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THE WHITE HOUSE

WASHINGTON

February 3, 1986

MEMORANDUM FOR ALL GENERAL COUNSEL

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Taxation of Fringe Benefits

You should be aware that Internal Revenue Service temporary regulations that appear at 50 Federal Register 52281-52313 (December 23, 1985) may be applicable to certain employees in your department or agency, and may impose certain reporting and withholding requirements on your department or agency as an employer. The regulations concern, inter alia, attribution of income to an employee who uses an employer-provided vehicle for personal purposes. Although questions of personal tax liability are the responsibility of the individual taxpayer, you should take appropriate steps to ensure (1) that potentially covered employees are aware of the possible applicability of these new regulations, and (2) that your department or agency complies with any applicable requirements.

FFF:JGR;aea 2/3/86

cc: FFFielding

✓JGRoberts

Subj

Chron

THE WHITE HOUSE

WASHINGTON

February 3, 1986

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*
SUBJECT: IRS Fringe Benefit Issue

The attached memorandum is as "barebones" as possible, while still alerting everyone to what is involved.

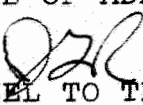
Attachment

THE WHITE HOUSE

WASHINGTON

February 4, 1986

MEMORANDUM FOR CHRISTOPHER HICKS
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, OFFICE OF ADMINISTRATION

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Your Memorandum (Revised)
on Fringe Benefits Taxation

I have reviewed the package you propose to send out with supplemental W-2 forms reporting taxable income attributable to personal use of a Government vehicle. You may take or leave the following suggestions as you see fit:

1. Delete the first sentence and substitute the following:
"This is to advise you that IRS temporary regulations issued on December 23, 1985 (effective January 1, 1985) may affect your tax liability for 1985 and subsequent years. The regulations provide that personal use of an employer-provided vehicle and driver may result in the attribution of taxable income to an employee. Under the regulations, commuting is considered personal use and the term "employer" appears to include the Federal Government."

This reformulation avoids an explicit statement that we consider commuting in a government-provided vehicle personal use, which would conflict with the statutory restriction that vehicles may only be used for "official purposes." (Providing the information in the supplemental W-2 is of course based on the assumption that such commuting is personal use covered by the regulations, but it is important that this assumption be laid to the IRS and not be explicitly endorsed by us.)

2. I recommend not providing the summary of the pertinent provisions of the regulations. We should let the IRS speak for itself through the regulations, and neither endorse nor interpret the IRS position. Any White House summary runs the risk of establishing a White House interpretation that may differ from the IRS interpretation, or unnecessarily restrict the flexibility of affected taxpayers in responding to the IRS. (I have no objection to furnishing the explanation of the valuation formula used by the Office of Administration, since this is necessary to make sense of the provided figures.)

3. A query with respect to the valuation formula explanation: why was it considered necessary to calculate an "average workday"? A government vehicle is devoted to official use for the entire period it is not used for commuting, so why should the denominator in the commuting time to total time ratio not be 24 hours?

4. Throughout the value formula explanation, "chauffeur" should be changed to "driver," for appearance purposes.

5. Typos: last line of section I on page 2 ("wich") and line 3 in section IV ("attache").



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
Washington, D.C. 20503

February 4, 1986

MEMORANDUM FOR

FROM: Christopher Hicks
Deputy Assistant to the President
for Administration and Director,
Office of Administration

SUBJECT: Supplemental W-2 Forms Reporting Taxable Income
Attributable to Use of a Government Vehicle

Due to a change in the tax law effective January 1, 1985, for which regulations were issued on December 23, 1985, the commuting value of a government-provided vehicle and driver is now considered to be a "fringe benefit" taxable to the employee to whom the vehicle and driver are provided. Furthermore, the taxable benefits are required to be reported by the employer as compensation on a FORM W-2 Wage and Tax Statement. Accordingly, I have enclosed a supplemental W-2 that reflects the commuting value of your government supplied vehicle and driver for the period of time you were employed by [Agency] during 1985.

The valuation reflected on this supplemental W-2 is subject to adjustment, based on information which you may be in a position to furnish. If you believe that such an adjustment is necessary, please contact my office by February 17.

I have also enclosed with this memorandum the following information which may prove useful to you.

1. A copy of the December 23, 1985 IRS regulations on the taxation of fringe benefits;
2. A brief summary of the pertinent provisions of the regulations and an explanation of the formula which the Office of Administration used in placing a value on the commuting use; and,
3. A worksheet reflecting the data and calculations used in computing the taxable commuting value for 1985.

You may wish to share the regulations and other information with your tax accountant or attorney.

If you have any questions about any of the information we have furnished you, you may wish to contact Arnold Intrater, General Counsel for the Office of Administration (456-6226) or Ursula Pearson, Director, Financial Management Division of the Office of Administration (395-7244).

TAXATION OF COMMUTING VALUE OF
OF AN EMPLOYER (GOVERNMENT)
FURNISHED VEHICLE

Background Information

In 1975, the IRS issued a discussion draft of Proposed Regulations which dealt with the issue of the taxability of various employer-provided fringe benefits -- including the use of a company car by an employee. This tentative effort to address a very sensitive tax issue was withdrawn. From 1975 to 1984, Congress placed a moratorium on the issuance of regulations covering fringe benefits. Finally, in the Deficit Reduction Act of 1984, Congress addressed the issue by amending the tax code to make fringe benefits taxable as compensation for income tax and withholding purposes unless the fringe benefit qualified for an exclusion under the Code. The 1984 Act was made applicable for the tax year beginning January 1, 1985.

The IRS's initial efforts at issuing regulations pursuant to the 1984 Act raised a storm of protest. The focal point of the protests was over the requirement to keep detailed contemporaneous records. The initial regulations were withdrawn, and Congress amended the code to provide for less stringent record-keeping requirements. The IRS issued its current regulations on December 23, 1985. These are Temporary Regulations and, while binding, are subject to change based on comments received during a comment period that closes February 21, 1986.

1985 Tax Status of the Vehicle Fringe Benefit

Under the 1984 Act, the use of a employer-provided car is "a working condition fringe benefit." As such, the car is excludable from the income of an employee to the extent that the car would be excludable from an employee's income as an ordinary or necessary business expense.

In the case of a Federal official, this means that the availability of a government vehicle constitutes taxable compensation only to the extent of your "personal use" of the automobile. "Personal use" is defined to include commuting from home to work and back, as well as such other incidental personal use as may be applicable.

This tax is applicable for the 1985 tax year. However, as described below, the recordkeeping requirements are less stringent for 1985 than will be the case for 1986 and beyond. Furthermore, the IRS has provided several special rules that may be used to value the taxable benefit to an employee of government furnished transportation.

Valution Methods

The regulations provide three special rules that are available to the employer and the employee for placing a value on the taxable benefit derived from the use of an employer (government) furnished vehicle.

If these special rules are not used, the taxpayer is required to use general valuation principles -- the cost to a hypothetical person of leasing from a hypothetical third party the same or comparable vehicle on the same or comparable terms in the geographic area in which the vehicle is available for use. [Temporary Regulations page 52286, column three paragraph (4).]*

The three special rules are described briefly below.

1. Commuting Special Valuation Rule. [Temporary Regulations page 52292, column three, paragraph (f)]. This rule allows a taxpayer to value the commuting benefit at \$3.00 a day. It is not, however, available to a taxpayer who also is provided with a driver (chauffeur).
2. Vehicle Cent-Per-Mile Valuation Rule. [Temporary Regulations, page 52291, middle column, paragraph (e)]. This rule allows a valuation of the personal use of an automobile at a flat rate of 21 cents per mile for the first 15,000 miles. It is available only if the automobile is driven at least 10,000 miles a year and only if the fair market value of the car is less than \$12,800 (for 1985). It appears that under this valuation method the fact that the employee has a chauffeur is not relevant, but this method was not used because the mileage and fair market value tests were not met.
3. Automobile Lease Valuation Rule. [Temporary Regulations, page 52288, middle column, paragraph (d)]. This method was used by the Office of Administration in computing your taxable income. In brief, this valuation system provides a formula for determining the annual lease value of an automobile based on the automobile's fair market value. That figure is then reduced by the percentage that the automobile is used for business purposes. In addition, a cost of fuel at 5.5 cents per mile and, more significantly, the value of a driver must be added to determine the total value of the commuting benefit to the employee. The Annual Lease Valuation Rule specifically provides that the fair market value of a driver must be added to the annual lease value. [Temporary Regulations, page 52289, column two, bottom (c) (iii)].

* All page references to the Temporary Regulations are to the December 23, 1985 issue of the Federal Register (52286), which of three columns the information appears (column three) and the closest paragraph designation is (4).

Exception For Security Concerns.

If an automobile is made available for bona-fide business oriented security concerns, the cost of security related elements of the automobile are eliminated from the valuation of the automobile for personal tax purposes. [Temporary Regulations, page 52305, column one, paragraph (m).] This includes elimination of the cost of a driver. The commuting value of the vehicle itself, however, is still taxable.

The security concern test requires that there be an overall security program on a 24-hour basis. The program needs to include some method of controlling access to the employee's residence. A guard at home is not necessary -- an alarm system is sufficient to meet the regulating requirement. [Temporary Regulations, page 52305, last column, paragraph (B)(iii)].

Special Accounting Period.

Accounting guidelines issued by the IRS grant the employer an option to treat the value of the tax benefit provided during the last two months of the calendar year as paid during the subsequent calendar year. We did not adopt this special accounting rule and, if applicable, your W-2 reflects the benefit received in November and December.

VALUATION FORMULA FOR OFFICIALS IN THE
EXECUTIVE OFFICE OF THE PRESIDENT

The Office of Administration used the Annual Lease Valuation Formula [Temporary Regulations, page 52288, column two, paragraph (d)]* for purposes of computing the compensation to be shown on the enclosed W-2 form. This document describes how the formula was applied and what assumptions were used in computing the figures on the attached worksheet that bears your name.

The Annual Lease Valuation Formula bases the taxable benefit of the commuting use of an employer-furnished automobile on three elements:

1. The percentage of the annual lease value attributable to personal use of an automobile;
2. A charge of 5.5 cents per mile for fuel provided by the employer; and
3. The value of a chauffeur's service.

I. Annual Lease Value

The annual lease value is derived from the fair market value of the employer-provided automobile as follows:

Sticker Price: Furnished by the leasing company.

Fair Market Value: A 10 percent reduction of the sticker price in accordance with guidance furnished by the leasing company.

Annual Lease Value: The IRS provides a chart at Temporary Regulations, page 52288, column three.

* Page references are to the December 23, 1985 Temporary Regulations by page number, column designation and closest paragraph reference -- these are not technical legal references.

Personal Commuting Time: The Office of Administration made the assumptions that the average workday for an official in the Executive Office of the President is 11 hours, not including commuting time, and that the work year is 260 workdays. Commuting time, based on an estimate of the mileage from your home to the White House complex, was calculated using the following assumptions: For a commuting distance of 5 miles or less -- one-half hour per round trip; 6 to 10 miles -- one-hour per round trip; in excess of 10 miles -- one and a half hour per round trip.

The ratio of commuting time to total time (11 hours plus commuting time) is the percentage of personal use (i.e., commuting use) of the automobile. That percentage was applied to the annual lease value. If you were not employed in the Executive Office of the President for the full year, the calculations were adjusted to reflect a value only for the days that you were employed. This formula does not take into account an official who commuted more than five days a week (worked on weekends) nor does it take into account an official who commuted less than five days a week due to personal or official absences from Washington. The regulations expressly preclude the reduction of the value to the employee if the automobile was available to an employee, but not used for personal reasons (e.g., vacation). [Temporary Regulations, page 52289, last column, paragraph (B).] It is unclear, however, whether non-commuting due to official absences may be considered.

Underlying this time formula is a general assumption that the balance of use of a government vehicle, other than for commuting, is for official purposes. This conforms with the conditions under which a government vehicle is made available to an official.

II. Cost of Fuel

The Annual Lease Formula requires that fuel provided by an employer be valued at 5.5 cents per commuting mile. [Temporary Regulations, page 52289, middle column, paragraph (B).] Cost of fuel was determined by multiplying 5.5 cents by actual miles of round trip commute by days worked.

As in paragraph I, the figure for the days worked used in this portion of the formula is based on the assumption that the automobile is available all year (260 workdays), and that it was in use by the official five days a week, every week while employed in the Executive Office of the President.

III. Cost of a Chauffeur

The regulations are silent as to a method for computing the value of a chauffeur (other than providing the general rule that one may use evidence of comparable availability to determine fair market value).

Informal calls to chauffeur services revealed that a driver for a service is paid somewhere between \$4 and \$9 an hour on the average. Most chauffeur services charge in excess of \$35 an hour for transportation. Cab fares are considerably less and arrangements can be made for daily transportation.

The Office of Administration did not explore these options further. Rather, it was determined to use a formula that valued the use of a driver based on the actual hourly salary of an Executive Office of the President driver. We used the actual hourly rate on the assumption that, for tax purposes, the employee may value the basic service provided and need not have inputted to him the additional costs, such as overtime, to the employer. Thus, for officials using a White House fleet automobile, the basic hourly rate used is \$8.99. For other Executive Office of the President officials, the rate of \$10.76 was used.

The hourly rate was multiplied by the round trip commuting time and number of days to arrive at the total cost of a chauffeur.

IV. Total Value

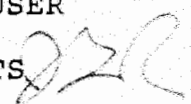
The three elements of this formula -- lease value, fuel and driver -- were then added and the amount reflected as income on the attache W-2. We did not use the special accounting rule which would allow the benefits for November and December of 1985 to be reported as income in 1986.

THE WHITE HOUSE

WASHINGTON

February 7, 1986

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

SUBJECT: Fringe Benefit Taxation

Don Korb, Assistant to the Commissioner, has advised me that Mr. Egger confirmed that it was his view that the regulations in question do apply to Federal Government officials. I read Mr. Fielding's proposed memorandum to Mr. Korb, who reviewed it with Mr. Egger. Korb advised me that it was Egger's view that the memorandum should be sent.