Company Meeting Space Rental

(a.k.a. Augusta Rule)

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HOW IT WORKS

Section 280(A) of the Internal Revenue Code grants an individual an ability to rent their home for less than 15 days per year without reporting that income or paying tax on it, so long as certain requirements are met. Business owners can use this to their advantage by holding legitimate business meetings in their home for a fee. When done right, the business gains a legitimate tax deduction while the homeowner (usually the business owner) gains the money tax free. Legitimate meetings could include board meetings, company parties, employee meetings or other types of meetings that are relatively infrequent and serve a legitimate business purpose.

HOW TO IMPLEMENT

One to three parties are required to implement this strategy:

1) You as the business owner need to have the meetings, make sure you obey the rules, and collect the proper documents.
2) Your bookkeeper (which could be you, your tax professional, or another third party) needs to make sure this is properly recorded in your books, which is typically done as a rent expense.
3) Your tax professional needs to make sure this is properly reported on your tax return, including taking into account any impact in your state.

REQUIREMENTS

To meet the requirements of Section 280(a), the following must exist:

1) There is a legitimate business reason for the rental
2) The owner charges the business a reasonable rate for the rental
3) The property is a qualifying residence
4) Proper documentation is kept

LEGITIMATE BUSINESS REASON

Legitimate business meetings could include (but are not limited to):

1) Board meetings
2) Company parties
3) Upper management meetings
4) Financial, legal, marketing, or other meetings
5) Business growth meetings

When planning appropriate meetings, it is best to avoid using those that are frequent, routine meetings, such as weekly staff meetings, daily partner discussions, or other meetings that typically occur more frequently than once a month.

REASONABLE RATE

The general rule of thumb is to charge a rate similar to what you would pay a third party to rent a space for your meetings. You could, for example, get quotes from event venues, hotels, or other locations that offer space in your area.

At Tax Hive, we frequently refer to a website called Peerspace (found at www.peerspace.com) to find reasonable rates. We will search for board rooms within a state. We will then determine a reasonable middle ground (which we have seen typically falls in the range of ($175-$275 per hour), and pull supporting documentation from the website for these rates. We like to recommend holding meetings that can justify a day rental so you can reasonably justify $1600 per meeting.

QUALIFYING RESIDENCE

There are two requirements for a property to fit the rules of a qualifying residence.

1) Rent a dwelling that also qualifies as one of your residences
2) The property is not rented out for more than 14 days per year

A dwelling unit, according to the code, includes a house, apartment, condominium, boat, mobile home, and similar property. It is proposed a residence should include basic living accommodations, including a sleeping space, a toilet, and cooking facilities.

To be a residence we like to recommend you use a property in which you live over 140 days because you have to live in the home for the greater of:

1) 14 days, or
2) 10% of the days you rent the unit

Remember the 14 day rule has been argued to apply on a rolling 12 month basis, which means you can't go over the 14 days in any 12 month period. For this reason we at Tax Hive like to recommend one meeting per month. It keeps you safely below the 14 day limit.

PROPER DOCUMENTATION

We strongly recommend the following documents as part of your audit defense in using this strategy:

1) A rental agreement for the use of the home (we recommend a new one for each use, though it can be a newly signed copy of previous agreements where dates and signatures are all you update).
2) Documentation of the meeting that took place (i.e. board meeting minutes or event pictures). Meeting minutes, if used, should include who was there, what was discussed, and the date the meeting was held. Pictures, if used, should include timestamps to support the claim.

3) An invoice sent from you to the company clarifying the date of the meeting and the rate charged.
4) Evidence the invoice was paid

The final pages of this document provide examples of these documents..

AN EXAMPLE OF THE AUGUSTA RULE:

Client A owns Corporation B, which files as a Subchapter S Corporation. As a Subchapter S Corporation, Corporation B is required to hold board meetings. Client A chooses Spouse C as a member of the board, and they elect to have monthly board meetings.

Client A does some research and determines an average range of $175-$275 per hour is normal for meeting spaces they find. Client A decides to rent the home to the business at $1600 per day (8 hours times $200 per hour), choosing not to be aggressive in rates. Over 12 days at $1600 per day, Client A charges Corporation B $19,200 per year for meetings.

Because Client A chooses not to rent the personal residence for any other reason, Client A stays below the 14 day limit and is allowed to exclude the rental income from their income. Corporation B pays the money to Client A, allowing Corporation B to claim a legitimate expense on their books.

SUPPORTING TAX LAW

1) IRC Section 280A(g)
2) IRC Section 280A(f)(1)(A)
3) Proposed IRC Section 1.280A-1(c)(1)
4) IRC Section 280A(d)(1)

COMMON MISTAKES AND HOW TO AVOID

1) Claiming the wrong amount in deductions
    a) We have often seen people use AirBnB rates for these rentals. Those rates will typically not give you the best deduction, reducing the value of this strategy for your business. On the flip side, we have occasionally seen people claim too much. In this case you run the risk of the IRS disallowing portions of your claim. The best way to prevent these is to use the website www.peerspace.com to generate rates or getting quotes from event venues in your state. These will usually provide you with better and more reliable rates than other options.
2) Using the Augusta Rule in a sole proprietorship
    a) The Augusta rule was developed based upon the IRS losing several arguments in court against individuals renting their home out to other people. No business was required. It is reasonable, then, to assume you can win an argument against the IRS when using this in your sole proprietorship. There is, however, one court case we have seen where part of the decision around the qualifications of the

Augusta rule was an evaluation of whether or not the company was an LLC or was simply a DBA. For that reason we are nervous taking the claim in a sole proprietorship that has need set up as an LLC. If you choose to use the Augusta rule in a DBA business, please note you are taking a significant risk. You can avoid this by setting up as an LLC with an EIN for that company. You can make it even more solid by making an S Corp election.

  b) We have also seen single member LLCs lose this election because they claim it using meetings that are not reasonable for that LLC, such as claiming it for board meetings in a single member LLC that has not elected to be taxed as an S Corp. A board meeting is not reasonable for these companies and is understandably rejected by the IRS. Make sure you are holding events that make sense and are reasonable for your company.

3) Lack of support
   a) If the IRS requests it, you will need to provide support. If you have it, they will often go away. If you don't, you'll likely have a problem. Make sure you have the proper documentation on file.
4) Exceeding the 14-day limit
   a) Any property that is rented out for more than 14 days is automatically disqualified from using this strategy. Make sure you pay attention to the 14-day limit on the property you will be using.
5) Charging rent for your home office
   a) Charging rent for your home office effectively puts you above the 14-day limit. It is better to claim that expense through reimbursement, not rent. It is even better if you do so through an accountable plan.
6) Primary place of business is in the home.
   a) The IRS has occasionally argued that you can't use the Augusta rule in a property that is your primary place of business. Technically you are allowed to use this rule in any qualifying residence, regardless of other things done in that residence. If, however, you have a place that qualifies as both a qualifying residence and your primary place of business, the IRS may choose to ignore the fact it is a qualifying residence, argue it is a primary place of business and not a residence, and then disallow the claim. This is technically incorrect, but we have seen no court case fighting this claim by the IRS. We do not regularly see them disallow the use of the Augusta strategy in these cases, but we have seen evidence they have done so in the past with taxpayers who have chosen not to fight it. With that in mind, we would argue you can use this strategy in this case, but you need to make sure you understand the risk and are comfortable with it before you do.

COMMON QUESTIONS

1) Can I use the Augusta Strategy if I claim the home office space?
   a) Yes, but you need to make sure you are doing it the right way. Please note there have been several taxpayers who have had this disallowed because they did not

do it the right way, which has led to several articles online incorrectly claiming you cannot. If your home office space is claimed through a rent expense, you will not be able to do the Augusta rule. If you continue to claim it as a home office deduction, not a rent, you will generally be fine. You can make this even more solid by establishing an accountable plan and running home office deductions through the accountable plan.

2) How do we report the Augusta strategy as an expense?
    a) Generally, we recommend including it under your rent expense on your Profit and Loss Statement. You can also claim it through any other category that makes sense to you. The key is to make sure you are doing it in a method that makes sense to you, allows you to make the decisions you need to make, and properly records it in the expenses of your business.
3) Can I use the Augusta strategy for each business?
    a) The Augusta strategy can only be used on a qualifying residence that is rented out for 14 days or less for any purpose. Each business can use the Augusta rule so long as that use fits within those rules. That means you cannot have each business rent your primary home for 14 days each. It can only be 14 days total, assuming you are not renting it on other days outside those 14 days.
4) Can I use the Augusta strategy as a sole proprietor?
    a) Yes, but you have some potential complications. There is one court case we have found on record where the decision as written includes an evaluation of whether the company in question was set up as an LLC or filing under a DBA. For this reason, we recognize the IRS has a better chance of successfully disallowing the Augusta rule if claimed under a DBA (sole proprietorship without an LLC structure). We strongly recommend you set up an LLC and claim this deduction through it.
    b) You should also know there are a lot of articles online stating you cannot claim the Augusta rule in a single-member LLC. That court case suggests this is wrong. The foundation for that argument comes from the fact several companies have had their claim disallowed. What these articles fail to consider, however, is that those claims are for companies claiming it the wrong way. For example, a single member LLC filing as a sole proprietorship does not need a board and should not hold board meetings. They should look for other ways to claim the deduction. These single-member LLCs using the Augusta strategy for board meetings have rightfully had the deduction disallowed because it is not reasonable for their entity to hold that kind of meeting. If you claim it for reasons that fit your business, you are unlikely to have an issue.
5) Can I use the Augusta strategy if I am a renter (don't own my home)?
    a) This is another area where a lot of details online are inaccurate. If you are not renting your home out to other people, it does not matter if you yourself are in fact a renter. The tax code in question indicates this can be used for apartments, condos, and other types of dwellings typically considered rentals. The key is it must be a qualifying residence.
6) Can I do the Augusta strategy using Zoom calls?

a) You can, but this is extremely risky. One of the biggest reasons the IRS rejects the claim of the Augusta strategy is failure to reasonably justify the reason for the claim. It can be hard to justify the need for a boardroom for Zoom meetings. It's best to have at least some members of the group that is meeting come to the home for the meeting.

7) Can both partners in a partnership use the Augusta strategy in their home?
   a) The Augusta rule works for any property meeting the requirements of being a qualifying residence and renting out for any purpose for 14 days or less. So long as both partners have a qualifying residence and ensure they don't exceed the 14-day limit, both partners can use the Augusta rule. The partnership, assuming these expenses are taken on the partnership level, does need to justify the need for those meetings. An alternative is to have each partner own their share through individual businesses and have those individual businesses hold board meetings or other qualifying reasons for renting the home.

8) What do I do with the support documents?
   a) The support documents are only needed if the IRS requests them. You do not need to give them to your tax preparer or your tax planner. Your bookkeeper may wish to see them, but even they don't need to do so in order for you to claim the expense. We still strongly encourage you to have these documents in case the IRS requests them.

9) Can I use the Augusta strategy in my rental business?
   a) Yes. It can be hard finding justification for these meetings, and you need to remember the potential complications if you run your rental business from your home as many rental companies do. If you are comfortable working around these complications by holding legitimate meetings or events needed for your rental business in your otherwise qualifying home, then you can claim this expense.

10) Can I use the Augusta rule with losses?
   a) No. The Augusta rule is not able to create or enhance a loss. You can use it to the extent of your profits or what is reasonable for your area.

EXAMPLE DOCUMENTS

The following pages contain examples of documents that can be used to evaluate what documents your company can use for the use of the corporate meetings, a.k.a. The Augusta Rule.

MINUTES OF THE MEETING OF DIRECTORS OF

____

A meeting of the directors was held at ______(insert location)_______, on the _______day of ______________, 20___.

The following members were present:

____

____

____

____

____

Appointed as the chairman of the meeting was _________________________.

The top five matters discussed, and the resolutions/actions determined include:

1. *Matter 1 - associated resolution or actions to be taken*
2. *Matter 2 - associated resolution or actions to be taken*
3. *Matter 3 - associated resolution or actions to be taken*
4. *Matter 4 - associated resolution or actions to be taken*
5. *Matter 5 - associated resolution or actions to be taken*

Any other important items to report on.

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AGREEMENT TO RENT RESIDENCE TO A CORPORATION

PARTIES

Property Owner: ___________________________________

Tenant/Renter: ____________________________________

PROPERTY ADDRESS

____

TERM

This rental agreement is for ONE day, being the ___ day of _____________, 20___.

RENT

The rate of rent shall be $__________ per day, due and payable within 30 days of receipt of the invoice.

AMENITIES

Amenities provided by the landowner for the use of the client are included in the cost of rent and shall include the following: ____.

SIGNED

The undersigned acknowledges that they have read the agreement and will comply with the terms.

Dated this ___ day of ____________, 20___.

________________________ Owner

________________________ Tenant

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VALUATION WORKSHEET

This valuation is being done for the purpose of determining a fair market rental rate for a meeting space for the board of directors of the below-named organization. Once the valuation is completed, the organization will determine which location it shall use for its meeting place. Aside from price, other factors to be considered include access to information and resources needed for decision making and other business purposes, convenience, and the atmosphere and location of the space provided. (see below or refer to attachments)

Organization: ____

First Location: ______________________________ Price________________

Amenities and Notes: ____

Second Location: ___________________________ Price________________

Amenities and Notes: ____

Third Location: _____________________________ Price________________

Amenities and Notes: ____

Fourth Location: ____________________________ Price________________

Amenities and Notes: ____

Fifth Location: ______________________________ Price________________

Amenities and Notes: ____

Sixth Location: _____________________________ Price________________

Amenities and Notes: ____

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