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

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Nov 15 2004

The Honorable
United States Senate
Washington, DC 20510

Dear Senator :

This letter responds to the inquiry dated September 27, 2004, from you and Senator _____ on behalf of the _____ and the _____. You wrote about the Service's 2004-2005 Guidance Priority Plan (Plan).

You asked us to reexamine and clarify the rules determining whether certain agent-drivers and commission drivers of _____ are statutory employees (section 3121(d)(3)(A) of the Internal Revenue Code (the Code)). You also asked us to reconsider the position we took in General Counsel Memorandum (GCM) 39853 (June 20, 1991), which concludes that route ownership is not an investment in facilities that exempts a worker from statutory employee status if the investment is substantial. The _____ requested that we put reconsideration of the GCM on the IRS's 2004-2005 Plan.

The Department of Treasury Office of Tax Policy and the IRS released the 2004-2005 Plan on July 26, 2004. We received many suggestions for items to be included in the Plan. Consideration of items for the Plan was made at the highest levels of the IRS. Although the reexamination and clarification of the rules for determining whether certain agent-drivers and commission drivers of _____ are statutory employees was not included, projects can be added through the course of the year. We will make note of your suggestion and keep it in mind when we are asked to propose projects that could be added to the Plan.

Thank you for your letter. If you have further questions, please contact me at
or of my staff at .

Sincerely,

Catherine E. Livingston
Associate Chief Counsel
(Tax Exempt and Government Entities)