii) Maximum per month: $185.00
Step 4. The resulting calculated minimum per week lodging value will be rounded to the nearest nickel. The resulting calculated maximum per month lodging value will be rounded to the nearest dollar.

The following examples illustrate the computation of taxable wages in such cases for calendar year 2013:

EXAMPLE A
Ordinary rental value to public of lodging per month .......... $ 500
Cash value of lodging to employee (66 2/3 percent of $ 500 equals $ 333.33) .............................................. $ 333.33

EXAMPLE B
Ordinary rental value to public of lodging per month .......... $ 1,800.00
Cash value of lodging to employer employee (66 2/3 percent of $ 1,800.00 2,100.00 equals $ 1,200.00 1,400.00. The cash value for 2013 cannot be in excess of $ 1,193.00 1,224.00) .... $ 1,193.00

EXAMPLE C
Ordinary rental value to public of lodging per week .......... $ 50
Cash value of lodging to employee (66 2/3 percent of $ 50.00 equals $ 33.33. The cash value for 2013 cannot be less than $ 38.70 39.90; 4 weeks times $ 38.70 39.90 equals $ 154.80 159.60) .............................................. $ 154.80 159.60

(B C) In those cases where subdivision (a)(1) is not applicable, if the employee receives part of his or her lodging in exchange for a cash payment and part in exchange for services rendered, the department shall consider that only the part received in exchange for services rendered is received in lieu of cash wages. The amount of the cash payment by the employee shall be deducted from the ordinary rental value of the lodging to the public, and the reasonably estimated cash value of the remainder, which is the part received by the employee in lieu of cash wages, shall be 66 2/3 percent of
the ordinary rental value to the public, but not in excess of $1,193.00 the maximum per month value. The following examples illustrate the computation of taxable wages in such cases:

EXAMPLE A
Ordinary rental value to public of lodging per month...................... $ 660
Employee pays cash for lodging....................................................... 60
Remainder................................................................. 600
Cash value of lodging to employee (66 2/3 percent of $ 600 equals $ 400).................................................................. $ 400 Taxable Wages

EXAMPLE B
Ordinary rental value to public of lodging per month...................... $ 400
Employee pays cash for lodging....................................................... 190
Remainder................................................................. 210
Cash value of lodging to employee (66 2/3 percent of $ 210 equals $ 140).................................................................. 140 Taxable Wages

(C) Whenever the average of residential rent prices in the Los Angeles, San Diego, and San Francisco Metropolitan Areas during the twelve months of any fiscal year ending on June 30 varies from the average of prices during the same months ending on June 30, 1973, by 10 percent or more, according to the residential rent indexes published by the United States Department of Labor, Bureau of Labor Statistics, the director shall by authorized regulation modify the 2011 scale of maximum and minimum rates for lodging upward or downward in substantially the same ratio for the ensuing calendar year.

(4) Where there are unusual facts and circumstances which make any of the foregoing inapplicable, the department shall consider reasonably estimated cash value of meals or lodging to the employees.

(b) Employers shall maintain reasonably complete records of meals and lodging furnished employees as a part of their remuneration. Such records shall be in such form as to show the number and kind of meals actually consumed by employees. If, in any case, an employee objects to the amount of deductions made for contributions on the ground that the value and number of meals furnished or the value of any remuneration in kind is erroneous, he or she may protest to the department and request a determination thereon.

(c) It is immaterial for the purposes of this section that the facilities furnished by the employer are furnished for his or her convenience or the convenience of the employee.

(d) The provisions of this section shall not be construed to include as taxable wages items expended on behalf of the employer and designated as traveling allowance.
(e) This section is not applicable to meals and quarters furnished officers and crew members aboard merchant vessels, or the meals and quarters received by fishermen except as specifically provided in Sections 926-4 and 926-5 of these regulations.

(f) No right or cause of action founded upon any scale of reasonably estimated cash value of meals to employees in effect under provisions existing prior to the amendment of this section shall be abolished or impaired by such amendment.

AMEND SECTION 926-4 TO READ:

§ 926-4. Taxable Value of Meals and Quarters Furnished Officers and Crewmen Aboard Vessels.

(a) Meals and quarters received by officers and crewmen aboard a vessel shall be taxable on the basis of a reasonably estimated cash value to the employee as determined or approved by the department as hereinafter provided:

(1) The reasonably estimated cash value of meals and quarters to an employee shall not be less than:
   (A) The bona fide value stipulated in a union agreement or contract of employment; or
   (B) The value established as a basis of compliance with any applicable law governing minimum wages.

(2) In those cases where subdivision (a)(1) is not applicable the department shall consider the following scale to be the calculate annually and publish in the DE 44 California Employer’s Guide and the EDD website (www.edd.ca.gov), a reasonably estimated cash value to the employee of meals and quarters for the calendar year 2011 and thereafter, except as modified herein in accordance with the following provisions of this subdivision:

   (A) Licensed Personnel. For calendar year 2012, for each day or part of a day aboard a vessel, $10.30 for meals plus $8.10 for quarters, or a total of $18.40. For calendar year 2013, for each day or part of a day aboard a vessel, $10.85 for meals plus $8.30 for quarters, or a total of $19.15.

   (B) Unlicensed Personnel. For calendar year 2012, for each day or part of a day aboard a vessel, $10.30 for meals plus $5.50 for quarters, or a total of $15.80. For calendar year 2013, for each day or part of a day aboard a vessel, $10.85 for meals plus $5.65 for quarters, or a total of $16.50.

   (C) Adjustment of Meals Values. Whenever the average of retail prices of foods in California cities during the twelve months of any fiscal year ending on June 30 varies from the average of prices during the same months ending on June 30, 1969, by 10 percent or more, according to the cost of living indexes published by the United States Department of Labor, Bureau of Labor Statistics, the director shall by authorized regulation modify the 2011 scale for meals upward or downward in substantially the same ratio for the ensuing calendar year.

   If, however, it can be shown to the satisfaction of the department in any case that the scale as determined herein exceeds 120 percent of the cost of the raw materials used in preparing meals for employees, the department shall consider 120 percent of the cost of such raw materials to be the basis for a reasonably estimated value of meals to employees.

For calendar year 2014, and annually thereafter, the meals valuation for both licensed and unlicensed personnel shall be the same value as the Three Meals Per Day Value calculated pursuant to the four-step process in 926-3(a)(2)(A).
(D) Adjustment of Quarters Values. Whenever the average of residential rent prices in the Los Angeles, San Diego, and San Francisco Metropolitan Areas during the twelve months of any fiscal year ending on June 30 varies from the average of prices during the same months ending on June 30, 1973, by 10 percent or more, according to the residential rent indexes published by the United States Department of Labor, Bureau of Labor Statistics, the director shall by authorized regulation modify the 2011 scale of rates for quarters upward or downward in substantially the same ratio for the ensuing calendar year.

For calendar year 2014, and annually thereafter, the department shall calculate the daily quarters valuations according to the following steps:

Step 1. Retrieve the Consumer Price Index – Urban Wage Earners and Clerical Workers, unadjusted data for Rent of Primary Residence for the Los Angeles Metropolitan Area by navigating to the United States Department of Labor, Bureau of Labor Statistics website at http://data.bls.gov/cgi-bin/srgate, and entering the series number: CWURA421SEHA. After entering the series number, then select the applicable state fiscal year (SFY) period of data to retrieve. The SFY that should be selected will be the SFY immediately preceding the calendar year for which rates are being calculated. For example, for calendar year 2014, the SFY will be July 2012 – June 2013. The data for each month (July – June) is added together and divided by 12 to obtain an average. The average will be rounded to the 3rd decimal point.

Step 2. The average calculated above is then divided by the average for Rent of Primary Residence for the Los Angeles Metropolitan Area for the SFY 1972-73 (which is 43.367) to produce a computed index. The computed index will be rounded to the 3rd decimal point.

Step 3. The computed index is then multiplied by each of the 1974 daily quarters valuations figures, which are:

(i) Licensed personnel: $1.25  
(ii) Unlicensed personnel: $0.85

Step 4. The resulting calculated daily quarters values will be rounded to the nearest nickel.

(b) "Vessel" as used in this section includes freighter, tanker, passenger or any other vessel, except fishing vessels. (Fishing Vessels--See Section 926-5.)

(c) "Licensed personnel" as used in this section includes masters, mates, engineers, pilots, radio telegraphers and any other persons who are licensed pursuant to the United States Shipping Code, and also includes pursers and surgeons and any other persons who are registered pursuant to the United States Shipping Code.

(d) "Unlicensed personnel" as used in this section includes all members of the crew other than persons described in subdivision (c) of this section.

(e) Notwithstanding the provisions of subdivision (a)(2) of this section, if an employer maintains records in such form as to show the number and kind of meals actually consumed by employees the scale for individual meals set forth in subdivision (a)(2) of section 926-3 of these regulations may apply.

(f e) It is immaterial for the purposes of this section that the facilities furnished by the employer are furnished for his or her convenience or the convenience of the employee.
(g f) No right or cause of action founded upon provisions for the reasonably estimated cash value to officers and crewmen aboard vessels of meals and quarters in effect prior to the amendment of this section shall be abolished or impaired by such amendment.

AMEND SECTION 926-5 TO READ:

§ 926-5. Taxable Value of Meals and Quarters Received by Fishermen Aboard Fishing Vessels.

(a) Meals and quarters received by fishermen aboard fishing vessels shall be taxable on the basis of a reasonably estimated cash value to the employee as determined or approved by the department as hereinafter provided:

(1) The reasonably estimated cash value of meals and quarters to an employee shall not be less than:

(A) The bona fide value stipulated in a union agreement or contract of employment; or

(B) The value established as a basis of compliance with any applicable law governing minimum wages.

(2) In those cases where subdivision (a)(1) is not applicable the department shall consider the following to be a reasonably estimated cash value to the employee of meals and quarters:

(1 A) Meals. The value of meals may be computed on one of the following bases, at the option of the employer:

(A i) The cost of food furnished to or consumed by fishermen shall be equally divided by the number of fishermen to determine the taxable value of meals to each fisherman.

(B ii) If an employer maintains records in such form as to show the number and kind of meals actually consumed by fishermen, the scale as set forth meal values as established in Section 926-3(a)(2) of these regulations may be applied.

(2 B) Quarters.

(A i) For the calendar year 2011 and thereafter except as modified in accordance with this subdivision, quarters furnished to fishermen aboard fishing vessels have a cash value to the employee of $38.70 a week, or $5.50 a day for periods less than a week, where the facilities include the following minimum standards:

1. Living compartment space that normally permits standing erect.
2. Heat, light and ventilation.
3. Gear locker.
4. Head and bathing facilities.
5. Individual bunks or berths with mattresses, assigned to each fisherman.

(B ii) Quarters which do not meet the above minimum standards have no cash value to the fishermen.

(iii) For the calendar year 2012, quarters which meet the above minimum standards have a cash value to the employee of $39.10 per week, or $5.55 a day for periods less than a week. For the calendar year 2013, quarters which meet the above minimum standards have a cash value of $39.70 a week, or $5.65 a day for periods less than a week.
Adjustment of Quarters Values. Whenever the average of residential rent prices in the Los Angeles, San Diego, and San Francisco Metropolitan Areas during the twelve months of any fiscal year ending on June 30 varies from the average of prices during the same months ending on June 30, 1973, by 10 percent or more, according to the residential rent indexes published by the United States Department of Labor, Bureau of Labor Statistics, the director shall by authorized regulation modify the 2011 scale of rates for quarters upward or downward in substantially the same ratio for the ensuing calendar year.

The weekly and daily quarters valuations will be calculated annually and published in the DE 44 California Employer's Guide and the EDD website (www.edd.ca.gov).

For calendar year 2014, and annually thereafter, the department shall calculate the weekly and daily quarters valuations according to the following steps:

1. Retrieve the Consumer Price Index – Urban Wage Earners and Clerical Workers, unadjusted data for Rent of Primary Residence for the Los Angeles Metropolitan Area by navigating to the United States Department of Labor, Bureau of Labor Statistics website at http://data.bls.gov/cgi-bin/srgate, and entering the series number: CWURA421SEHA. After entering the series number, then select the applicable state fiscal year (SFY) period of data to retrieve. The SFY that should be selected will be the SFY immediately preceding the calendar year for which rates are being calculated. For example, for calendar year 2014, the SFY will be July 2012 – June 2013. The data for each month (July – June) is added together and divided by 12 to obtain an average. The average will be rounded to the 3rd decimal point.

2. The average calculated above is then divided by the average for Rent of Primary Residence for the Los Angeles Metropolitan Area for the SFY 1972-73 (which is 43.367) to produce a computed index. The computed index will be rounded to the 3rd decimal point.

3. The computed index is then multiplied by each of the 1974 weekly and daily quarters valuations figures, which are:
   (i) $6.00 per week
   (ii) $0.85 a day for periods less than a week

4. The resulting calculated weekly and daily quarters values will be rounded to the nearest nickel.

(b) It is immaterial for the purposes of this section that the cost of food consumed aboard fishing vessels is borne by the employer, by the employees or is shared by the employer and employees. The following examples illustrate the computation of taxable wages under two methods of accounting where the employer elects to apply the formula set forth in subdivision (a)(1)(A) of this section. It is assumed that the share for the owner or operator of the vessel is 40 percent and the fishermen's share is 60 percent.

EXAMPLE A. All operating expenses, including the cost of food consumed aboard, are deducted from the gross receipts from sale of the catch. The remainder is divided into two shares, one for the owner or operator of the vessel and the other to be distributed among the fishermen. The fishermen's cash wages plus the total cost of food constitute taxable wages.
EXAMPLE B. All operating expenses, except cost of food consumed aboard, are deducted from the gross receipts from sale of the catch. The remainder is divided into two shares, one for the owner or operator of the vessel and the other to be distributed among the fishermen. The amount of the fishermen's share before deduction of the cost of food constitutes taxable wages.

Gross proceeds from sale of the catch............................................. $1,000
Less fuel and other operating expenses........................................ 200
Owner or operator's share (40 percent).................................. 320
Fishermen's share (60 percent).................................................. 480 Taxable wages
Less cost of food................................................................. 100
Cash wages.............................................................................. $380
(i) Taxable wages each person, assuming 5 men with equal shares – $ 96.
(ii) Taxable wages each person, assuming 5 men, 1 man having 2 shares, and 4 men having 1 share each:

<table>
<thead>
<tr>
<th></th>
<th>Total wages</th>
<th>Less cost of food</th>
<th>Cash</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fisherman “A”</td>
<td>$160</td>
<td>$20</td>
<td>$140</td>
</tr>
<tr>
<td>Fisherman “B”</td>
<td>80</td>
<td>20</td>
<td>60</td>
</tr>
<tr>
<td>Fisherman “C”</td>
<td>80</td>
<td>20</td>
<td>60</td>
</tr>
<tr>
<td>Fisherman “D”</td>
<td>80</td>
<td>20</td>
<td>60</td>
</tr>
<tr>
<td>Fisherman “E”</td>
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<td>20</td>
<td>60</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$480</strong></td>
<td><strong>$100</strong></td>
<td><strong>$380</strong></td>
</tr>
</tbody>
</table>

(c) "Fishermen" as used in this section includes all persons aboard the vessel who are entitled to receive a share-of-the-catch or who are remunerated on any other basis.

(d) It is immaterial for the purposes of this section that the facilities furnished by the employer are furnished for his or her convenience or the convenience of the employee.

(e) No right or cause of action founded upon provisions for the reasonably estimated cash value to fishermen of meals and quarters in effect prior to the amendment of this section shall be abolished or impaired by such amendment.