



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Jack Reed
United States Senate
Washington, DC 20510

Attention:

Dear Senator Reed:

I am responding to your inquiry dated November 14, 2014, on behalf of one of your constituents. This is a follow-up to a previous inquiry involving the 80/50 rule found in Internal Revenue Code (Code) section 132(f)(5)(B)(ii). We responded to the previous inquiry in a letter dated August 1, 2014, which I am enclosing with this response.

In our previous response, we described the 80/50 rule and how it applied to the three types of van pools identified in Treasury Regulation 1.132-9(b) Q/A 21. These three types are employer-operated van pools, employee-operated van pools, and private or public transit-operated van pools.

Your constituent sought clarification of the term "operated" as used in Treasury Regulation 1.132-9(b) Q/A-21. Your constituent indicated that the employer did not provide a vehicle but instead provided a transit pass. Your constituent wrote that the van is owned by a private company but is driven by a member of the van pool. Your constituent wishes to determine whether she participates in an employer-operated van pool, an employee-operated van pool, or a private or public transit-operated van pool.

As a general matter, we cannot provide binding legal advice to taxpayers unless they request a private letter ruling as described in Revenue Procedure 2014-1, 2014-1 Internal Revenue Bulletin 1. However, I may provide the following general information.

As we stated in our previous letter, in an employer-operated van pool, the employer either purchases or leases a van to enable employees to commute together to the

employer's place of business or the employer contracts with and pays a third party to provide vans and pays some or all of the cost of operating the vans.

In an employee-operated van pool, the employees, independent of their employer, operate a van to commute to their places of employment. In a private or public transit-operated van pool, public transit authorities or a person in the business of transporting persons for compensation or hire owns and operates the van pool.

The term "operate" is not specifically defined in Code section 132 or the regulations. However, the Merriam-Webster Dictionary definition of "operate" includes "to use and control (something); to have control of (something, such as a business, department, program, etc.)."

Thus, in determining whether a van pool is "operated" by an employer, an employee, or by a private or public transit authority, factors such as who drives the van, who determines the route, who determines the pick-up and drop-off locations and times, and who is responsible for administrative details would all be relevant factors.

As we noted in our previous reply, a transit pass includes any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if the transportation is provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle in which the seating capacity is at least 6 adults (not including the driver) [Section 132(f)(5)(A)(ii)].

The fact that your constituent receives a transit pass from her employer, however, does not necessarily signify that the van pool is a public or privately operated van pool.

I hope this information is helpful. If you have any additional questions, please contact me at _____ or _____ at _____.

Sincerely,

Victoria A. Judson
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure