

BOARD OF TRUSTEES OF THE COLLEGERESOLUTION ON TAX LIABILITY FOR HOUSING

(Board of Trustees meeting, June 8, 1986)

(a) Authorizing the President and Vice-President for Business and Financial Affairs to enter into a Closing Agreement with the Director of the Bureau of Internal Revenue for the resolution of outstanding tax liability on housing allowance payments for the period 1982-1985;

(b) Authorizing the development and implementation of new housing regulations which would satisfy the College's obligations under IRS regulations and relieve the College of future tax liability.

WHEREAS, under the terms of their employment contract with the College, faculty members are required to live on campus and are provided on-campus housing or, in lieu thereof, a housing allowance of \$425 per month; and

WHEREAS, in a ruling dated March 20, 1986 the Bureau advised the College:

(a) that housing provided by the College to faculty does not meet the following three tests of Section 1.119-1(3)(b) of the IRS regulations which would make such housing exempt from income taxes:

- (i) The lodging is furnished on the premises of the employer;
- (ii) The lodging is furnished for the convenience of the employer, and
- (iii) The employee is required to accept such lodging as a condition of employment.

(b) that subparagraph (iii) is not determined by the terms of a contract, but means that the lodging is required in order for the employee to properly perform the duties of his employment, including being available at all times or he could not perform the services required of him unless he was furnished on premises lodging;

(c) that the fair market value of the housing or the allowance paid in lieu of housing is includible in gross income and subject to withholding taxes; and

WHEREAS, the College has been advised that it faces a potential liability on several fronts as follows:

(a) Although members of the faculty are personally liable for taxes on the housing allowance excluded from gross income, the College has a contingent liability for taxes which the institution failed to properly withhold;

(b) Additionally, the institution is open to the real possibility of law suits from faculty members to recover amounts they might be required to pay plus legal expenses because of expressed or implied representations made by the College in the contract that sets forth the terms and conditions of employment which faculty members accept; and

WHEREAS, the College wishes to avoid any litigation with members of the faculty and/or the Bureau of Internal Revenue on this matter, and would like to obtain finality as to the tax to be paid as well as the resolution of any related issues; and

WHEREAS, after exploring a range of possible alternatives it is the advice of legal counsel, and the tax consultants of Arthur Andersen that the College seek a Closing Agreement with the Bureau of Internal Revenue pursuant to the provisions of Section 1491, Title 33 of the Virgin Islands Code in order to obtain a legally binding lump-sum settlement which would conclusively bring this tax liability matter to a close; and

WHEREAS, the Director of the Bureau of Internal Revenue has indicated an interest in negotiating a closing agreement, and has in the spirit of the cooperation advised the College that (a) he would relieve the College and faculty members of liability on the value of housing in cases where there are persons ineligible for the tax exemption living in campus housing; (b) with respect to the payment of the housing allowance, he is prepared to forgive the years 1982 and 1983 and, in so doing, accept a total lump-sum of approximately \$200,000 for a potential liability of well over \$500,000 for the years 1982 through 1985;

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE COLLEGE:

Section 1. That the President and Vice-President for Business and Financial Affairs be and are hereby authorized to negotiate, conclude and sign a Closing Agreement with the Bureau of Internal Revenue on the College's behalf and on behalf of the members of the faculty for the purpose of conclusively resolving all issues related to tax liability on housing and housing allowance provided by the institution; subject to modification of the aforesaid terms and conditions by the attorney and staff of the College of the Virgin Islands to include consideration of installment payments of the settlement amounts, to include 1986 in the tax settlement, and utilization of sworn testimony from former governors and the former director of the tax division, as well as the possibility of communicating with the attorney for the Bureau of Internal Revenue;

Section 2. That the agreement to be concluded include provisions necessary to protect the interests of both the College and members of the faculty; reflect a settlement and terms of payments that take into account the College's ability to meet any required payment obligations on a timely basis;

Section 3. That the President and Vice President for Business and Financial Affairs are authorized to develop and implement new housing regulations which would satisfy the College's obligations under IRS regulations and relieve the institution of any future liability with respect to taxes on housing for faculty members;

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CERTIFICATION

The undersigned does hereby certify that the foregoing is a true and exact copy of a resolution of the Board of Trustees of the College of the Virgin Islands adopted at its meeting on June 8, 1986, as recorded in the minutes of said meeting.

Arthur A. Richards
Secretary of the Board