DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
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[redacted]

Dear [redacted]:

This responds to your letter dated September 19, 2000, requesting information on whether certain benefits provided to you by your employer are includable in your income. Specifically, you asked whether you are required to include in your income the value of a personal computer, life insurance, health insurance and certain personal airline travel benefits provided to you by your employer.

Unfortunately, we are not able to issue a ruling on these issues due to the fact that your submission does not comport with the requirements for requesting a private letter ruling. Revenue Procedure 2000-1, 2000-1 I.R.B. 4, sets forth procedures for requesting letter rulings. If you wish to request formal guidance, such as a private letter ruling, you should follow the procedures set forth in Revenue Procedure 2000-1. In the absence of a request for formal guidance, we are only able to provide general information. Accordingly, in response to your request, we have reviewed the facts provided to us and set forth below general information, which we hope will be helpful to you.

Section 61 of the Internal Revenue Code (the "Code") provides that, except as otherwise excluded, "gross income" includes compensation for services, including fringe benefits. In general, an employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the sum of (i) the amount, if any, paid for the benefit by or on behalf of the recipient, and (ii) the amount, if any, specifically excluded from gross income by some other section of the Code.

Employer-Provided Personal Computer

You have asked whether the value of a personal computer provided to you by your employer at the cost of internet access for three years is taxable income to you. We understand that the computer can be used by you for either personal or business purposes.

Section 132(a)(3) of the Code provides that gross income shall not include any fringe benefit that qualifies as a working condition fringe benefit. A "working condition fringe benefit" is defined in section 132(d) as any property or services 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 (trade or business expenses) or 167 (depreciation on business property).

Section 1.132-5(a)(1)(ii) of the Income Tax Regulations (the "regulations") provides that if under section 274 of the Code certain substantiation requirements must be met in order for a deduction under section 162 or 167 to be allowable, then those substantiation requirements apply when determining whether property is excludable as a working condition fringe benefit. Section 1.274-5T(e) of the regulations provides that an employee may not exclude from gross income as a working condition fringe benefit any amount of the value of the availability of "listed property" provided by an employer to an employee, unless the employee substantiates for the period of availability the amount of the exclusion in accordance with section 274(d). Section 274(d) generally requires the employee to substantiate to the employer by adequate records the date, the amount, and business purpose of the use, as well as the amount of expenditures with respect to the listed property.

Section 280F(d)(4)(A)(iv) of the Code provides that the term "listed property" includes "any computer or peripheral equipment (as defined in section 168(i)(2)(B))." However, section 280F(d)(4)(B) provides that the term "listed property" does not include any computer or peripheral equipment used exclusively at a regular business establishment and owned or leased by the person operating such establishment. For this purpose, any portion of a dwelling unit shall be treated as a regular business establishment only if the requirements of section 280A(c)(1) are met with respect to such portion.

To summarize, the value of the business use of the computer provided to you by your employer may be excludable from your income as a working condition fringe benefit to the extent that, if you had leased or purchased the computer yourself, the expense you incurred would be deductible. Expenses related to listed property are deductible only if the substantiation requirements under section 274(d) are satisfied. Because computers and peripheral equipment are generally listed property, you must satisfy the substantiation requirements under section 274(d) to exclude the value of the business use of the property as a working condition fringe benefit. The value of the personal use of the computer would be includable in your income, but would be reduced by the amount you paid for the computer.

However, the substantiation requirements under section 274(d) do not apply if the property is not listed property. Computers and peripheral equipment are not listed property if they are used at a place that qualifies under the Code as a home office. A place will not qualify as a home office unless the employee is working at home for the employer's convenience. In this regard, if an employee who is given the choice of working at home or at an employer-provided office, chooses to work at home, the employee generally is not working at home for the employer's convenience.

Personal Travel on Employer's Airline

You have further inquired whether the value of personal travel provided to you on your employer's airline is includable in your income. Section 132(a)(1) of the Code provides that certain services an employer provides to its employees, termed "no-additional-cost services" are excluded from the employees' gross incomes. Section 132(b) of the Code provides that the term "no-additional-cost services" means any service provided by an employer to an employee if the service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and the employer incurs no substantial additional cost (including foregone revenue) in providing the service to the employee.

To qualify for the exclusion for no-additional-cost services, the employer must incur no substantial additional cost in providing the service to the employee. For this purpose, the term "cost" includes any revenue foregone because the service is furnished to the employee rather than to a nonemployee customer. Generally, situations in which employers incur no additional cost in providing services to employees are those in which the employees receive the benefit of excess capacity which otherwise would have remained unused because nonemployee customers would not have purchased it. Thus, airlines generally do not incur substantial additional costs by furnishing free flights to employees in such a way that nonemployee customers are not displaced. H.R. Rep. No. 432, 98th Cong. 2d Sess. 1594 (1984).

Section 1.132-2(a)(2) of the regulations provides that one of the services eligible for treatment as a no-additional-cost service is transportation by aircraft. However, the exclusion does not apply when the employee takes a personal flight at no charge and receives reserved seating on a commercial flight. Of course, the Code does not prevent an airline from reserving free seating for its employees. If the airline allows its employees to reserve seats for free flights, however, the value of the flights is included in the employees' gross income under section 61 of the Code.

To summarize, the value of personal flights provided to you on your employer's airline may be excludable from your income if you work in the same line of business in which the employer offers flights for sale to nonemployee customers, and if the flights are offered to you in such a way that nonemployee customers are not displaced (e.g., on a "space-available" basis).

Personal Travel by Parents on Employer's Airline

You inquired whether the value of personal travel provided by your employer to your parents is includable in your income. Under a special statutory provision, the use of free or discounted passes by a parent of an airline employee is treated as use by the employee. Code § 132(h)(3); Reg. § 1.132-1(b)(1). Thus, (assuming you are an airline employee), to determine whether personal travel provided to your parents is excludable from your income as a no-additional-cost service, the rules set forth above are applicable in the same manner as if the travel had been provided to you.

Personal Travel by Domestic Partner on Employer's Airline

You requested information on whether the value of personal travel provided by your employer to your domestic partner is includable in your income. The exclusion for no-additional-cost services (including airline travel) applies only to benefits provided to employees. The definition of "employee" for purposes of the no-additional-cost services exclusion in section 132(b) of the Code includes current employees, spouses of employees, dependent children of employees, former employees who have left the service of the employer due to retirement or disability, and widows and widowers of employees who died while employed in the line of business or left service due to retirement or disability. If your domestic partner does not fall within this definition of "employee", then the fair market value of travel (less any amount you paid for such travel), provided by your employer to your domestic partner is includable in your gross income.

Personal Travel on Another Employer's Airline

You asked whether you are required to include in income the personal travel provided to you on an airline other than your employer's airline, offered at a discount through a contract made by your employer. Section 132(i) of the Code provides that, for purposes of the no-additional-cost exclusion, any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if: (i) the service is provided pursuant to a written agreement between the employers, and (ii) neither of the employers incurs any substantial additional costs (including foregone revenue) in providing the services or pursuant to such agreement.

Employer-Provided Life Insurance

You questioned whether to include the value of life insurance coverage provided to you by your employer in your income. Under Code section 79, generally, the cost of up to $50,000 of group-term life insurance coverage provided to an employee by his or her employer is not included in income. However, the cost of employer-provided insurance must be included in income to the extent it exceeds the cost of $50,000 of coverage, but the amount included is reduced by the amount paid by the employee towards the purchase of the insurance.

Employer-Provided Health Insurance

You also asked whether the value of health insurance coverage provided to you by your employer is includable in your income. Section 106 of the Code provides that "gross income of an employee does not include employer-provided coverage under an accident or health plan." Section 1.106-1 of the regulations provides that, "[t]he gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse, or his dependents, as defined in section 152."

Health Insurance Provided to Domestic Partner

Finally, you have inquired whether health insurance provided by your employer to your domestic partner is includable in your income. Employer-provided coverage under an accident or health plan for personal injuries or sickness incurred by individuals other than the employee, his or her spouse, or his or her dependents, as defined in section 152 of the Code, is not excludable from the employee's gross income under section 106 of the Code. Thus, if your domestic partner is not your spouse or your dependent, the fair market value of health insurance coverage provided to your domestic partner by your employer (less any amount you paid for such coverage) is includable in your income.

Section 152(a)(1) through (8) of the Code provides that the term "dependent" means any individual over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer and who is related to the taxpayer in one of several specified relationships.[1]

Section 152(a)(9) of the Code provides, in pertinent part, that the term "dependent" means an individual over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer and (other than an individual who at any time during the taxable year was the spouse of the taxpayer) who, for the taxable year of the taxpayer has as his or her principal place of abode the home of the taxpayer and is a member of the taxpayer's household. Section 152(b)(5) of the Code provides that an "individual is not a member of a taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law."

An employee's domestic partner who is not related to the employee in one of the relationships specified in section 152(a)(1) through (8) of the Code, may qualify as a dependent of the employee if the requirements of sections 152(a)(9) and (b)(5) discussed above are met.

You have also asked whether you are required to pay Social Security tax on the benefits described above. If a fringe benefit is excludable from an employee's gross income, then its value is not added to the employee's wages and there are no employment tax consequences. On the other hand, if the benefit is not excludable (or is only partially excludable) from gross income, its value is reported as wages on the employee's Form W-2 and the employer generally must withhold income taxes and the employee's share of FICA, in addition to paying its share of FICA and FUTA.

This letter provides general information only. It describes well-established interpretations and principles of tax law without applying them to a specific set of facts.

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[1] The relationships specified in Code section 152(a)(1) through (8) are as follows:

(1) A son or daughter of the taxpayer, or a descendant of either,
(2) A stepson or stepdaughter of the taxpayer,
(3) A brother, sister, stepbrother, or stepsister of the taxpayer,
(4) The father or mother of the taxpayer, or an ancestor of either,
(5) A stepfather or stepmother of the taxpayer,
(6) A son or daughter of a brother or sister of the taxpayer,
(7) A brother or sister of the father or mother of the taxpayer,
(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer

It is advisory only and has no binding effect with the Internal Revenue Service. This letter is intended only to provide you with general guidance for determining how to comply with applicable law.

The attorney assigned to this matter is Lynne Camillo (Employee ID #50-01066). She can be reached at (202) 622-6040.

Sincerely,

Jerry E. Holmes
Chief, Employment Tax Branch 2
Office of the Assistant Chief Counsel
(Exempt Organizations/ Employment Tax/
Government Entities)