



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

OFFICE OF THE CHIEF COUNSEL

December 02, 2009

Number: **INFO 2009-0241**
Release Date: 12/31/2009

CC:TEGE:EOEG:ET2
CONEX-148963-09

UIL: 274.10-00

Dear _____ :

I am responding to your letter dated October 19, 2009, addressed to Internal Revenue Service Commissioner Douglas Shulman. The Commissioner has asked me to respond to your letter. You requested that the IRS amend its regulations to allow an automobile assigned to an inspector for the Department of Agriculture in your state to be treated as a qualified nonpersonal use vehicle.

The Internal Revenue Code (Code) provides that compensation for services, including the value of employer-provided fringe benefits, is includible in an employee's income [Code section 61(a)(1)]. The personal use of an employer provided automobile is a fringe benefit. Commuting between home and work is a personal expense. As a general rule, the value of the personal use of an employer-provided automobile must be included in the employee's income.

However, Congress has provided a limited exception to this rule for qualified nonpersonal use vehicles. Thus, one hundred percent of the value of the use (including personal use) of a qualified nonpersonal use vehicle is excluded from gross income as a working condition fringe benefit. 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." Under the statute, it is the nature of the vehicle and not rules imposed by the employer on the employee which make it likely that a qualified nonpersonal use vehicle will not be used more than a minimal amount for personal purposes. For example, ambulances, cement mixers, and forklifts are included in the list of qualified nonpersonal use vehicles set forth in Income Tax Regulation § 1.274-5T(k).

Passenger automobiles like the sedan described in your letter are generally not exempt from taxation as qualified nonpersonal use vehicles because by design they can easily be used for personal purposes. For this reason the only passenger automobiles that meet the definition of qualified nonpersonal use vehicles under the regulations are certain vehicles used by public employees involved in law enforcement and emergency response matters, including police officers, law enforcement officers, and firefighters.

As you noted in you letter, Regulation § 1.274-5T(k)(2)(ii)(S) provides that the Commissioner may designate other vehicles as qualified nonpersonal use vehicles. In fact, the IRS recently proposed that the list of qualified nonpersonal use vehicles be expanded to include clearly marked "public safety officer vehicles". See 2008-25 I.R.B. 1175, Notice of Proposed Rulemaking, REG-106897-08. It is appropriate to include these vehicles because they are utilized by public employees involved in emergency response and public safety matters.

We hope this information is helpful to you. If you have any questions or need further assistance in this matter, please contact _____ of my office. _____ can be reached at _____.

Sincerely,

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