



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

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OFFICE OF
CHIEF COUNSEL

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The Honorable David Obey
Member, U.S. House of Representatives
First Star Plaza
401 5th Street, Suite 406A
Wausau, WI 54403

Attention:

Dear Congressman Obey:

This responds to your letter dated November 12, 2008, on behalf of your constituent,

asked whether any exceptions to the requirement to provide Forms 1099 to volunteer drivers existed under the facts outlined in her letter.

An exception does exist. If does not know how much of the reimbursement each volunteer will exclude from gross income, the amount included is not fixed and determinable and information reporting is not required.

Generally, all persons, including not-for-profit corporations, who make payment of fixed or determinable income in the course of business to another person of \$600 or more in any taxable year must provide an information return, Form 1099-MISC, to the IRS (section 6041 of the Internal Revenue Code). Income is determinable whenever a basis of calculation exists by which the payor can determine the amount to be paid (section 1.6041-1(c) of the Income Tax Regulations). Therefore, if a charity only pays a volunteer reimbursement for actual expenses, or if the charity is unaware that the volunteer's reimbursement exceeds actual expenses, no fixed or determinable income exists and the charity has no information reporting obligations.

is correct that the charitable deduction rate for volunteer drivers is only 14 cents per mile. However, the legislative history of section 170(i) indicates that the use of this rate is not mandatory, and a taxpayer may always use actual allowable expenses. Gas and oil are allowable expenses, but depreciation, maintenance, and insurance are not allowable expenses. Therefore, the volunteers must recognize as income either (1) the difference between the reimbursement rate and 14 cents per mile or (2) their actual expenses.

I hope this information is helpful. If we can be of further assistance, please contact
or at .

Sincerely,

Deborah A. Butler
Associate Chief Counsel
(Procedure & Administration)