

Publication

01/18/2022

Client Alert: IRS Concludes Many Airbnb-Style Rental Arrangements Are Subject to Self-Employment Tax

The ongoing COVID-19 pandemic has caused many individuals to reevaluate vacation destinations and where they choose to work. Why work in snowy Chicago during the winter months when you can perform the same work remotely in a tropical destination. As a consequence, individuals have increasingly made use of short-term rental arrangements offered by online platforms such as Airbnb, VRBO, and HomeAway that allow owners of everything from vacation homes to spare bedrooms to connect with a wider range of potential tenants. The IRS and other tax authorities have been paying attention, and in recent guidance, concluded that the “rents” from many short-term rental arrangements are subject to U.S. self-employment taxes.

In IRS Chief Counsel Memorandum 202151005 (Dec. 23, 2021), the IRS evaluated two “general” fact patterns for short-term rental arrangements. In the first example, the owner rented out a fully-furnished vacation property through an online rental marketplace. The owner provided linens, kitchen utensils, and various other items to make the property fully habitable for occupants. The owner also provided daily cleaning services, access to dedicated Wi-Fi, access to beach and recreational equipment, and prepaid ride-share vouchers between the rental property and the nearest business district. Although the owner provided significant items and

CLIENT SERVICES

Private Wealth
Taxation

RELATED PEOPLE

Eric N. Mann
Eric M. McLimore

services to guests, they were of a type that is not unusual or extraordinary for the online rental marketplace.

The IRS concluded that the net rental income from this example constituted “Net Earnings from Self Employment (“NESE”). Generally, income earned from rentals is treated as an exception from NESE. However, the IRS determined that the exception did not apply because the owner also rendered substantial services to the occupants. The IRS reasoned that services provided to the tenant exceeded those services required to maintain the space in a condition suitable for occupancy and were for the convenience of the tenant. Because the IRS viewed the rental payments as implicitly including a material payment for services, the net rental income constituted NESE and, thus, should be subject to the 12.4% FICA tax and the 2.9% Medicare tax (and potentially subject to the additional 0.9% Medicare tax on self-employment income exceeding certain thresholds).

In the second example, the owner rented out a fully-furnished room and bathroom in a dwelling via an online rental marketplace. The owner cleaned the rooms and bathroom between each occupant’s stay, but did not provide any other amenities or services. Occupants did not have access to common areas of the dwelling, such as the kitchen and the laundry room. Thus, the owner generally did not provide any services other than keeping the premises fit for occupancy.

In the second example, the IRS concluded that the net rental income was not NESE because the owner did not provide substantial services beyond those required to maintain the space in a condition suitable for occupancy. The IRS did not view cleaning the premises between occupants as substantial services for the convenience of occupants that should cause the rental income to be subject to self-employment taxes.



In its guidance, the IRS purposefully considered fact patterns with different levels of services provided to the occupants by the owner. Whether services are for the “convenience” of occupants, or sufficiently “substantial” to warrant treating a portion of the rent as in exchange for the services, are inherently based on the facts and circumstances of each case. Clients engaged in rental activities through online marketplaces must balance the increased desirability of their property that results from the provision of services, and the likelihood that the IRS may view the rental payments as subject to self-employment taxes. Notably, the IRS’s memorandum did not address the tax consequences of remote work from the short-term renter’s perspective, but one should expect future guidance on the consequences to employees and employers from both the federal and state tax authorities as more and more people continue to work away from their main office.

Clients who are considering remote work arrangements personally or for their employees should contact Eric McLimore, Eric Mann, or their Neal Gerber Eisenberg attorney if they have any questions.

The content above is based on information current at the time of its publication and may not reflect the most recent developments or guidance. Neal Gerber Eisenberg LLP provides this content for general informational purposes only. It does not constitute legal advice, and does not create an attorney-client relationship. You should seek advice from professional advisers with respect to your particular circumstances.