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INTERNAL REVENUE SERVICE  
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MEMORANDUM FOR RENEE BROTMAN

FROM: Heather C. Maloy  
Associate Chief Counsel  
(Income Tax & Accounting)  
By: George Baker

SUBJECT: Use of Vehicles by Law Enforcement Officers

This Chief Counsel Advice responds to your inquiry dated July 12, 2000, regarding the tax treatment of the use by employees of employer-provided vehicles. In particular, you have asked whether the rules in Rev. Rul. 99-7, 1999-1 C.B. 361, apply when a law enforcement agency provides unmarked vehicles to its employees to perform law enforcement functions. This memorandum may be shared with field offices. Chief Counsel Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be relied upon or otherwise cited as precedent.

LAW AND ANALYSIS

Section 61(a)(1) of the Internal Revenue Code provides that gross income includes compensation for services, including fringe benefits. Section 1.61-21(a) of the Income Tax Regulations provides that the use of an employer-provided automobile is a fringe benefit includible in the employee's gross income except to the extent it is specifically excluded from gross income.

Section 132(a)(3) excludes from gross income any fringe benefit that qualifies as a working condition fringe, defined in § 132(d) as any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under § 162 or § 167.

Rev. Rul. 99-7 provides that transportation expenses paid or incurred by an employee in going between the residence and certain temporary work locations are deductible under § 162(a). Also, Rev. Rul. 55-109, 1955-1 C.B. 261, provides that automobile expenses incurred in going between one business location and another business location generally are deductible under § 162(a). Thus, the value of the use of an employer-provided vehicle by an employee is excludable as a working condition fringe

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to the extent such transportation expense would have been deductible under Rev. Rul. 99-7 or Rev. Rul. 55-109 if paid or incurred by the employee.

However, § 1.132-5(h) provides a special rule that, generally, 100 percent of the value of the use of a qualified nonpersonal use vehicle (as described in § 1.274-5T(k)) is excluded from gross income as a working condition fringe. Section 1.274-5T(k) provides rules under § 274(i), which defines “qualified nonpersonal use vehicle” as any vehicle which, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes. Section 1.274-5T(k)(2)(ii)(R) includes in the list of qualified nonpersonal use vehicles “Unmarked vehicles used by law enforcement officers (as defined in paragraph (k)(6) of this section) if the use is officially authorized.” Section 1.274-5T(k)(6) defines the term “law enforcement officer” and describes the scope of officially authorized personal uses, and it provides that the vehicle must be owned or leased by the law enforcement agency.

Accordingly, if a law enforcement agency provides an unmarked vehicle to an employee under circumstances that meet all the rules for a qualified nonpersonal use vehicle as described in the regulations cited above, the full value of the use of the vehicle is excluded from the employee’s gross income as a working condition fringe under § 1.132-5(h), and the employer will not be required to rely on Rev. Rul. 99-7 or Rev. Rul. 55-109 to exclude this value. However, the special rule provided in § 1.132-5(h) only applies to the value of the use of employer-provided vehicles, and it does not apply to the use of the employee’s personal automobile.

Please note that this memorandum considers only whether Rev. Rul. 99-7 applies when a vehicle is a “qualified nonpersonal use vehicle” under § 1.274-5T(k); it is not intended to provide guidance on the proper application of the “qualified nonpersonal use vehicle” rules.