

## **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, <u>operate</u> a van to commute to their places of employment. In a private or public transitoperated van pool, public transit authorities or a person in the business of transporting persons for compensation or hire owns <u>and operates</u> 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