



TOWN OF SUFFIELD

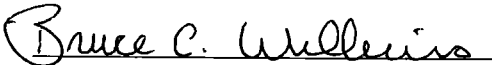
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Public Works Department

Personal Use of Vehicles Policy

The personal use of the highway department vehicles is prohibited. The foreman has the authority to commute to and from work using a town vehicle. This position is required to be on call and the use of this vehicle will allow the individual to respond to emergencies and to determine the course of action that is required. The commuting is considered a taxable benefit to the employee and will be included on their W-2 form and the end of the calendar year.


Bruce C. Williams
Director of Public Works

cc.: Robert H. Skinner, First Selectman
John Lange, Human Resources
Finance Department

RESTRICTED USE VEHICLES

No personal use

If no personal use is allowed for a vehicle, that vehicle is not subject to the above valuation rules, and there is no taxable benefit. To take advantage of this, the following requirements must be met:

1. The employer must maintain a written policy prohibiting the employee from using (or allowing others to use) the vehicle for personal purposes, except for *de minimis* personal use, such as a stop for lunch between two business deliveries.
2. The vehicle must be stored on the employer's premises.
3. The employee using the vehicle must not live on the employer's premises where the vehicle is stored.
4. The employer must reasonably believe that the policy prohibiting personal use is being followed.

In addition, there must be evidence that the above rules are being satisfied; it is not clear how this last rule is to be met. Perhaps an annual affidavit signed by the affected employees affirming that they have followed the rules would constitute sufficient evidence. However, it should be noted that this approach has been neither approved nor disapproved by the IRS.

Commuting only

Some employers make use of another rule, under which all personal use other than *commuting to and from work* is prohibited. Personal use is *all* use that is not use in the employer's business. If the requirements for this rule are met, the taxable benefit of the commuting (a personal use) is valued at \$1.50 per one-way commute; that is, the taxable benefit to the employee is \$3.00 for each working day.

Example

If a particular employee commutes to and from work using such a vehicle on 240 days in a calendar year, the taxable benefit is \$720 for that year (equals 240 times \$3.00).

To take advantage of this commuting rule, the following requirements must be met:

- The vehicle must be *used in the employer's business*.
- For *bona fide noncompensatory business reasons*, the employee is *required* to use the vehicle to commute to and from work.

- The employer must have a *written policy* prohibiting the employee from using (or allowing others to use) the vehicle for personal purposes, except for commuting and *de minimis* personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home).
- Except for such *de minimis* personal use, the employee must *actually* refrain from using the vehicle for personal purposes other than commuting.
- The employee required to use the vehicle must not be a *control employee* (defined below).

If the employer maintains a vehicle that is generally used each workday to transport at least three employees to and from work in an employer-sponsored commuting vehicle pool, the vehicle is deemed to have met the first two requirements. For other vehicles, though, the employer should be aware that bona fide noncompensatory business reasons for such a policy may be difficult to establish. This is because most noncompensatory reasons for providing an individual with a vehicle are not obvious. There are certain clear exceptions to this; for example, the noncompensatory business reasons for having police officers park their marked vehicles outside their residences are fairly clear. (Police vehicles are subject to another exception, however, which is discussed below under "Qualified Nonpersonal Use Vehicles.") Nevertheless, in *most* cases, the first assumption of the IRS is that a vehicle is provided to an employee as compensation.

In addition, there must be evidence that the above rules are being satisfied; it is not clear how this last rule is to be met. Only if these rules are followed is the commuting exception allowed. Perhaps an annual affidavit signed by the affected employees affirming that they have followed the rules would constitute sufficient evidence. However, it should be noted that this approach has been neither approved nor disapproved by the IRS.

Control employees

The commuting rule does not apply to *control employees*. A control employee of a governmental employer includes any

- elected official, or
- "[e]mployee whose compensation equals or exceeds the compensation paid to a Federal Government employee holding a position at Executive Level V, determined under Chapter 21 of title 2, United States Code, as adjusted by section 5318 of Title 5 United States Code" (Reg. sec. 1.61-21(f)(6)(ii)). This amount is currently \$110,700, and may be adjusted from time to time by Presidential order (the last such adjustment was made effective for pay periods beginning on or after January 1, 1998).

As an alternative to the above definition of control employee, an employer may treat all and only employees who are "highly compensated" as control employees. After January 1,

1997, a "highly compensated employee" is any employee who in the preceding year earned more than \$80,000 and, if the employer so elects, was in the top paid group of employees. An employee is in the top paid group if the employee is in the top 20 percent of employees when ranked by compensation.

The \$80,000 amount is for 1997 and 1998, and may be adjusted annually based on inflation. For this purpose, compensation includes all taxable benefits as well as salary reduction contributions to cafeteria plans, 401(k) plans and 403(b) annuity plans. It should be noted that a different definition of highly compensated employee applied for years beginning before 1997.

Any use that is forbidden to a control employee is also forbidden to family members of the employee. Family members include brothers, sisters, spouse, ancestors and lineal descendants.

QUALIFIED NONPERSONAL USE VEHICLES

There is generally no taxable income recognized by the employee for "qualified nonpersonal use vehicles." These are vehicles that by their nature are not likely to be used for personal purposes. The exception generally applies to the driver of the vehicle and any passengers. However, there is an exception to the exception with respect to a passenger bus with a capacity of at least 20 passengers. The *driver* is the only individual who will generally have no income. An example of this in the regulations deals with a passenger bus with a capacity of 25. The bus is provided by an employer to transport employees to and from work. In this case, all employees except the driver will usually have income with respect to the commuting. (See "Commuting only," above. See also "Public Transportation," in Chapter 12, for possible exceptions to income inclusion for such a service.) Included among qualified nonpersonal use vehicles are the following vehicles:

- clearly marked police and fire vehicles;
- unmarked law enforcement vehicles, in certain limited cases;
- ambulances and hearses;
- vehicles with loaded gross weight in excess of 14,000 pounds;
- heavy equipment such as "cherry pickers," cement mixers, combines, cranes and derricks;
- delivery trucks with limited seating;
- utility repair, dump, garbage, refrigerated and flatbed trucks;
- moving vans; and
- passenger and school buses.