***Vanicek v. Commissioner, 72 T. C. 721 (1979)***

Lodging provided by an employer can be excluded from an employee's gross income under Section 119 if it is for the employer's convenience, on the business premises, and a condition of employment.

**Summary**

In Vanicek v. Commissioner, the Tax Court ruled on whether the fair rental value of lodging provided by the Forest Preserve District of Cook County to its employees, Edward Vanicek and John Moden, could be excluded from their gross income under Section 119. The court found that the lodging was furnished for the convenience of the employer, located on the business premises, and required as a condition of employment, thus allowing the exclusion. However, the court denied the Vaniceks' deduction for utility expenses due to lack of evidence to apportion these costs between business and personal use.

**Facts**

Edward Vanicek and John Moden were employed by the Forest Preserve District of Cook County, Illinois, and served as resident watchmen. As watchmen, they were required to live in district-owned residences strategically located within their assigned areas to monitor and protect the land from fires, vandalism, and other encroachments. Vanicek and Moden were provided these lodgings rent-free, but did not report the fair rental value as income. The IRS challenged this exclusion and also contested the Vaniceks' deduction of utility expenses related to these residences.

**Procedural History**

The IRS issued a notice of deficiency to Vanicek and Moden for the tax years 1972-1974, asserting that the fair rental value of their lodging should be included in their gross income. The petitioners contested this in the U. S. Tax Court, which consolidated their cases. The court's decision was subject to review by the U. S. Court of Appeals for the Seventh Circuit.

**Issue(s)**

1. Whether the fair rental value of lodging furnished by the employer is excludable from gross income under Section 119.
2. Whether the Vaniceks are entitled to deduct utility expenses under Section 162.

**Holding**

1. Yes, because the lodging was furnished for the employer's convenience, on the business premises, and required as a condition of employment.
2. No, because the Vaniceks failed to provide evidence to apportion utility expenses

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between business and personal use.

### Court’s Reasoning

The court applied Section 119, which excludes lodging from gross income if three conditions are met: it is furnished for the employer’s convenience, on the business premises, and required as a condition of employment. The court found that the residences were strategically located to allow Vanicek and Moden to perform their duties as watchmen effectively, thus fulfilling the condition of employment and convenience of the employer. The residences were also deemed part of the business premises because they were integral to the district’s operations. The court distinguished this case from Benninghoff v. Commissioner, noting that the watchmen’s duties extended beyond the residences themselves. Regarding the utility expenses, the court relied on Cohan v. Commissioner, stating that while it could estimate deductions, it required some basis for doing so, which was lacking in this case.

### Practical Implications

This decision clarifies the criteria for excluding the value of employer-provided lodging from gross income under Section 119. It emphasizes the importance of the lodging’s strategic location and its integral relationship to the employer’s business activities. For legal practitioners, this case provides guidance on how to argue for the exclusion of lodging value from income, particularly in situations where employees must live on the employer’s premises to perform their duties effectively. The ruling also underscores the need for detailed record-keeping when claiming deductions for business expenses, as the court will not estimate deductions without a reasonable basis. Subsequent cases, such as Benninghoff, have been distinguished based on the nature of the employee’s duties and the relationship of the lodging to those duties.

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