

BENEFITS OF A HOME OFFICE LEASE

There is a tremendous advantage for a business that rents a home office from the individual entrepreneur. Here's how it works:

Business-Tenant's Deductible Rental Payments

Rent for the use of property to which the business has no title and in which the business has no equity can be deducted as a trade or business expense if the rent is paid in connection with the company's trade or business, is ordinary and necessary, and is paid or incurred during the taxable year. If the property on which the rent is paid is used for both business and personal purposes, only the portion allocable to business use is deductible as a business expense. If the company leases office space at the residence of an officer or director, for the rent to be deductible the office space must be exclusively used for business purposes on a regular basis and be the principal place of business of the company.

Individual-Landlord's Home Office Deduction

The individual can take advantage of exceptions to the general rule disallowing a deduction for a dwelling that is occupied by a taxpayer as their personal residence.

The exceptions are for entrepreneurs who:

- Exclusively use a portion of their dwelling unit on a regular basis as a principal place of business for any trade or business, or,
- Use their residence a place of business that is for patients, clients, or customers in meeting or dealing with the owner in the normal course of the trade or business, or,
- Have a separate structure that is not attached to the dwelling in connection with the trade or business, or,
- Use part of the home for storage of inventory or product samples can if they sell products at wholesale or retail as their trade or business, the inventory or product samples are kept in the home for use in the trade or business, the home is the only fixed location of the trade or business, the storage space is used on a regular basis and the storage space is separately identifiable.

An individual that is a shareholder of a corporation or member of a limited liability company may want to claim the home office deduction. Deductible expenses include real estate taxes, deductible mortgage interest, rent, casualty losses, utilities, insurance, depreciation and repairs. When deducting expenses for business use of the home, depreciation can be claimed for the part of your home that is a home office. The part of your home that is a home office may be depreciated over a recovery period of 39 years using the straight line method of depreciation.

However, the entrepreneur should keep in mind that when the employee-taxpayer leases a part of the home to his employer-business, the home office deduction will be disallowed for such employee-taxpayer attempting to claim the deduction. Instead, for the residential space that meets the home office requirements, the employer-business should reimburse the employee (which includes officers, directors and independent contractors) for expenses for property and services provided so the employee can perform their job, such as office equipment maintenance, supplies, utilities and other such expenses. Such reimbursement will qualify as working condition fringe benefits to the extent the employee could deduct the cost as a business expense as if the employee paid for it. To qualify, the employee must meet substantiation requirements. Working condition benefits are exempt from taxation, so this is a great way to save on your employment tax.

A home office lease can benefit the entrepreneur in the following ways:

- Provides the company with a framework for a business deduction for the amount paid to the employee, shareholder, officer, director or independent contractor.

- Provides the shareholder of a corporation or member of an LLC a framework for creating a home office deduction when allowing the company to use a portion of the individual's home as a work place, storage, or garage for the company vehicle.
- Allows for the reimbursement of business expenses for employees of the company as working condition fringe benefits excludible from wages;
- It documents the actual commencement date and length of the lease agreement and allows for automatic renewals of the lease agreement to avoid additional lease preparation costs in the future.
- It is a legally binding, written lease agreement between the company and the employee, officer, director or independent contractor for use of a portion of the home. It complies with state law which generally requires all leases of real property for more than a stated period to be in writing.

By the numbers:

1. You rent a portion of your home that is used for business purposes to the company.
2. The company pays you rent each month for that portion of the home used for business purposes.
3. The rent paid by the company is a business expense and a tax deduction for the company.
4. If you are not an employee of the company, you claim the home office deduction. If you are an employee, the company reimburses you for property and services provided to you so you can perform your job, such as office equipment maintenance, supplies, utilities and other such expenses. These are working condition fringe benefits, which may be excluded from wages.

If you have any questions, please call any Spiegel & Utrera office listed below:

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