

Part III - Administrative, Procedural, and Miscellaneous

COVID-19 Relief for Employers Using the Automobile Lease Valuation Rule

Notice 2021-7

I. PURPOSE

In response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic, this notice provides temporary relief for employers and employees using the automobile lease valuation rule to determine the value of an employee's personal use of an employer-provided automobile for purposes of income inclusion, employment tax, and reporting. Due solely to the COVID-19 pandemic, if certain requirements are satisfied, employers and employees that are using the automobile lease valuation rule may instead use the vehicle cents-per-mile valuation rule to determine the value of an employee's personal use of an employer-provided automobile beginning as of March 13, 2020. For 2021, employers and employees may revert to the automobile lease valuation rule or continue using the vehicle cents-per-mile valuation rule provided certain requirements are met.

II. BACKGROUND

If an employer provides an employee with an automobile that is available to the employee for personal use, the value of the personal use must be included in the employee's gross income. Treas. Reg. section 1.61-21(b)(1) states that an employee must include in gross income the amount by which the fair market value of a fringe benefit exceeds the sum of: (1) the amount, if any, paid for the benefit by or on behalf of the recipient; and (2) the amount, if any, specifically excluded from gross income by some other section of subtitle A of the Internal Revenue Code of 1986. The value of an employee's personal use of an employer-provided automobile may be determined under the automobile lease valuation rule to the extent the employer meets the requirements under section 1.61-21(d). Alternatively, an employer may determine the value of the personal use by using the vehicle cents-per-mile valuation rule to the extent the employer meets the requirements under section 1.61-21(e)(1) or the commuting valuation rule to the extent the employer meets the requirements under section 1.61-21(f).¹ The rules set forth in sections 1.61-21(d)(7) and 1.61-21(e)(5) (the "consistency rules") provide that the employer and the employee must use the chosen valuation methodology consistently, except that the employer and the employee may use the commuting valuation rule if the requirements for it are satisfied.

Section 132(a)(3) of the Internal Revenue Code provides that gross income does

¹ Employers that qualify for use of the commuting valuation rule under section 1.61-21(f) determine the value of a vehicle they provide to an employee for commuting use by multiplying the number of one-way commutes by \$1.50. Use of this rule is subject to stringent requirements, such as having a written policy limiting the employee's use to commuting and de minimis personal use.

not include any fringe benefit that qualifies as a working condition fringe. A working condition fringe means any benefit provided to an employee of the employer to the extent that, if the employee paid for the benefit, the payment would be allowable as a deduction under section 162 or 167. Employers that provide vehicles for their employees' use can exclude as a working condition fringe the amount that would be allowable as a deductible business expense if the employee paid for its use. If the employee uses the vehicle for both business and personal use, the value of the working condition fringe is the part determined to be for business use of the vehicle. Amounts that are excluded from gross income under section 132 are also excluded from Federal Insurance Contributions Act (FICA) taxes (social security and Medicare, including Additional Medicare Tax), Federal Unemployment Tax Act (FUTA) tax, and Federal Income tax withholding. Sections 3121(a)(20), 3306(b)(16), and 3401(a)(19).

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in response to the ongoing COVID-19 pandemic. As a result of the pandemic, many employers suspended business operations or implemented telework arrangements for employees. Consequently, employers have indicated that business and personal use of employer-provided automobiles has been reduced for employees. However, due to the way in which the value of an employee's personal use of an employer-provided automobile is computed using the automobile lease valuation rule under section 1.61-21(d), employers have noted a resulting increase in the lease value required to be included in an employee's income for 2020 compared to prior years. In contrast,

determining the value of an employee's personal use of an employer-provided automobile using the vehicle cents-per-mile valuation rule results in income inclusion of only the value that relates to actual personal use, thereby providing a more accurate reflection of the employee's income in these circumstances.

A. AUTOMOBILE LEASE VALUATION RULE

Under the automobile lease valuation rule, the employer determines the fair market value of the automobile when it was first made available to any employee and applies the corresponding "Annual Lease Value" from the table provided in section 1.61-21(d)(2)(iii). "Automobile" is defined in section 1.61-21(d)(1)(ii) as any four-wheeled vehicle manufactured primarily for use on public streets, roads, and highways. Section 1.61-21(d)(1)(i) specifies that absent any statutory exclusions relating to the employer-provided automobile, such as the exclusion for working condition fringe benefits under section 132(a)(3), the amount of the Annual Lease Value is included in the gross income of the employee. If the automobile is used by the employee in the employer's business, the employer generally reduces the Annual Lease Value by the amount that is excluded from the employee's wages as a working condition fringe.

Section 1.61-21(d)(4) provides that, for periods of continuous availability of at least thirty days, but less than an entire calendar year, an employer may pro-rate the Annual Lease Value in certain circumstances by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is the number of days of availability and the denominator of which is 365.

An employer with a fleet of 20 or more automobiles may use a fleet-average value

for purposes of calculating the Annual Lease Values of the automobiles in the employer's fleet, provided the requirements of section 1.61-21(d)(5)(v) are met. The fleet-average value is the average of the fair market value of each automobile in the fleet.

Section 1.61-21(d)(7) provides various consistency rules. Section 1.61-21(d)(7)(i) states that an employer may adopt the automobile lease valuation rule only if it is adopted by the later of: (1) January 1, 1989; or (2) the first day on which the automobile is made available to an employee of the employer for personal use (or, if the commuting valuation rule is used when the automobile is first made available to an employee for personal use, the first day on which the commuting valuation rule is not used). Section 1.61-21(d)(7)(ii) provides that an employer must continue to use the automobile lease valuation rule for all subsequent years that the employer makes the automobile available for use by any employee, except the employer may use the commuting valuation rule in any year that the requirements for that rule are met.

Section 1.61-21(d)(7)(iii) provides that an employee may adopt the automobile lease valuation rule only if the employer adopts the rule. Further, the employee may adopt the automobile lease valuation rule as of the first day that the automobile is made available for personal use or, if the commuting valuation rule is used when the automobile is first made available to the employee for personal use, the first day on which the commuting valuation rule is not used. Section 1.61-21(d)(7)(iv) further specifies that an employee is required to use the automobile lease valuation rule for all subsequent years after the rule has been adopted and the automobile is available to the employee, unless the employer uses the commuting valuation rule.

B. VEHICLE CENTS-PER-MILE VALUATION RULE

Under the vehicle cents-per-mile valuation rule, the value of the benefit provided in the calendar year equals the standard mileage rate (cents-per-mile rate) multiplied by the total number of miles the vehicle is driven by the employee for personal purposes (personal miles). Section 1.61-21(e)(4) defines “personal miles” as all miles for which the employee used the automobile except miles driven in the employee’s trade or business of being an employee of the employer. Notice 2020-05, 2020-4 I.R.B. 380, provides that the standard mileage rate is 57.5 cents per mile for 2020. For purposes of the vehicle cents-per-mile valuation rule, “vehicle” is defined to include “automobiles” under section 1.61-21(d)(1)(ii).²

Section 1.61-21(e)(1)(iii)(A) provides that the vehicle cents-per-mile valuation rule may not be used for a calendar year if the fair market value of the vehicle (determined pursuant to section 1.61-21(d)(5)(i) through (iv)) on the first day the vehicle is made available to the employee exceeds a base value of \$50,000, as adjusted annually for inflation under section 280F(d)(7). For 2020, the vehicle cents-per-mile valuation rule may not be used for vehicles with a fair market value in excess of \$50,400. Notice 2020-05.

Section 1.61-21(e) provides that employers may use the vehicle cents-per-mile valuation rule if the employer provides an employee with the use of a vehicle that: (1) the

² Vehicle is defined in section 1.61-21(e)(2) for purposes of the vehicle cents-per-mile valuation rule to mean “any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways”, including an “automobile” as defined for purposes of the automobile lease valuation rule.

employer reasonably expects will be regularly used in the employer's trade or business throughout the calendar year (or such shorter period as the vehicle may be owned or leased by the employer), or (2) satisfies the requirements of the mileage rule (described in section 1.61-21(e)(1)(ii)). Section 1.61-21(e)(1)(iv) provides that the vehicle is considered to be regularly used in an employer's trade or business if either of the following safe harbor conditions are satisfied: (1) at least 50 percent of the vehicle's total annual mileage is for the employer's business, or (2) the vehicle is generally used each workday to transport at least three employees of the employer to and from work in an employer-sponsored commuting vehicle pool.

Section 1.61-21(e)(5) provides various consistency rules. Section 1.61-21(e)(5)(i) provides that an employer must adopt the vehicle cents-per-mile valuation rule by the first day on which the employer-provided vehicle is used by an employee for personal use (or, if the commuting valuation rule is used when the vehicle is first used by an employee for personal use, the first day on which the commuting valuation rule is not used). Further, section 1.61-21(e)(5)(ii) requires the employer to use the vehicle cents-per-mile valuation rule for all subsequent years in which the vehicle qualifies, except that the employer may use the commuting valuation rule with respect to a particular vehicle to the extent the requirements for the rule are satisfied.

Section 1.61-21(e)(5)(iii) provides that the employee may adopt the vehicle cents-per-mile valuation rule only if the rule is adopted by the employer and beginning as of the first day on which the vehicle for which the employer adopted the rule is available to that employee for personal use (or, if the commuting valuation rule is used when the vehicle

is first used by an employee for personal use, the first day on which the commuting valuation rule is not used). Further, the employee must use the vehicle cents-per-mile valuation rule for all subsequent years of personal use of the vehicle under section 1.61-21(e)(5)(iv) unless the employer uses the commuting valuation rule.

C. ANNOUNCEMENT 85-113

Employer-provided automobiles are noncash fringe benefits. Employment taxes imposed on noncash fringe benefits are collected (or paid) by an employer at the time and in the manner prescribed by the Secretary in regulations.³ Announcement 85-113, 1985-31 I.R.B. 31, provides guidelines for withholding, paying, and reporting employment tax on taxable noncash fringe benefits. Announcement 85-113 provides generally that taxpayers may rely on the guidelines in the announcement until the issuance of regulations that supersede the temporary and proposed regulations under section 3501(b).⁴ Announcement 85-113 generally is applicable to current payments of noncash fringe benefits, including automobiles.

Section 1 of Announcement 85-113 allows payors of certain noncash fringe benefits to treat the benefits as paid on any day(s) during the year so long as they treat benefits provided in a calendar year as paid not later than December 31 of the calendar year. Section 5 of the announcement allows employers to treat certain benefits paid during the last two months of the year (or any shorter period) as paid during the

³ Section 3501(b).

⁴ As of the date of publication of this notice, no regulations have been issued that supersede the temporary and proposed regulations under section 3501(b).

subsequent calendar year.

III. GRANT OF RELIEF

Due to the suddenness and unexpected onset of the COVID-19 pandemic, the Department of the Treasury and the Internal Revenue Service are providing relief from the consistency rules in sections 1.61-21(d)(7) and 1.61-21(e)(5). Accordingly, an employer using the automobile lease valuation rule for the 2020 calendar year may instead use the vehicle cents-per-mile valuation rule beginning on March 13, 2020, notwithstanding the consistency rules in section 1.61-21(d)(7), if, at the beginning of the 2020 calendar year, the employer reasonably expected that an automobile with a fair market value not exceeding \$50,400 would be regularly used in the employer's trade or business throughout the year, but due to the COVID-19 pandemic the automobile was not regularly used in the employer's trade or business throughout the year. For this purpose, the COVID-19 pandemic is considered to have commenced on March 13, 2020, the date of the President's emergency declaration. Therefore, employers that choose to switch from the automobile lease valuation rule to the vehicle cents-per-mile valuation rule in the 2020 calendar year must prorate the value of the vehicle using the automobile lease valuation rule for January 1, 2020, through March 12, 2020. Employers should multiply the applicable Annual Lease Value by a fraction, the numerator of which is the number of days during the period beginning on January 1, 2020, and ending on March 12, 2020 (72 days), and the denominator of which is 365. As of March 13, 2020, employers may begin using the vehicle-cents-per-mile valuation rule. Employees using

the automobile lease valuation rule whose employers switch from the automobile lease valuation rule to the vehicle cents-per-mile valuation rule under this notice must also switch to the vehicle cents-per-mile valuation rule.

Further, notwithstanding the consistency rules in section 1.61-21(e)(5), employers that choose to switch from the automobile lease valuation rule to the vehicle cents-per-mile valuation rule during 2020 may revert to the automobile lease valuation rule for 2021, provided they meet the requirements of section 1.61-21(d), other than the consistency rules in section 1.61-21(d)(7). Alternatively, employers that choose to switch to the vehicle cents-per-mile valuation rule during 2020 may continue using that rule for 2021, provided they meet the requirements of section 1.61-21(e), other than the consistency rules in section 1.61-21(e)(5). Employees that use one of the special valuation rules for vehicles must use the same special valuation rule for vehicles that is used by their employer. The consistency rules in section 1.61-21(e)(5) will apply as of January 1, 2021, as if January 1, 2021, were the first day the vehicle was used by the employee for personal use, and the consistency rules in section 1.61-21(d)(7) will apply as of January 1, 2021, as if January 1, 2021, were the first day the vehicle was made available to the employee for personal use. Accordingly, the special valuation rule used for 2021 must continue to be used by the employer and the employee for all subsequent years, except to the extent the employer uses the commuting valuation rule.

Employers that originally used the automobile lease valuation rule to calculate the value of the personal use of an employer-provided automobile during 2020 and that want to instead begin using the vehicle cents-per-mile valuation rule during 2020 based on the

relief provided in this notice may use the rules in Announcement 85-113 for reporting and withholding on taxable noncash fringe benefits, or the adjustment process under section 6413 or the refund claim process under section 6402 to correct any overpayment of federal employment taxes on these benefits (for information on these adjustment and refund claim processes, see the regulations under these sections, Rev. Rul. 2009-39, 2009-52 I.R.B. 951, section 13 of Publication 15 (Circular E), Employer's Tax Guide, and the Instructions for Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund).

IV. DRAFTING INFORMATION

The principal author of this notice is Andrew Trujillo. For further information regarding this notice contact Andrew Trujillo on (202) 317-4826 (not a toll-free call).