

INTERNAL REVENUE SERVICE

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Dear [REDACTED]:

This letter is in response to your inquiry to Senator [REDACTED] about the federal tax consequences to State of [REDACTED] employees resulting from the use of State-provided vehicles. The Senator's office asked us to respond directly to you. In your letter, you question whether the value of the use of State-provided vehicles should be exempt from federal income tax in light of the State's policy against the personal use of State vehicles. I hope the following general information will be helpful to you.

Commuting-Use Value is Generally Included in Income

Gross income means all income from whatever source derived, including (but not limited to) compensation for services, including fees, commissions, and *fringe benefits*. [Section 61(a)(1) of the Internal Revenue Code (the Code).]

Gross income does not include any fringe benefit that qualifies as a working condition fringe benefit. The term "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or service, such payment would be allowable as a deduction under section 162 (trade or business expenses). [Sections 132(a)(3) and 132(d) of the Code.] Use of a State-owned vehicle to perform official duties is a working condition fringe and thus does not result in income to the employee.

However, an employee's costs of commuting between home and work generally are nondeductible personal expenses under sections 1.162-2(e) and 1.262-1(b)(5) of the Income Tax Regulations (regulations). Thus, the value of the commuting use of an employer-provided vehicle is generally income to the employee. An exception to this rule exists if the vehicle is a qualified nonpersonal use vehicle.

Qualified Nonpersonal Use Vehicles

The value of the use of a qualified nonpersonal use vehicle as described in section 1.274-5T(k) of the temporary regulations (copy enclosed) is generally excluded from gross income as a working condition fringe benefit. [Section 1.132-5(h) of the regulations.]

The term "qualified nonpersonal use vehicle" means any vehicle which, by reason of its nature (i.e. design), is not likely to be used more than a de minimis amount for personal purposes. Vehicles which are qualified nonpersonal use vehicles include, in part, clearly marked police and fire vehicles. [Section 1.274-5T(k)(2) of the temporary regulations.]

The [REDACTED] document you refer to describes many types of qualified nonpersonal use vehicles. You ask specifically about item # 16 of the [REDACTED] document, which describes certain pick-up trucks and vans. Pick-up trucks and vans are not qualified nonpersonal use vehicles "unless the truck or van has been specially modified with the result that it is not likely to be used more than a de minimis amount for personal purposes." [Section 1.274-5T(k)(7) of the temporary regulations.] Thus, the *design* of the pick-up or van determines whether it is a qualified nonpersonal use vehicle; the State of [REDACTED] policy against personal use does not cause State vehicles to be qualified nonpersonal use vehicles.

To summarize, whether using a State-owned vehicle results in income to the employee depends upon whether the value of the use is a working condition fringe. Use of the vehicle for official State business is a working condition fringe. But the commuting value of using a State-owned vehicle is not a working condition fringe unless the vehicle is a qualified nonpersonal use vehicle. Whether a vehicle is a qualified nonpersonal use vehicle depends upon the design of the vehicle irrespective of the employer's policy on personal use.

This letter will be available for public inspection under the Freedom of Information Act after names, addresses, and other identifying information have been deleted.

I hope this information will be helpful to you. If we can be of further assistance, please contact me at (202) 622-6010 or John Richards (ID # 50-08837) of this office at (202) 622-6040.

Sincerely,

Mary Oppenheimer
Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

Enclosure

