

Housing Benefits: The Brian Kelly/LSU Contract

By Martin J. Greenberg

Brian Kelly (“Kelly”) entered into a monstrous Employment and IP License Agreement with Louisiana State University and Agricultural and Mechanical College (“LSU”) dated as of April 8, 2022 after jumping his football coaching position at Notre Dame during a time when Notre Dame’s football team was Bowl bound. The contract has many provisions that are interesting for analysis purposes, but this article will dwell most significantly on Paragraph 6, Housing Benefits, of Schedule A (Supplemental terms for Brian Kelly and Brian Kelly Football, LLC).¹

In a 1992 Marquette Sports Law Review article entitled “Representation of College Coaches in Contract Negotiations,” I indicated that coaches’ compensation was based on three components which commonly denominate the total compensation as the “package:”

1. University pay - what the coach gets in salary and fringe benefits [from the university].
2. Outside income - this deals with whether a coach is an employee or an independent contractor, or retains some type of proprietary interest in the enterprise. Examples of outside income include radio and television deals, endorsements, camps, speeches and the like.
3. "Pepper Rodgers" income or perquisites - these are monies that are paid to the coach by virtue of him being the coach. Examples of perquisites might include a house, country club memberships, car, etc.²

¹ Employment and IP License Agreement for Brian Kelly, Head Coach, with Louisiana State University dated as of April 8, 2022, on file with the author.

² Martin J. Greenberg, Representation of College Coaches in Contract Negotiations, 3 MARQ. SPORTS L. J. 101 (1992) Available at: <https://scholarship.law.marquette.edu/sportslaw/vol3/iss1/9>.

In other words, the packages consists of institutional pay and benefits, outside income, and perquisites.

The first benefit as stated in Paragraph 6 of Schedule A in Kelly's contract is a Relocation Incentive and states as follows:

A. Employee shall receive a relocation incentive of \$35,000. To receive these funds, Employee must sign a Relocation Incentive Agreement which provides that all or part of the moving expense payment must be repaid to LSU if employment does not continue for at least two years from the Start Date. All relocation benefits are taxable compensation subject to withholding and other appropriate deductions.³

Relocation Incentives help a new employee cover or defray the costs of moving from one location to another in order to facilitate employment or job performance.⁴ A relocation package may include, but is not limited to, packing and moving, travel, short or long term housing, storage, moving insurance, employment assistance for coach's spouse, home sale/purchase, and tax assistance, to name a few.⁵ Some relocation packages cover the total costs of a move, but many provide either a lump sum benefit or limited reimbursement. The four types of relocation packages that employers may offer are:

1. Lump sum: Your employer gives you a set amount of money to help pay for your move; you decide how to spend the money.
2. Reimbursement: Your employer reimburses you for qualified moving expenses, usually up to a certain limit.

³ Employment and IP License Agreement for Brian Kelly, Head Coach, with Louisiana State University dated as of April 8, 2022, on file with the author.

⁴ Sato, Gayle, *Is My Relocation Package Taxable?*, Experian.com, Sept. 25, 2022, <https://www.experian.com/blogs/ask-experian/are-relocation-expenses-taxable/>.

⁵ *Id.*

3. Direct payment: Your employer pays for moving expenses directly, usually through selected or approved vendors.

4. Relocation services: Your employer may hire a relocation service to manage your move. Relocation specialists can coordinate movers, arrange temporary housing, book plane tickets and more.⁶

Another good example of a moving expense summary table is contained as Exhibit B to Jonathan Smith's Oregon State Contract effective 1/1/2017 which is attached hereto.

The IRS considers relocation benefits as taxable income. At least through 2025, the IRS requires employers to include moving expense reimbursement in the employees reported wages.⁷ This includes direct payments to movers or airlines and payments made to relocation services for the employees' benefit.⁸ Income tax may be withheld from the employee's relocation money as granted.⁹ Some employers in the determination of relocation packages will include the estimated taxes in their relocation payments.¹⁰ Some employers "gross up" their benefits by adding money for taxes.¹¹ If the employee relocation package is for a set or determined amount and if that employee spends more than that amount so allotted, normally and by virtue of the TCJA, those excess moving expenses would not be deductible.¹²

The second benefit as stated in Paragraph 6 of Schedule A in Kelly's contract is Temporary Housing and states as follows:

⁶ *Id.*

⁷ *Id.* See also 26 U.S. Code § 217 (Moving Expenses).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

B. If necessary, Employee shall be eligible for temporary housing at a site chosen by the Athletic Department for a period of not more than 90 days from the Start Date while securing permanent accommodation.¹³

Employer-provided housing is a perk that employers offer employees, especially those that are required to move from one location to another location. Temporary housing is also limited in time and either the employer will provide the housing or, in the alternative, pay for the housing so provided to the employee. In most instances, the employer is providing housing as a fringe benefit to attract an employee, the IRS will consider the value of the lodging, whether it is housing provided by the employer or the employer pays for temporary housing as a taxable benefit to the employee.¹⁴ However, the IRS permits employers to exclude the value of housing in three specific instances, i.e. (1) housing is on the business premises; (2) lodgings are offered for the employer's convenience; and (3) employees must accept housing as a condition of employment.¹⁵

The third provision, which is the most interesting in Paragraph 6 of Schedule A in Kelly's contract is the granting of an interest free equity loan and profit sharing. The provision states as follows:

C. LSU, or an affiliated foundation, shall provide a secured interest-free mortgage loan (not to exceed \$1,200,000) of 20 percent of the purchase price of Employee's primary domicile, located within a 30-mile radius of the LSU campus, to be used as Employee's residence. Upon the earlier of (i) the sale or other conveyance of the home, (ii) the date Employee begins to use the residence as a

¹³ Contract, *supra* Note 1.

¹⁴ Kosinski, Jena, *How to Offer Employer-provided Housing to Employees*, PatriotSoftware.com, Apr. 11, 2022, <https://www.patriotsoftware.com/blog/payroll/employer-provided-housing/>; See also 26 U.S. Code § 119 (Meal or Lodging furnished for the convenience of the employer).

¹⁵ *Id.*

rental property or as a residence for anyone other than himself or his spouse, or (iii) Employee accepts employment with someone other than LSU, Employee shall repay to lender the original loan amount in addition to 20 percent of the increased value of the home (net of transaction and related expenses and broker commissions associated with the sale or conveyance or based on appraised value if retained). The loan shall be subject to such other terms, conditions and stipulations as are mutually agreed to by the lender and Employee and not inconsistent with the terms of this Agreement.¹⁶

As noted above, Kelly is provided an interest free equity loan not to exceed \$1.2 million which would constitute 20% of the purchase price of Kelly's primary home located within 30 miles of the LSU campus.¹⁷ For example, if Kelly purchased a \$5 million dollar home, LSU would provide him the 20% of a down or equity payment, i.e.. \$1 million, without the necessity of paying any interest thereon. This provision also contains a profit-sharing component. Kelly is required to repay the equity loan upon the earlier occurrence of the following:

- (i) the sale or other conveyance of the home,
- (ii) the date Employee begins to use the residence as a rental property or as a residence for anyone other than himself or his spouse, or
- (iii) Employee accepts employment with someone other than LSU, Employee shall repay to lender the original loan amount in addition to 20 percent of the increased value of the home (net of transaction and related expenses and

¹⁶ Contract, *Supra* note 1.

¹⁷ *Id.*

broker commissions associated with the sale or conveyance or based on appraised value if retained).¹⁸

The payback to LSU shall be the original loan amount in addition to 20% of the increased value of the home (net of transaction and related expenses and broker commissions associated with the sale or conveyance or based on appraised value if retained).¹⁹

The question becomes is the “no interest” provision subject to the imputed interest provisions of the Internal Revenue Service. Imputed interest occurs when a taxpayer has borrowed money but the lender in this case, the University, charges no interest or an interest rate that is much lower than the market rate.²⁰ In most cases the lender is responsible for paying taxes on the imputed interest on a loan. The IRS established Applicable Federal Rates (AFR) through the Tax Reform Act of 1984.²¹ The AFR determines the lowest interest that one may charge on loans below a specific interest rate threshold and considers the amount of potential income generated from the interest rate as imputed income.²² There are several exemptions from the rules on imputed interest that allows the lender to avoid paying taxes on the difference between the actual and imputed interest rates.²³ Loans made by a qualified charitable organization, a political organization, or a non-profit organization may also be exempt from imputed interest.²⁴

Kelly’s contract is for a term of ten (10) years.²⁵ A house is normally a capital asset and is subject to capital gains. To get the benefit of capital gains you must have lived in the home which

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Chen, James, *Imputed Interest: What it is, How to Calculate, FAQs*, Investopedia, Jun. 9, 2023, <https://www.investopedia.com/terms/i/imputedinterest.aspm>. See also 26.U.S. Code § 7872 – Treatment of loans with below-market interest rates.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Contract, *Supra note 1.*

constitutes a principal asset for two of the last five years.²⁶ Presuming that Kelly complies with the term of his contract, any sale on his principal residence would be subject to a capital gains tax rates. The Taxpayer Relief Act of 1997, however, provides that a primary residence is exempt from capital gains taxes on the first \$250,000 if you are single and \$500,000 if you are married filing jointly.²⁷ The 20% increase in value which is payable to the University pursuant to the contract terms would not be considered as part of the capital gains upon which Kelly would be subject to paying taxes.

Conclusion

Housing benefits are another perquisite to entice and attract a high-powered coach to enter into a contractual relationship with a university. Kelly has an excellent housing benefits clause which covers the bases.

²⁶ Langager, Chad, *Capital Gains Tax on Home Sales*, Investopedia, Mar. 12, 2023, <https://www.investopedia.com/ask/answers/06/capitalgainhomesale.asp>. See also U.S. Code § 121 - Exclusion of gain from sale of principal residence.

²⁷ *Id.*