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INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Dear _____ :

This is in response to your letter dated May 20, 2008, requesting information on the applicability of the commuting valuation rule with respect to vehicles the County provides to its employees. You asked whether the commuting valuation rule can be used to value the personal use of vehicles that the County provides to all of its employees, including elected officials.

Fringe Benefit Background

Internal Revenue Code (Code) § 61(a)(1) provides the general rule that gross income means all income from whatever source derived including the value of fringe benefits provided as compensation for services. However, Code § 132(a)(3) provides an exception to the general rule: gross income does not include any fringe benefit which qualifies as a working condition fringe. The term working condition fringe means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under Code § 162, relating to ordinary and necessary business expenses.

Code § 262 provides that no deduction is allowed for personal expenses. Income Tax Regulation (Regulation) § 1.262-1(b)(5) states: "The taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses." Thus, if an employer gives an automobile to an employee to be used in the employer's business, and that employee also uses that automobile to commute to and from the place of business, the value of the commuting use of the automobile is not excludable as a working condition fringe and the employer

must include an amount attributable to the value of commuting in the employee's gross income.

Commuting Valuation Rule

The amount that must be included in the employee's gross income for personal use is generally determined by reference to fair market value unless the employer elects to use one of the special valuation rules set forth in the Regulations. The commuting valuation rule is one of the special valuation rules that an employer may elect to use if all of the following requirements are met:

- The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business, and is used in the employer's trade or business;
- For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle;
- The employer has established a written policy under which neither the employee nor any individual whose use would be taxable to the employee, may use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home);
- Except for de minimis personal use, the employee does not use the vehicle for any personal purposes other than commuting; and
- the employee required to use the vehicle for commuting is not a control employee of the employer.

If all of these requirements are met, the commuting use of an employer-provided vehicle is valued at \$1.50 per one-way commute under the commuting valuation rule. [Regulation § 1.61-21(f)(1)].

You asked whether governmental employers can use the commuting valuation rule with respect to vehicles provided to elected officials. The answer to this question depends upon how the employer chooses to define control employees. As noted above, the commuting valuation rule may not be used to value vehicles provided to control employees. Governmental employers may choose between two alternative definitions of control employees. [Regulation § 1.61-21(f)(6)]. The first alternative defines a control employee of a government employer as any (i) elected official, or (ii) employee whose compensation equals or exceeds the compensation paid to a federal Government employee holding a position at Executive Level V, determined under Chapter 11 of title 2, United States Code, as adjusted by section 5318 of Title 5 United States Code. For 2008, Executive Level V compensation amounts to '\$139,600.

Governmental employers who use this definition of control employee may not use the commuting valuation rule to value vehicles provided to elected officials.

Alternatively, governmental employers may choose to define control employee as any highly compensated employee. A highly compensated employee for 2008 is an employee who either (i) was a 5% owner at any time during the year or the preceding year; or (ii) received more than \$100,000 in pay for the preceding year. However, employees who are not in the top 20% of employees when ranked by pay for the preceding year are not considered control employees for purposes of this definition. Under this definition, elected officials may or may not constitute control employees depending on how much they were paid for the preceding year and whether their level of compensation is in the top 20% of employees when ranked by pay for the preceding year.

Qualified Nonpersonal Use Vehicles

You also mentioned the exclusion from income for the use of employer-provided qualified nonpersonal use vehicles. These are vehicles that, by reason of their design, are not likely to be used more than a very limited (*de minimis*) amount for personal purposes. [Regulation § 1.274-5T(k)]. Some of the more common types of qualified nonpersonal use vehicles used by governmental entities include:

- Clearly marked police and fire vehicles,
- Ambulances used as such,
- Dump trucks,
- School buses (as defined in Code § 4421(d)(7)(C)), and
- Unmarked vehicles used by law enforcement officers if the use is officially authorized.

If the employer-provided vehicle is a qualified nonpersonal use vehicle, then no amount is includible in the employee's gross income and the entire fair market value of the vehicle's use by the employee is excluded from the employee's gross income as a working condition fringe. See Regulation § 1.274-5T(k)(2)(ii) for a complete list of qualified nonpersonal use vehicles. Whether a vehicle provided to an employee constitutes a qualified nonpersonal use vehicle depends upon the nature of the vehicle and, in some cases, the nature of the individual's employment responsibilities.

Employers who are not eligible to use the commuting valuation rule because the specific requirements are not met, or whose vehicles are not qualified nonpersonal use vehicles, have several other optional methods available for determining the value of the personal use of an employer provided vehicle for inclusion in an employee's income. In this regard, an employer may use either the vehicle-cents-per-mile valuation rule or the automobile lease valuation rule, if the special requirements for the use of either of these rules are satisfied. If neither of these rules are available, an employer may use the general valuation rule to determine the value of the fringe benefit. In general the fair

market value of an employer-provided vehicle is the amount the employee would have to pay a third party to lease the same or similar vehicles on the same or comparable terms in the geographic area where the employees uses the vehicle.

Further information on the valuation rules used to value an employee's use of an employer provided vehicle are contained in Publication 15-B, Employers Tax Guide to Fringe Benefits. We have enclosed a copy of the 2008 Publication 15-B for your use.

You submitted a list of job titles of employees who drive vehicles provided by the County along with the make, model and year of the vehicles, and asked that we determine whether the commuting valuation rule applies to all of the job titles listed. Unfortunately, we are not able to issue a ruling on these issues due to the fact that your submission does not comport with the requirements for requesting a private letter ruling. Revenue Procedure 2008-1, 2008-1 I.R.B. 1, sets forth procedures for requesting letter rulings. If you wish to request formal guidance, such as a private letter ruling, you should follow the procedures set forth in Revenue Procedure 2008-1. In the absence of a request for formal guidance, we are only able to provide general information. This letter describes well-established interpretations and principles of tax law without applying them to a specific set of facts. It is advisory only and has no binding effect with the Internal Revenue Service. This letter is intended only to provide you with general guidance for determining how to comply with applicable law.

We hope that this information is helpful to you. If you have any questions, please contact _____ of my staff at _____.

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
(Exempt Organizations/Employment
Tax/Government Entities)
(Tax Exempt & Government Entities)

Encl: 15B, Employer's Guide to Fringe Benefits