



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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January 31, 2002

[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]:

I apologize for the delay in responding to your October 16, 2001 inquiry on behalf of your constituent, [REDACTED]. Her inquiry involves two issues:

- The tax rules for fuel used by nonprofit organizations that provide public transportation.
- The allowable personal automobile mileage rates.

I will address the fuel tax issue. A representative of the Associate Chief Counsel (Income Tax & Accounting) will respond to you about the mileage rate issue.

The Internal Revenue Code (the Code) generally taxes gasoline before the consumer buys it. However, the Code allows a refund of the gasoline tax if gasoline is used:

- In a bus while furnishing for hire passenger land transportation available to the general public. The bus must be engaged in either (1) scheduled transportation along regular routes, or (2) nonscheduled (charter) operations if the seating capacity of the bus is at least 20 adults, not including the driver.
- For the exclusive use of a state or local government.
- For the exclusive use of a nonprofit educational organization.

[Sections 6416(b)(2) and 6421 of the Code]

For purposes of this refund, the term "nonprofit educational organization" means an educational organization described in section 170(b)(1)(A)(ii) of the Code, which is exempt from income tax under section 501(a). An educational organization is one that

normally maintains a regular faculty and curriculum and has a regularly enrolled body of students at the place where its educational activities are carried on [Section 170(b)(1)(A)(ii) of the Code]. A nonprofit educational organization must have as its primary function the presentation of formal instruction [Section 1.170A-9(b)(1) of the Income Tax Regulations]. The law does not allow us to refund the tax on gasoline sold to other nonprofit organizations.

I hope this information is helpful. If you have any questions, please contact me at (202) 622-3130.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:

Richard A. Kocak
Chief, Branch 8