

FOR YOUR INFORMATION

News for School Clients

**EMPLOYEE PERSONAL USE OF
EMPLOYER VEHICLES**

July 2004



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Employee Personal Use of Employer Vehicles

There has been significant media coverage recently on the policies and procedures of the State of Wisconsin related to employee personal use of employer vehicles. The State of Wisconsin is currently in discussion with the IRS regarding its past practices that were not in conformity with IRS regulations. As a result, a school district may have concerns regarding its policies and procedures related to employee personal use of school district vehicles. This article will discuss the income tax consequences of employee personal use of district vehicles, as well as policies and procedures related to such use.

As a general rule, if an employer offers anything of value to its employees, it is considered taxable income to the employees under Internal Revenue Code (“IRC”) § 61. IRC § 61(a) specifically includes “compensation for services, including fees, commissions, fringe benefits and similar items” in gross income. Where an employer provides an employee with the personal use of a vehicle, the employee receives a fringe benefit, the value of which is includible in gross income, unless it is excluded under some other section of the IRC. Treas. Reg. § 1.61-21(a)(2). Therefore, without a specific exemption, the value of the employee’s personal use of an employer vehicle must be included in the employee’s income.

There are no specific exemptions for employee personal use of an employer vehicle.

A fringe benefit that qualifies as a “working condition fringe” is excluded from the employee’s gross income. Generally, a working condition fringe is something that, if the employee had paid for it, he could have deducted that amount on his return as a business expense. IRC § 132(d). Business use of an employer vehicle qualifies as a working condition fringe; employee personal use of an employer vehicle does not qualify as such.

A *de minimis* fringe is a benefit whose value, taking into account the frequency with which the employer provides similar fringe benefits to other employees, is so small that accounting for it would be unreasonable or administratively impractical. IRC § 132 (e)(1). Use of an employer vehicle for commuting more often than once per month, does not qualify as a *de minimus* fringe benefit. Private Letter Ruling 9442003.

Employee personal use of a school bus, like other district-owned vehicles, is a taxable benefit to the employee. Personal use of a district vehicle may include commuting from home to work, use on personal errands, or personal trips.

The value of the employee personal use of a district vehicle is taxable compensation, which should be reported on the employee's Form W-2, subject to FICA tax, and federal and Wisconsin income tax withholding. The easiest way to value the employee personal use of a district vehicle is on a cents-per-mile basis using the standard mileage rate, which is adjusted annually by the IRS. The standard mileage rate for the year 2004 is 37.5 cents per mile. For example, if an employee uses a district vehicle for personal purposes for 1,000 miles during the course of a year, he should have \$375 (1,000 miles x .375) added to his taxable compensation for the year and FICA tax and federal and Wisconsin income tax withholding should be applied.

Employee personal use of an employer's vehicle also affects Wisconsin Retirement System (WRS) contributions. Employee personal use of the employer vehicle is reportable earnings for WRS purposes (see Wisconsin Retirement System Administration Manual, Chapter 4 – Earnings and Credible Service, p. 18).

In order to comply with IRS regulations regarding employee personal use of district vehicles, the district should have a policy requiring all employees to keep a log of

miles driven with district vehicles for personal purposes. The log should be turned into the district periodically, such as every pay period or every month. Then, the district should value any personal use of a district vehicle. The value of any such personal use should be added to the employee's taxable compensation for that period. Without strong guidance from the district, employees may not be willing to report personal use miles. Therefore, it is important that the district policy and the district's expectations regarding the policy be communicated to all employees.

Similarly, employees who are provided a contractual weekly, monthly, or annual mileage or transportation allowance for business use of the employee's personal vehicle must report such business use to the school district. Any mileage allowance received in excess of the value of actual business use of the employee's vehicle must be reported as compensation.

Any district that has not complied with these IRS regulations should establish a policy and procedures similar to those described above, including reporting the value of personal use of the district vehicle as taxable compensation.

If you have any questions regarding this topic, please call David Weller of Lathrop & Clark LLP at 608-286-7235. Attorney Weller, who is also a CPA, provides counsel in the areas of taxation and employee benefits, among other areas.

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