



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

OFFICE OF THE CHIEF COUNSEL

December 07, 2009

Number: **INFO 2009-0221**
Release Date: 12/31/2009

CC:TEGE:EOEG:ET2
CONEX-149438-09

UIL: 274.10-00

Dear :

This letter responds to your request dated October 28, 2009, for the opinion of the Internal Revenue Service as to whether the vehicles issued to employees who are on 24-hour call for emergency response to suppress wildfires are qualified nonpersonal use vehicles within the meaning of Internal Revenue Code (Code) § 274(i).

As a general matter, apart from the procedure for issuing a formal opinion, as described in Revenue Procedure 2009-1, 2009-1 C.B. 1, the IRS is not able to provide binding legal advice applicable to particular taxpayers. We have enclosed a copy of Revenue Procedure 2009-1 for your reference. In the event that you decide to request formal guidance, such as a letter ruling, you should follow the procedures set forth in Revenue Procedure 2009-1. In the absence of a request for formal guidance, we are only able to provide the following general information, which we hope will be helpful to you.

The Code provides that employees must include in their income any compensation they receive for services, including employer-provided fringe benefits [Code § 61(a)]. An employee's personal use of an employer-provided automobile is a fringe benefit. Because expenses employees incur commuting between home and work are considered personal expenses, employees must generally include the value of the personal commuting use of employer-provided automobiles in income.

However, Congress provided a limited exception to this rule for qualified nonpersonal use vehicles. Income Tax Regulations provide that 100 percent of the value of the use of a qualified nonpersonal use vehicle is excluded from gross income as a working condition fringe benefit [Income Tax Regulation § 1.132-5T(h)]. Code § 274(i) defines a "qualified nonpersonal use vehicle" as "any vehicle which, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes."

Income Tax Regulation § 1.274-5T(k)(2)(ii) provides a list of vehicles that are qualified nonpersonal use vehicles. The regulations provide that a clearly marked fire vehicle is a qualified nonpersonal use vehicle. A clearly marked fire vehicle is a vehicle, owned or leased by a governmental unit, or any agency or instrumentality thereof, that is required to be used for commuting by a fire fighter who, when not on a regular shift, is on call at all times, provided that any personal use (other than commuting) of the vehicle outside the limit of the fire fighter's obligation to respond to an emergency is prohibited by such governmental unit. A fire vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a fire vehicle.

In evaluating whether a particular vehicle is a clearly marked fire vehicle and a qualified nonpersonal use vehicle, consideration should be given to the amount of time an employee devotes to suppressing wildfires and the amount of time the employee devotes to other activities. This is one factor that the IRS considered when it determined in a letter ruling that certain vehicles provided by a government agency to its employees were not qualified nonpersonal use vehicles [PLR 8748009]. We have enclosed a copy of the letter ruling for your information. Although letter rulings do not provide any precedential authority, they do provide a glimpse at the Service's analysis in similar situations.

If you have any questions, or need further assistance in his matter, please contact
at .

Sincerely,

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

Enclosures: (2)