



CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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The Honorable Russell D. Feingold
United States Senator
517 East Wisconsin Avenue
Milwaukee, WI 83202

Attention: Hope DeVougas

Dear Senator Feingold:

This letter responds to your inquiry of June 16, 2004, on behalf of your constituent, Mr. . Mr. requested that the IRS amend the "qualified non-personal use vehicles" list in Publication 15-B to include "Highway Commissions and Patrol Superintendent vehicle used for highway purposes." I hope the following general information on qualified non-personal use vehicles is helpful.

Working Condition Fringes

Gross income includes compensation for services including fringe benefits such as an employer provided automobile (Section 61 of the Internal Revenue Code (the Code)). A fringe benefit provided for the performance of services is compensation for these services (Section 1.61-21(a)(3) of the Income Tax Regulations (the Regulations)). However, the law provides an exclusion from gross income for working condition fringes (Section 132(d) of the Code).

A working condition fringe is any property or services an employer provides an employee 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 employee must include the value attributable to his or her personal use of the vehicle in gross income. However, the employee can exclude the value attributable to employee's business use of the employer's vehicle from gross income as a working condition fringe, if he or she substantiates its business use (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. A qualified non-personal use vehicle is any vehicle that, 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 cement mixer, a school bus, or an ambulance. An employee does not have to substantiate the business use of a qualified non-personal use vehicle to exclude its value from gross income, due to the low risk of personal use.

Request for an Amendment to the Regulations

The list of qualified non-personal use vehicles in Publication 15-B originates in section 1.274-5T(k)(2)(ii) of the Regulations. If Mr. _____ would like to recommend an amendment to the Regulations, Notice 2004-26 (copy enclosed) provides instructions on recommending changes to the Internal Revenue Service's Guidance Priority List. If, Mr. _____ would like a formal opinion on whether the vehicles the Highway Commissions and Patrol Superintendent drive are qualified non-personal use vehicles, he can request a private letter ruling, following the procedures in Revenue Procedure 2004-1, 2004-1 I.R.B. 1 (copy enclosed). Without a request for a private letter ruling, I can only provide general information.

Again, I hope this information is helpful. If you have additional questions or need further assistance, please call me or _____ at _____.

Sincerely,

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

Enclosures (2)