



National Association of State Comptrollers

January 22, 2007

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The Honorable Steven T. Miller
Commissioner
Tax Exempt and Government Entities Division
Room 684
1111 Constitution Avenue, NW
Washington, DC 20224-0002

Dear Commissioner Miller:

On behalf of the National Association of State Comptrollers and its Payroll Group, I am writing to request your consideration and amendment of a number of outdated fringe benefit regulations that no longer make sense in today's work environment. Specifically, we would like to call to your attention IRS policies on cell phone use, take-home vehicles (and valuation methods) and business mileage reimbursement.

As commissioner of the Tax Exempt and Government Entities (TEGE) Division, you are well aware of the Federal State and Local Governments (FSLG) mission to facilitate cooperation through partnerships with federal, state, and local government agencies for the purpose of meeting their federal tax responsibilities. Over the years, our organization has worked successfully with FSLG to address a number of tax-related issues, and we very much appreciate FSLG outreach efforts that are the very core of TEGE's mission. We urge you to consider the burdens facing state and local governments as a result of outdated fringe benefit policies and regulations.

The first area of concern regards the onerous recordkeeping and audit requirements needed to comply with the IRS policy on employer provided cell phones. We believe the administrative burden created by the regulations far outweigh any benefit to the employee and therefore request that the IRS amend its policy on personal use of an employer provided cell phone as this policy no longer makes sense in the current work environment. Years ago when the IRS established its policy, cell phones were a perk provided only to executive level staff. Today, virtually every employee required to work in the field is provided a cell phone. Cell phone plans now provide free minutes, and in many cases unlimited calling, making calculation of personal use extremely difficult. Furthermore, the fact that many state government employees are on call and in certain instances addressing emergency situations only exacerbates how a state is to implement a reasonable policy on the issue of personal use. Surely a situation in which a state employee calls home from a disaster area to assure family of his safety would not be considered a personal use taxable to the employee. Our member states struggle with drafting cell phone policies that comply with the IRS regulations but that do not penalize the employee for personal phone calls that may be very necessary in the course of business. We urge the IRS to amend its policy and institute a de minimus rule, particularly in light of today's cell phone plans and pricing.

Secondly, we request your reconsideration of the IRS policy on take-home vehicles and suggest that the definition of "qualified non personal use" be expanded. According to IRS verbiage, vehicles considered "qualified non personal-use vehicles" are a working condition fringe benefit and therefore excluded from income. Nonetheless, many state vehicles that employees are "not likely to use more than minimally for personal purposes" do not fit the IRS list/definition of non-personal use and are therefore taxable fringe benefits to the employee, for example, vehicles utilized by state medical examiners and fire chiefs (i.e., first responders). These individuals are required to respond to emergencies and are on call 24 hours a day, seven days a week. While first

responders are required, by virtue of their positions, to take state vehicles home, the state vehicles do not meet the criteria for “qualified non-personal use,” and therefore commuting use of the vehicle is taxable to the employee.

Furthermore, there are many State Departments of Transportation and Public Facilities and State Departments of Health and Human Services vehicles that do not meet the exemption requirements. For example, DHHS employees are often on call and are required to take state vehicles home to respond to incidents, which could occur at any hour of the day or night, such as when children are required to be removed from the home. Similarly, transportation employees are required to take home vehicles to respond to road emergencies. These state transportation vehicles, however, do not meet the vehicle weight and/or other criteria considered to qualify as a “qualified non personal-use vehicle.” It would be very costly and in many cases time sensitive to require employees to drive to a state site to pick up a vehicle and then travel to the work or emergency site. We suggest that the IRS revisit and extend the definition of “non-personal use” to include services that should be exempt rather than exempting a service based on the type of vehicle driven.

We also want to point out an issue in utilizing the commuter valuation method and request that the IRS remove the requirement that an employee be subject to the Fair Labor Standards Act (FLSA) in order to meet the definition of “qualified employee.” The FLSA condition causes an administrator to use the lease value or cents per mile valuation method for an employee that falls outside FLSA even though the commuter valuation method would be more appropriate and far more efficient to compute. Further, a redefining or increase of the threshold for applying the lease value vs. cents per mile valuation method would be of great assistance to payroll administrators nationwide as the current regulations require application of the lease value method to most assigned vehicles even though the cents per mile valuation is less burdensome and does not significantly impact the annual taxable fringe benefit amount.

We ask that the IRS also address computing income for employees that utilize an employer provided EZ pass. State payroll administrators struggle to create a policy on the use of EZ pass as the current IRS regulations dealing with commuting use of a vehicle do not speak to the use of EZ pass. Therefore, we would welcome guidance on whether the use of EZ pass, when commuting to and from work in an employer provided vehicle, constitutes a taxable event.

Lastly, we bring to your attention IRC Section 274, the deemed substantiation rule. Section 274 enables employers to pay employees business mileage reimbursement for automobiles tax free if the employer reimburses at an amount equal to or lower than the standard mileage rate. Limiting the tax free reimbursement to automobiles ignores the value of using alternative transportation, particularly with today’s fuel prices, and penalizes employees who choose to reduce their dependency on fossil fuel and foreign oil by use of alternative methods of transportation.

We thank you for your consideration of these matters and look forward to working with your staff to establish reasonable regulations that more accurately reflect today’s business environment. Should you have any questions or if you would like to discuss in more detail the issues facing state payroll administrators, please feel free to contact Cornelia Chebinou, NASACT’s Washington Director and NASC Payroll Group staff liaison at (202) 624-5451 or via e-mail cchebinou@nasact.org.

Sincerely,



Paul Carlson
State Accounting Administrator, Nebraska
NASC President

Cc: Sunita B. Lough, Director, Federal State and Local Governments