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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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The Honorable Jerry Moran
U.S. House of Representatives
Washington, DC 20515

Attention:

Dear Mr. Moran:

I am responding to your letter dated April 16, 2007, about the requirement that emergency medical service and emergency management employees who commute to work in county-owned vehicles include a minimum of \$3.00 per day in commuting expenses in gross income. You also asked about the tax treatment of employer-provided cellular telephones. I hope the following information is helpful.

Qualified Nonpersonal Use Vehicles

Generally, employees must include the value of an employer-provided vehicle used for commuting purposes in income (Section 132 of the Internal Revenue Code (the Code)). However, the Code and Treasury Regulations (the Regulations) provide certain exclusions for qualified nonpersonal use vehicles. Employees can exclude 100 percent of the value of the use of a "qualified nonpersonal use vehicle" from gross income as a working condition fringe (Section 1.132-5(h) of the Regulations).

A "qualified nonpersonal use vehicle" is any vehicle which, by reason of its nature, an employee is not likely to use more than a minimum amount for personal purposes (Section 274(i) of the Code). Cement mixers, moving vans, and forklifts are examples of the types of vehicles exempt from taxation as qualified nonpersonal use vehicles. Passenger automobiles such as sedans are generally not exempt from taxation because by design, they can easily be used for personal purposes. However, as you noted in your letter, the regulations provide that qualified nonpersonal use vehicles include clearly marked police and fire vehicles and unmarked law enforcement vehicles used by law enforcement officers.

Your submission and the attachments present factors in support of a position that EMS and EM vehicles are similar to police vehicles in ways that are relevant to the Code section 132 exception for qualified nonpersonal use vehicles. Presently the regulations do not include county-owned automobiles driven by emergency medical service personnel and emergency management personnel as qualified nonpersonal use vehicles. However, the Regulations do provide that the Commissioner may designate other vehicles as qualified nonpersonal use vehicles. This authority is consistent with the legislative history on this issue which provides that Treasury and the Service may issue guidance expanding the list of vehicles and identify other appropriate qualified nonpersonal use vehicles where that can be done while preserving the basic requirement that the exception be limited to vehicles that, by their nature, employees are not likely to use more than a minimum amount for personal purposes.

You have asked that we give full consideration to designating EMS and EM vehicles as qualified nonpersonal use vehicles. This is the time of year when the IRS and the Treasury Department are determining what issues should be addressed in the coming year through the issuance of new regulations and other forms of published guidance. I have raised the issues in your letter with our counterparts at the Treasury Department and I speak for that office as well as ours in assuring you that the IRS and the Treasury Department will carefully consider and evaluate whether we can and should open a guidance project on this issue as part of our upcoming guidance plan.

Cellular Telephones

Government employers frequently provide their employees with cellular telephones for business purposes. This can raise special tax issues, because under the Code, cellular telephones are "listed property". "Listed property" includes items obtained for use in a business but designated by the Code as lending themselves easily to personal use. Hard-wired telephones are not listed property, because they remain in the office at all times and are less susceptible to personal use.

An employer can exclude an employee's use of an employer-provided cell phone from the employee's gross income, if the employer has some method of requiring the employee to keep records that distinguish business from personal phone charges. If the employee uses the telephone exclusively for business, all use is excludable from income (as a working condition fringe benefit). The employer must include the value of any personal use of the cell phone in the employee's wages. Personal use includes individual personal calls, as well as a pro rata share of monthly service charges.

To ensure that an employee's business use of an employer-provided cell phone is excludable from gross income, the employee should keep a record of each call and its business purpose. If calls are itemized on a monthly statement, the employee should identify each call as personal or business. The employee should submit this information

to the employer, who must maintain these records to support the exclusion of the phone use from the employee's wages. If the employee does not use the cell phone to make personal calls, or has only minimal personal use of the cell phone, the business use of the phone is not taxable to the employee.

We hope this information is helpful. If you have questions or need further assistance in these matters, please contact me or _____ of my staff at () _____.

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
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