



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 Richard M. Nolan
Member, U.S. House of Representatives
Chisago County Courthouse
313 North Main Street, Room 103
Center City, MN 55012

Attention:

Dear Congressman Nolan:

I am responding to your inquiry dated October 27, 2014, on behalf of your constituent, . asked whether he must pay income tax on reimbursements he receives from his employer for the expenses of driving his car when his employer calls him back to work from home, even though the employer does not place him on an "on call status."

Employees must include in gross income reimbursements they receive from their employer of the expenses of driving their cars between their residence and their regular place of work. In addition, these reimbursements are wages for employment tax purposes, and the employer must report them on Form W-2, Wage and Tax Statement.

Gross income includes all income from whatever source derived, except as otherwise provided by law (section 61 of the Internal Revenue Code). Thus, in general, taxpayers must include in gross income money they receive without an offsetting obligation to repay it.

If received the reimbursement under an accountable plan, he would not include it in gross income. However, one condition for a plan to qualify as an accountable plan is that the employee must have paid or incurred deductible expenses while performing services as an employee (section 1.62-2(d) of the Income Tax Regulations (regulations)). Commuting expenses do not qualify to be part of an accountable plan because commuting expenses between an employee's residence and regular place of work are not deductible business expenses (section 1.162-2(e) of the regulations).

I hope this information is helpful. If you have questions, please call me or at () .

Sincerely,

Michael J. Montemurro
Chief, Branch 4,
Office of Associate Chief Counsel
(Income Tax and Accounting)