



**DEPARTMENT OF DEFENSE  
ARMED FORCES TAX COUNCIL  
WASHINGTON, D.C. 20301-4000**

(Fiscal)

7 November 2018

**MEMORANDUM FOR RECORD**

**SUBJECT: Information paper – Taxability of Domicile to Duty Benefits for CY 2018**

This information paper provides information on the income tax implications of employer provided home-to-work (i.e., domicile to duty) transportation when the DoD provides a vehicle for the use of an employee (e.g., Service member or civilian). In general, all personal use of employer-provided vehicles (including domicile to duty use) is taxable as wages, even if the use is provided for security reasons. Commuting expenses are not deductible, because they are not considered business expenses.<sup>1</sup>

Employees must be approved by appropriate authority to receive domicile to duty benefits.

- 31 U.S.C. § 1344 and DoDM 4500.36, Acquisition, Management, and Use of DoD Non-Tactical Vehicles, July 7, 2015, provides policy, responsibilities and procedural guidance for members entitled to domicile to duty transportation, as well as, those authorized to grant domicile to duty benefits.
- In accordance with 10 U.S.C. § 2637, the Secretary of Defense may authorize the commander of a unified command to use Government owned or leased vehicles to provide transportation in an area outside the United States if the commander determines that public or private transportation in such area is unsafe or not available.

Employees receiving domicile to duty benefits (DTD) must send DFAS the certified fringe benefit<sup>2</sup> amounts they received no later than December 15 of each calendar year so that DFAS can ensure that the income is reflected on the employees tax forms (i.e., IRS Form W-2). Service Departments may direct specific DTD reporting requirements related to DTD authorization required for audits supporting related requirements (e.g., vehicle utilization data/rates, specific vehicle data, and cost impacts).

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<sup>1</sup> See generally 31 U.S.C. § 1344(a) (establishing that transporting individuals between their residences and their places of employment is generally not transportation for an official purpose).

<sup>2</sup> See generally *The Bureau of National Affairs, Inc., U.S. Income Portfolios: Compensation Planning Portfolio 394-5th: Employee Fringe Benefits 3* (2018) (explaining that fringe benefits are all benefits that are provided by an employer to its employees other than through wages for services rendered). A working condition fringe, which is not included in gross income, is "any property or service provided to an employee of the employer to the extent that if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167" of the Internal Revenue Code. I.R.C. § 132(d). See Appendix 3 for a sample certification memorandum.

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To calculate the benefit amount received, employers (DoD authorizing officials) can choose one of the following four methods, assuming the requirements are met. The qualification criteria are explained in Appendix I.

- Commuting Valuation Rule: \$1.50 for each one way commute. This special valuation rule will generally be used by most senior officers and employees who for bona fide non-compensatory reasons (e.g., security) are required to commute. This rule is simpler than the other methods and will result in lower taxable income for employees in most cases.
- Cents-per-Mile Valuation Rule: The taxable benefit is 54.5 cents per mile in 2018. If fuel is not provided by the employer, the amount can be reduced by up to 5.5 cents per mile.
- Automobile Lease Valuation (ALV) Rule: The taxable benefit is determined by a Treasury Regulation table based on the fair market value (FMV) of the vehicle. The amount is pro-rated based on how long the vehicle is provided to the employee.
- General Valuation Rule: The value of the commute is the amount that an individual would have to pay in an arm's-length transaction to lease a comparable vehicle under comparable conditions in the same geographic area. This method will generally result in higher taxable income for employees.

Although domicile to duty benefits are generally taxable, there are limited exceptions.

- Law enforcement (e.g., police officers, special agents, etc.) personnel performing their official duties in the 10th circuit, including Oklahoma, Kansas, New Mexico, Colorado, Wyoming, and Utah, plus portions of Yellowstone National Park extending into Montana and Idaho, receive DTD benefits tax free due to *Pollei v. Commissioner*, 877 F.2d 838. In *Pollei*, a police commissioner was able to deduct commuting costs between his domicile and his duty locations. The IRS does not agree with this opinion and announced in an Action on Decision (AOD-CC-1989-018) that it will not honor it outside the 10th circuit "with respect to cases involving substantially similar privately owned police equipped cars where tours of duty begin and end when the officers leave for work or arrive home in their cars."
- IAW 26 C.F.R. 1.132-5 and 26 C.F.R. 1.274-5, the value of the use of a qualified non-personal use vehicle which by its nature is not likely to be used more than a minimal amount for personal reasons, can be excluded from gross income as a working condition fringe. Specifically, a law enforcement officer who is employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crimes, who is authorized by law to carry firearms, execute search warrants, and make arrests, and who regularly carries firearms can exclude the officially authorized use (including commuting costs between one's domicile and duty locations) of a marked or unmarked government

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owned or leased law enforcement vehicle as long as the use is incident to law-enforcement functions, such as being able to report directly from home to an emergency situation, crime scene, or other law enforcement exigency. This exception should be narrowly interpreted and questions concerning its applicability should be directed to legal counsel or the Armed Forces Tax Council. This exception does not include field work performed by employees such as recruiters driving standard four door sedan that are likely to be used more than a *de minimis* amount for personal purposes.

- Enlisted members and warrant officers receiving DTD benefits in areas where they qualify for combat zone tax exclusion benefits (e.g., by serving in a combat zone or qualifying to receive hostile fire or imminent danger pay while serving in a qualified hazardous duty area or area designated in direct support of operations in a combat zone) earn income that is tax free in the combat zone IAW I.R.C. §112. Commissioned officers (not including commissioned warrant officers) earn tax free income only up to the maximum amount that could be received by the senior enlisted member which is \$8,586 (i.e., \$8,361 plus \$225 for hostile fire or imminent danger pay) for 2018.

If more detailed information is needed (e.g., who can qualify to use specific rules, how the benefit amounts are calculated, etc.), please see Appendix 1's enclosures (e.g., Enclosure 1 includes how to determine the FMV of chauffeur services; Enclosure 2 shows calculations using the commuting, cents-per-mile, and automobile lease valuation rules).

Employees should keep a log (e.g., Appendix 2) of their commuting trips throughout the year so that they can easily calculate their benefits and turn in their certified amounts (e.g., Appendix 3) to DFAS no later than December 15, each year. Members should address their certification memorandums to the processing POC(s) of their branch of service and send the memo using a digitally signed e-mail to their service POC(s) to facilitate receipt and processing of their information in a timely manner. DFAS points of contact for this memorandum include:

- Army and VIP Issues: Ms. Marlow Burton at [marlow.v.burton.civ@mail.mil](mailto:marlow.v.burton.civ@mail.mil) and (317) 212-0152 or DSN 699-0152.
- Navy: Ms. Charri Cephus-Long at [charri.w.cephus-long.civ@mail.mil](mailto:charri.w.cephus-long.civ@mail.mil) and (216) 204-4355.
- Air Force: Ms. Erin Dingwall at [erin.r.dingwall.civ@mail.mil](mailto:erin.r.dingwall.civ@mail.mil) and (317) 212-3506 or DSN 699-3506; and Odetta Pasols at [odetta.pasols.civ@mail.mil](mailto:odetta.pasols.civ@mail.mil) and (317) 212-1765 or DSN 699-1765.
- Marine Corps: Mr. Lawrence Page at [lawrence.s.page.civ@mail.mil](mailto:lawrence.s.page.civ@mail.mil) and (216) 204-4551 or DSN 580-6060.

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- DoD Civilians: Ms. Baranda Anderson at [baranda.d.anderson.civ@mail.mil](mailto:baranda.d.anderson.civ@mail.mil) and (317) 212- 9201 or DSN 699-9201; and Ms. Lilia Rivera at [lilia.e.rivera2.civ@mail.mil](mailto:lilia.e.rivera2.civ@mail.mil) and (317) 212-6515 or DSN 699-6515.

Employees should request a legal review from their servicing judge advocate or legal advisor, and submit their legal review along with their reports to DFAS. Appendix 4 shows a sample legal review. Service legal points of contact for this memorandum include:

- Department of Defense: LTC David Dulaney at [david.a.dulaney.mil@mail.mil](mailto:david.a.dulaney.mil@mail.mil).
- Army: MAJ Matthew Wright at [matthew.e.wright10.mil@mail.mil](mailto:matthew.e.wright10.mil@mail.mil).
- Navy: Ms. Kathlene Somerville at [kathlene.somerville@navy.mil](mailto:kathlene.somerville@navy.mil).
- Air Force: Lt Col Lanourra Phillips at [lanourra.l.phillips.mil@mail.mil](mailto:lanourra.l.phillips.mil@mail.mil).
- Marine Corps: Ms. Mary Hostetter at [mary.hostetter@usmc.mil](mailto:mary.hostetter@usmc.mil).
- Public Health Service: CAPT Elvira Hall-Robinson at [elvira.hall-robinson@hhs.gov](mailto:elvira.hall-robinson@hhs.gov).
- Coast Guard: Mr. Christopher Dunne at [christopher.m.dunne@uscg.mil](mailto:christopher.m.dunne@uscg.mil).
- National Guard: LTC Jocelyn Urgese at [jocelyn.s.urgese.mil@mail.mil](mailto:jocelyn.s.urgese.mil@mail.mil).

The point of contact for this memorandum is the undersigned at 703-695-3817.



DAVID A. DULANEY

LTC, JA

Executive Director, Armed Forces Tax Council  
DoD Office of General Counsel (Fiscal)

Enclosures as

## Appendix 1: Taxability of Domicile to Duty Benefits for CY 2018

### 1. Background.

a. Taxable Benefit. The benefit of employer-provided home-to-work (i.e., domicile to duty) transportation is taxable as wages or salary, even if provided for security reasons.

(1) Commuting expenses are not deductible for federal income tax purposes, because they are personal expenses, not business expenses.<sup>1</sup>

(2) The IRS and courts have consistently ruled that commuting expenses are nondeductible because they are incurred for personal, not business purposes (i.e., taxpayers incur commuting expenses, because they choose to live away from their places of employment; if they lived closer to work, they could walk).<sup>2</sup>

b. Valuation of Transportation benefits. Treas. Reg. § 1.61-21 and Treas. Reg. § 1.132-5 provide detailed rules concerning taxation of employer provided fringe benefits, including valuation of employee-provided home-to-work transportation.

2. Employer Options. An employer may choose to use the general valuation method or elect to use one of the "special valuation rules." The special valuation rules generally result in a lower value of the benefit (and lower taxable income) to employees. The regulations provide three special valuation rules: the commuting valuation rule, the cents-per-mile valuation rule, and the automobile lease valuation rule.

a. Commuting Vehicle Valuation Rule. Treas. Reg. § 1.61-21(f).

(1) Who may use this valuation method? Employers who satisfy the requirements of either (A) or (B) below may use this valuation method.

(A) Employees (other than a control employee)<sup>3</sup> who:

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<sup>1</sup> See Treas. Reg. § 1.162-2(e). Treas. Reg. § 1.262-1(b)(5).

<sup>2</sup> *Fausner v. Commissioner* 413 U.S. 838 (1973). *McCabe v. Commissioner*, 688 F.2d 102 (2d Cir.), cert. denied, 459 U.S. 906 (1982).

<sup>3</sup> See generally Treas. Reg. § 1.61-21(f)(6). A control employee is any elected official, or employee/member whose compensation equals or exceeds the compensation paid to a Federal Government Employee at Executive Level V. See *id.* A control employee is not disqualified from using this valuation rule if the vehicle provided to the control employee is not an automobile. See Treas. Reg. § 1.61-21(f)(2)(ii). The term "automobile" means any four-wheeled vehicle manufactured primarily for use on public streets, roads, and highways. See Treas. Reg. § 1.61-21(d)(1)(ii). NOTE: if transportation is provided during a bona fide business-oriented security concern as established by a security study, employers with control employees may use this valuation method. See Treas. Reg. § 1.132-5(m)(6).

(i) For bona fide non compensatory reasons (*e.g.*, security), the employee is required to commute;

(ii) Operate under a written policy that neither the employee nor family members may use the vehicle for personal use other than commuting or *de minimis* personal use (such as a stop for a personal errand on the way between conducting official business and the employee's home);

(iii) Except for *de minimis* personal use, does not use the vehicle for any personal purpose other than commuting; and

(iv) Does not have a chauffeur driven vehicle.<sup>4</sup>

(B) Provided the automobile is used for the period of a bona fide business oriented security concern,<sup>5</sup> the DoD may use this valuation method for any of its employees authorized domicile to duty benefits.<sup>6</sup> Additionally, the employee may exclude the value of any authorized personal use (other than commuting) of the vehicle that the security study determines to be reasonable and necessary for local transportation.<sup>7</sup>

(2) The value ascribed to the transportation using this rule is \$1.50<sup>8</sup> per each one-way commute; this may be considerably less than the other valuation methods. Note that under this

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<sup>4</sup> See Treas. Reg. § 1.61-21(f)(2)(i). For purposes of the Commuting Vehicle Valuation Rule, an individual will not be considered a chauffeur if he or she performs non-driving services for the employer, is not available to perform driving services while performing such other services and whose only driving services consist of driving a vehicle used for commuting by other employees of the employer. See *id.*

<sup>5</sup> See Treas. Reg. § 1.132-5(m)(2). A bona fide business-oriented security concern exists only if the facts and circumstances establish a specific basis for concern regarding the safety of the employee/member. No bona fide business-oriented security concern will be deemed to exist unless the employer establishes that an overall security program has been provided with respect to the employee involved. Normally, an overall security program is one in which security is provided to protect the employee on a 24-hour basis. However, an overall security program with respect to an employee is deemed to exist if:

[A] A security study is performed with respect to the employer and the employee (or a similarly situated employee of the employer) by an independent security consultant;

[B] The security study is based on an objective assessment of all facts and circumstances;

[C] The recommendation of the security study is that an overall security program is not necessary and the recommendation is reasonable under the circumstances; and

[D] The employer applies the specific security recommendations contained in the security study to the employee/member on a consistent basis.

<sup>6</sup> See Treas. Reg. § 1.132-5(m)(6) which allows this method to be used when necessary to satisfy a bona fide security concern. The requirements for using this valuation method (*e.g.*, the requirement that the value of a driver be added to the applicable cents-per-mile rate) are waived for government employees during the period of a "bona fide security concern." Treas. Reg. § 1.132-5(m)(5).

<sup>7</sup> See Treas. Reg. § 1.132-5(m)(1).

<sup>8</sup> See Treas. Reg. § 1.132-5(m)(1)(6). 26 C.F.R. 1.61-21(f)(3)(i).

rule, it is possible to incur more than two one-way commutes per duty day, as every trip between domicile and place of duty (whether that be one's office, airport for temporary duty purposes, or an off-site official function, meeting, or event) via employer-provided vehicle, is considered a one-way commute for purposes of this rule.<sup>9</sup>

(3) When made available for the period of a bona fide business oriented security concern, the \$1.50 amount includes the value of the bodyguard/driver. **This is the recommended special valuation rule for all government employees who qualify for the security exception and who reside 3 or more miles from their place of work.**

b. Cents-Per-Mile Rule. Treas. Reg. § 1.61-21(e).

(1) Who may use this valuation method? Employers who satisfy the requirements of either (A) or (B) below may use this valuation method for its employees.

(A) Provided the passenger automobile is first made available for personal use in calendar year 2018 and does not exceed \$15,600 in value,<sup>10</sup> any DoD employee may use this valuation method if:

(i) DoD reasonably expects the vehicle will be regularly used to conduct official business throughout the calendar year; or

(ii) The vehicle is actually driven at least 10,000 miles during the year and use of the vehicle throughout the year is primarily by employees.

(B) Provided the automobile is used for the period of a bona fide business oriented security concern,<sup>11</sup> the DoD may use this valuation method for any of its employees authorized domicile to duty benefits.<sup>12</sup> Additionally, the employee may exclude the value of the personal use (other than commuting) of the employer-provided vehicle that the security study determines to be reasonable and necessary for local transportation.<sup>13</sup>

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<sup>9</sup> See Rev. Rul. 99-7 (1999).

<sup>10</sup> See IRS Notice 2018-09. The 2018 rate is set in Notice 2018-09 (\$15,600 for a passenger vehicle and \$17,600 for a truck or van). This amount is adjusted annually pursuant to a formula prescribed by law. If the automobile was first made available in a prior year, a different limit may apply. The Internal Revenue Service publishes this value annually. Published prior rates for passenger automobiles are as follows: 2017 rate is set in Notice 2017-03 (\$15,900 for passenger vehicle and \$17,700 for truck or van; unchanged from the 2016 rate). 2016 rate is set in IRS Notice 2016-12 (\$15,900 for passenger vehicle and \$17,700 for truck or van); 2015 rate is set in Notice 2015-1 (\$16,000 for passenger vehicle and \$17,000 for truck or van); 2014 rate is set in Notice 2014-11 (rate is \$16,000 for passenger vehicle and \$17,300 for truck or van); and 2013 rate is set in Notice 2013-27 (\$16,000 for passenger vehicle and \$17,000 for truck or van). The 2012 rate is set in Rev. Proc. 2012-13 (\$15,900 for passenger vehicle and \$16,700 for truck or van). The 2011 rate set in Rev. Proc. 2011-11 is \$15,300. The 2010 rate set in Rev. Proc. 2010-10 is \$15,300. The 2009 rate set in Rev. Proc. 2009-12 is \$15,000. The 2008 rate set in Rev. Proc. 2008-13 is \$15,400. The 2007 rate set in Rev. Proc. 2007-11 is \$15,100.

<sup>11</sup> See *supra* note 3 for the definition of a bona fide business-security concern.

<sup>12</sup> See Treas. Reg. § 1.132-5(m)(6) which allows this method when necessary to satisfy a bona fide security concern.

<sup>13</sup> Treas. Reg. § 1.132-5(m)(1).

(2) For 2018, a taxpayer who uses this method multiplies the number of personal miles by a rate of 54.5 cents per mile.<sup>14</sup>

(A) If fuel is provided by the employer, it is included in the cents per mile rate. If fuel is not provided by the employer, the cents per mile rate may be reduced by no more than 5.5 cents per mile for miles driven in the U.S., Canada or Mexico. However, for miles driven outside the U.S., Canada, or Mexico the cents per mile rate does not reflect the FMV of fuel and the cents per mile rate may be reduced by 5.5 cents per mile unless the employer reimburses the cost of fuel or provides it in kind, in which case it must be valued at its FMV. Treas. Reg. § 1.61-21(e)(3)(ii).

(B) When a chauffeur is provided, the value of those chauffeur services must be added to these amounts.

(3) This method should be considered if the employee who qualifies for the security exception resides 2 miles or less from work. With few exceptions, such as if the commuting valuation rule applies, if an employer chooses to adopt this rule, the employer must adopt the rule on the first day the vehicle is used by the employee for personal use, and must use this rule for all subsequent years.<sup>15</sup>

c. Annual Lease Value (ALV) Rule. Treas. Reg. § 1.61-21(d).

(1) Who may use this valuation method? In general, an employer may use this rule if the employer adopts this rule on the first day in which the automobile is made available to an employee for personal use and the employer continues to use this rule for all subsequent years, unless the commuting valuation rule applies.

(2) Entire year. If the employee is provided with an automobile that is available for the entire calendar year, the value of the benefit provided is the ALV of the automobile.<sup>16</sup>

(3) Less than a year. If the vehicle is provided to the employee for less than a full year, the ALV is "prorated annual lease value" or a "daily lease value."<sup>17</sup>

(A) Where an employer-provided auto is continuously available to the employee for a period of 30 or more days, but less than an entire calendar year, the value of the availability is the "prorated annual lease value," calculated by multiplying the ALV by a fraction, the numerator of which is the number of days of availability and the denominator of which is 365.<sup>18</sup>

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<sup>14</sup> Notice 2018-03 (providing a standard mileage rate for business of 54.5 cents beginning January 1, 2018). *See also*, Rev. Proc. 2010-51 (the standard mileage rate will be published in annual notices).

<sup>15</sup> Treas. Reg. § 1.61-21(e)(5).

<sup>16</sup> *Id.* at para. 21(d)(1)(i).

<sup>17</sup> *Id.* at para. 21(d)(4).

<sup>18</sup> *Id.* at para. 21(d)(4)(i)(A).



(B) Where an employer-provided auto is continuously available to the employee for at least one, but less than 30 days, the value of the use of the auto is its "daily use value," calculated by multiplying the ALV by a fraction, the numerator of which is four times the number of days of the auto's availability (unless an election is made to treat all periods of continuous availability of the auto as periods of at least 30 days) and the denominator of which is 365.<sup>19</sup>

(4) Calculating the ALV. One calculates the ALV by first determining the fair market value (FMV) of the automobile as of the first date the automobile is made available to any employee for personal use (this may be recalculated every four years). Generally FMV is the amount someone would have to pay an unrelated third party to purchase the auto. The value of telephones or specialized equipment needed for the employer's business do not have to be included in the FMV of the auto if they are not susceptible to personal use and are not used in another business by the employee.

(A) FMV may be determined under safe harbor rules. For a newly purchased auto, the purchase price in an arm's-length transaction can be used as FMV. Sales taxes and title fees are included in the FMV.

(B) For employer-leased autos, reasonable retail values that are regularly reported in a nationally recognized publication can be used as FMVs. An alternative FMV for employer-leased autos is the manufacturer's suggested retail price less 8% (but including sales tax, title, and other expenses).

(C) The employer may also use the manufacturer's invoice price (including options), plus 4%, as the FMV of an employer-leased vehicle.<sup>20</sup>

(5) Once you determine the FMV, you use the table in Treas. Reg. § 1.61-21(d)(2)(iii) to calculate the ALV. Locate the FMV of the vehicle in the first column; the ALV is indicated in the second column. For example, if the FMV of the vehicle is \$30,000, the ALV is \$8,250.

(6) The ALV must be reduced to account for business use of the vehicle (i.e. the amount attributable as a "working condition fringe benefit").<sup>21</sup> The individual is subject to tax on the percentage use of the home-to-work miles as opposed to the business miles.<sup>22</sup> For example, if the home-to-work miles represent 10% of the total miles, then 10% of the ALV is taxable. (see Enclosure 2, example A).

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<sup>19</sup> *Id.* at para. 21(d)(4)(ii).

<sup>20</sup> Notice 89-110, 1989-2 CB 447.

<sup>21</sup> Treas. Reg. § 1.132-5(b)(1)(i).

<sup>22</sup> *Id.*

(7) If fuel is provided by the employer, it is valued at the FMV based on the facts and circumstances. In the alternative, fuel may be valued at 5.5 cents per mile, if the miles are driven in the U.S., Canada or Mexico.<sup>23</sup>

(8) When a chauffeur is provided, the FMV of chauffeur services must be added to this amount (see Enclosure 1).

d. General Valuation Method. The general valuation method is the default option, although it produces the most taxable income to the detriment of employees. Under the general valuation method, the taxable benefit is determined by “the amount that an individual would have to pay in an arm's-length transaction to lease the same or comparable vehicle on the same or comparable conditions in the geographic area in which the vehicle is available for use.”<sup>24</sup> Under this method, the value of chauffeur services must be added to the value of the vehicle. The valuation of such “chauffeur” services is determined by “the amount that an individual would have to pay in an arm’s-length transaction to obtain the same or comparable chauffeur services in the geographic area, including the time the chauffeur is on-call as well as actual driving time.”<sup>25</sup>

### 3. Other Considerations.

a. Use of the Vehicle by Spouses and dependents. In general, personal use of a government vehicle by a spouse or dependent constitutes taxable income to the employee, unless there is a bona fide business oriented security concern.

(1) The value of local vehicle transportation provided to the employee's spouse and dependents for personal purposes, other than commuting, will not be included in the employee's gross income during the period that a bona fide business-oriented security concern exists with respect to the employee, if the personal use is determined to be reasonable and necessary by a security study.<sup>26</sup>

(2) If a bona fide business-oriented security concern exists with respect to an employee (e.g., threats are made on the life of the employee), the bona fide business-oriented security concern is deemed to exist for dependents that travel in the same vehicle at the same time as the employee.<sup>27</sup>

#### b. DoD Requirements.

(1) IAW DOD 7000-14-R, Financial Management Regulation, vol. 7A, table 44-1, note 14, each member’s Service shall:

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<sup>23</sup> Treas. Reg. § 1.162-21(d)(3)(ii)(B).

<sup>24</sup> Treas. Reg. § 1.61-21 (b)(4).

<sup>25</sup> *Id.* at para. 21(b)(5)(i)(A).

<sup>26</sup> Treas. Reg. § 1.132-5(m)(1) and (2).

<sup>27</sup> *Id.* at para. 5(m)(3).

(A) Identify members receiving government employer-provided home-to-work transportation, certify that the fringe benefits were authorized, calculate and certify the value of the taxable fringe benefits, and submit the appropriate taxable gross income amounts to the servicing DFAS central site no less often than once a year. An exception to this requirement is when members receive taxable fringe benefits from active duty assignments outside their DoD Component (e.g. other federal agencies), the agency providing the taxable fringe benefit calculates the value of the benefit provided, and the member's Service verifies the correctness of the calculations;

(B) Keep members receiving such benefits advised of the tax liability annually accruing to them.

(2) Members' certified taxable fringe benefit amounts must be sent to the supporting DFAS Center no less often than annually and not later than December 15, each year, for processing to:

(A) Include the taxable non-cash benefit amounts in members' gross income;

(B) Withhold and deduct appropriate federal and state income taxes (not FICA taxes);  
and

(C) Generate Forms W-2 that reflect the adjusted gross income and withholdings. Military Service field finance offices are not authorized to process taxable fringe benefits as additional taxable wages, to withhold applicable taxes, or to generate manual Forms W-2.

Prepared by: LTC David Dulaney, Executive Director, Armed Forces Tax Counsel, (703) 695-3817

**Date:** November 7, 2018

## Appendix 1: Enclosure 1

### DETERMINING THE FAIR MARKET VALUE OF CHAUFFEUR SERVICES

(Extract Treas. Reg. § 1.61-21(b)(5))

1. The fair market value of chauffeur services provided to the employee by the employer is the amount that an individual would have to pay in an arm's-length transaction to obtain the same or comparable chauffeur services in the geographic area for the period in which the services are provided. In determining the applicable fair market value, the amount of time, if any, the chauffeur remains on-call<sup>1</sup> to perform chauffeur services must be included. Moreover, all other aspects of the chauffeur's services (including any special qualifications of the chauffeur (e.g., training in evasive driving skills) or the ability of the employee to choose the particular chauffeur) must be taken into consideration.

2. Alternative valuation with reference to compensation paid. Alternatively, the fair market value of the chauffeur services may be determined by reference to the compensation received by the chauffeur from the employer.

a. Compensation" means compensation and the fair market value of nontaxable lodging (if any) provided by the employer to the chauffeur in the current year.

b. Adjustments to compensation. A chauffeur's compensation is reduced proportionately to reflect the amount of time during which the chauffeur performs substantial services for the employer other than as a chauffeur and is not on-call as a chauffeur.

Example 1 (Treas. Reg. § 1.61-21(b)(5)(ii)(B)). Assume a chauffeur is paid \$25,000 a year for working a ten-hour day, five days a week and also receives \$5,000 in nontaxable lodging. Further assume that during four hours of each day, the chauffeur is not on-call to perform services as a chauffeur because that individual is performing secretarial functions for the employer. Then, for purposes of determining the fair market value of this chauffeur's services, the employer may reduce the chauffeur's compensation by 4/10 or \$ 12,000 ( $.4 \times (\$25,000 + \$5,000) = \$12,000$ ). The fair market value of the chauffeur's services is \$18,000 ( $\$30,000 - \$12,000$ ). However, a chauffeur's compensation is not to be reduced by any amounts paid to the chauffeur for time spent "on-call," even though the chauffeur actually performs other services for the employer during such time. A determination that a chauffeur is performing substantial services for the employer other than as a chauffeur is based upon the facts and circumstances of each situation. An employee will be deemed to be performing substantial services for the employer other than as a chauffeur if a certain portion of each working day is regularly spent performing other services for the employer.

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<sup>1</sup> "On-call time" means the total amount of time that the chauffeur is not engaged in the actual performance of driving services, but during which time the chauffeur is available to perform such services. With respect to a round-trip time spent by a chauffeur waiting for an employee to make a return trip is generally not treated as on-call time; rather such time is treated as part of the round-trip. Treas. Reg. § 1.61-21(b)(5)(iv).

Example 2 (modeled after Treas. Reg. § 1.61-21(b)(5)(vii) Example 1). DoD makes available to employee A an automobile and a full-time chauffeur B (who performs no other services for A's employer) for an entire calendar year. Assume that the annual lease valuation rule is used and that the Annual Lease Value of the automobile is \$9,250. Assume further that B's compensation for the year is \$12,000 and that B is not furnished lodging. The maximum amount subject to inclusion in A's gross income for use of the automobile and chauffeur is therefore \$21,250 ( $\$9,250 + \$12,000$ ). If 70 percent of the miles placed on the automobile during the year are for A's employer's business, then \$6,475 is excludable from A's gross income with respect to the automobile as a working condition fringe ( $\$9,250 \times .70$ ). Thus, \$2,775 is includible in A's gross income with respect to the automobile ( $\$9,250 - \$6,475$ ). With respect to the chauffeur, if 20 percent of the chauffeur's time is spent actually driving A or being on-call to drive A for personal purposes; then \$2,400 is includible in A's income ( $.20 \times \$12,000$ ). Eighty percent of \$12,000, or \$9,600 is excluded from A's income as a working condition fringe benefit. Thus A's gross income resulting from the taxable fringe benefit (i.e., vehicle and chauffeur) is \$5,175 ( $\$2,775 + \$2,400$ ).

## Appendix 1: Enclosure 2

**Example A:** Home-to-work 2018 Fringe Benefit Computation (Security).

### Commuting Valuation Rule

Step 1: Determine number of one-way commutes in CY 2018

Step 2: Multiply \$1.50 for each one-way commute

If 500 one-way commutes in CY 2018, then  $500 \times \$1.50 = \$750$

***Total taxable home-to-work benefit to be include as wages = \$750***

**Example B:** Home-to-work 2018 Fringe Benefit Computation (Security).

### Cents-Per-Mile Valuation Rule (with fuel provided by the employer)

Step 1: Determine number of one-way commutes in CY 2018

Step 2: Determine the distance in miles of each one way commute

Step 3: Multiply 54.5 cents per mile.

If 500 one-way commutes at 4 miles each, then  $500 \times 4 = 2,000$  miles total.  $2,000 \times \$0.545 = \$1,090$ .

***Total taxable home-to-work benefit to be include as wages = \$1,090***

**Example C:** Home-to-work 2018 Fringe Benefit Computation (non-security).

### Automobile Lease Valuation (ALV) Rule

Step 1: Identify Fair Market Value (FMV) of Vehicle= \$18,000

Step 2: Find ALV from Treas. Reg. 1.61-21(d)(2)(iii) = \$5,100

Step 3: Determine total miles driven in 2018 = 10,000

Step 4: Allocate 2018 miles to business and home-to-work use.

Business = 9,000 (9,000/10,000 = 90% of ALV excluded)

Home-to-work = 1,000 (1,000/10,000 = 10% of ALV included)

Step 5: Taxable value of vehicle = 10% of ALV or \$510

Step 6: Taxable value of fuel costs = 5.5 cents per mile ( $.055 \times 1,000$ ) = \$55

Step 7: Taxable value of chauffeur = 10% of annual salary (\$35,000) = \$3,500

***Total taxable home-to-work benefit to be included as wages = \$4,065 (\$510+\$55+\$3,500)***

### Appendix 3: Sample Certification Memo (Army)

XXXX-CG

15 November 2018

Memorandum FOR Defense Finance and Accounting Service, Special Assistance Section, VIP Teams, ATTN: Ms. Marlow Burton, Indianapolis, IN 46249

SUBJECT: Transportation Between Domicile and Duty as a Taxable Fringe Benefit

1. Per Volume 7A, Chapter 44, of the DoD Financial Management Regulation and 26 CFR § 1.61-21, the Department of Defense is required to establish a value for Government furnished home-to-work transportation for certain officials and to provide that information to those officials for use in preparing their annual income tax returns.

2. I, XXXX (SSN: XXX-XX-XXXX), was provided such transportation in tax year 2018. Based on an applicable valuation method provided by the Executive Director of the Armed Forces Tax Council, the taxable benefit to me in 2018 was \$XXX.XX. Please include this amount as taxable income on my IRS Form W-2 for 2018.

Enclosure  
Domicile-to-Duty Calculation

XXXX  
XXX, USA  
Commanding

## Appendix 4: Sample Legal Review

XXXX-JA

20 November 2018

Memorandum FOR Commanding General, XXXX

SUBJECT: Legal Review of Transportation Between Domicile and Duty as a Taxable Fringe Benefit

1. I have personally reviewed XXXX's submission for the value of his home-to-work transportation. The enclosure details the number of trips provided to XXXX. Further, XXXX meets the criteria for the applicable valuation method. Using the provided (commuting, cents-per-mile, automobile lease, or general) valuation method, the sum of \$XXX.XX should be construed as taxable income.

2. If you have any questions regarding the information contained in the documents, please feel free to contact me at XXXXX.mil, DSN XXX, or commercial XXX.

XXXXXX  
XXX, JA  
Staff Judge Advocate



## Appendix 2: Sample Log\*

2018	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Trips
JAN					2	4	2	2	2			2	2	2	2	2				2	2	6	2			2	2	2	2	2		44
FEB		2	2	2	2	2			2	2	2	2	2				2	2	2	6			2	2	2	4	2					44
MAR		2	2	2	4	2			2	2	6	6	2			2	2	2	2	2			2	2	2	2	2			2	2	54
APR	2	2	2			2	2	2	2	2			2	2	2	2	2			2	2	2	2	4			2	2	2	2		46
MAY	2			2	2	2	4	2			2	2	2	2	2			2	2	2	4	2				2	2	2	4			46
JUN	2	2	2	2	2			2	2	2	2	2			2	2	2	2	2			2	2	2	2	6			2	2		48
JUL	2	2	2			2	2	2	2	2			2	2	2	4	2			2	2	2	2	2			2	2	2	2	2	48
AUG			4	2	6	2	4										4	6	2	2	2			2	2	4	2	6			2	52
SEP	2	2	2	2				2	2	2	2			2	2	2	2	2			2	2	2	2	2			2	2	2		42
OCT	2	2			2	2	2	4	2				2	2	2	6			2	2	2	2	2			2	2	2	2	2		48
NOV		2	2	2	2	2			2	2	2	2	2			2	2	2	2	2				2	2	4				6		44
DEC	2	4	2	2			2	2	2	2	2			2	2	2	2			2	2	2								2		38
Total																																554

\* Service Departments may require additional reporting requirements related to DTD authorization and or methods used to collect data.