



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

CHIEF COUNSEL

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CC:TEGE:EOEG:ET2 [REDACTED]
CONEX-106154-04
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[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]:

This letter is in response to your letter of January 27, 2004, requesting guidance on the income tax consequences of local [REDACTED] law enforcement officers' use of unmarked law enforcement vehicles.

Generally, the Internal Revenue Service cannot provide binding legal advice applicable to any particular taxpayer. However, if a taxpayer wants formal guidance, he or she can request a private letter ruling, following the procedures set forth in Revenue Procedure 2004-1 (copy enclosed). Without a request for formal guidance, we can only provide general information, which we hope is helpful to you.

Working Condition Fringes

Gross income, as defined in Internal Revenue Code (the Code) section 61, includes compensation for services including fringe benefits such as an employer provided automobile. A fringe benefit provided in connection with the performance of services is considered to have been provided as compensation for such services under section 1.61-21(a)(3) of the Income Tax Regulations (the Regulations). However, section 132(d) of the Code provides an exclusion from gross income for working condition fringes.

A working condition fringe is any property or services an employer provides to an employee to the extent that if the employee paid for the property or services we would allow the payment as a deduction under section 162 or 167 of the Code. If an employer provides an employee with unrestricted use of a vehicle, the employee receives a non-cash fringe benefit and the value attributable to the employee's personal use of the

vehicle is required to be included in the employee's gross income. However, the value that is attributable to employee's business use of the employer's vehicle is excluded from the employee's gross income as a working condition fringe, provided the employee substantiates its business use under section 274(d) of the Code and section 1.274-5T of the Regulations.

Qualified Non-Personal Use Vehicles

An employee can exclude the value of a "qualified non-personal use vehicle" from gross income as a working condition fringe if the use of the vehicle conforms to the requirements of paragraphs (k)(3) through (7) of section 1.274-5T of the Regulations. An employee does not have to substantiate the business use of a qualified non-personal use vehicle in order to exclude its value from gross income.

A qualified non-personal use vehicle means any vehicle which, by reason of its nature, is not likely to be used more than a minimal amount for personal purposes (Section 274(i) of the Code). Examples include, but are not limited to, a fire engine, a clearly marked police vehicle, a flatbed truck, a school bus, or an ambulance.

Only in limited circumstances can an unmarked police car qualify as a non-personal use vehicle. In this regard, the driver must be a "law enforcement officer." The officer must

- be a full-time employee of a governmental unit that is responsible for preventing or investigating crimes involving injury to persons or property (including catching or detaining persons for these crimes);
- be authorized by law to carry firearms, execute search warrants, and to make arrests; and
- regularly carry firearms, except when it is not possible to do so because of the requirements of undercover work.

Additionally, the government agency or department that owns or leases the vehicle and employs the officer must authorize any personal use of the vehicle. Finally, the use must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips cannot qualify as an authorized use. [Section 1.274- 5T(k)(6) of the Regulations]

For example:

Detective C, who is a "law enforcement officer" employed by a state police department, headquartered in city M, is provided with an unmarked vehicle (equipped with radio communication) for use during off-duty hours because C must be able to communicate with headquarters and be available for duty at any time (for example, to report to a surveillance or crime site). The police department generally has officially authorized

personal use of the vehicle by C but has prohibited use of the vehicle for recreational purposes or for personal purposes outside the state. Thus, C's use of the vehicle for commuting between headquarters or a surveillance site and home and for personal errands is authorized personal use as described in paragraph (k)(6)(i) of this section. With respect to these authorized uses, the vehicle is not subject to the substantiation requirements of section 274(d) and the value of these uses is not included in C's gross income. [Section 1.274-5T(k)(8) of the Regulations]

In the example, the unmarked vehicle is a qualified non-personal use vehicle because all the requirements of Regulations section 1.274-5T(k)(6) are met. The driver is a law enforcement officer, the State governmental agency or department that owns or leases the vehicle and employs the officer authorized personal use of the vehicle, and the personal use is incident to law enforcement functions. However, if any of these requirements had not been met, the employee could still exclude the value attributable to the business use of the vehicle as a working condition fringe provided he or she had adequately substantiated the business use.

I hope this information is helpful. If you have additional questions or if we may assist you further, please call me [REDACTED]

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
Office of Assistant Chief Counsel
(Exempt Organizations / Employment Tax /
Governmental Entities)