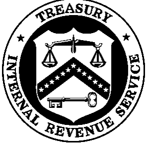

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Rob Wittman
Member, U.S. House of Representatives
401 Main Street
P.O. Box 494
Yorktown, VA 23690

Attention:

Dear Representative Wittman:

I am responding to your inquiry dated November 06, 2015 on behalf of your constituent, . asked a question involving the application of the 80/50 rule found in Internal Revenue Code (Code) section 132(f)(5)(B)(ii) to private vanpools. wrote that his employer imposes the 80/50 rule on the vanpool of which he is a member. He believes he is a member of a privately owned vanpool that should not be subject to the 80/50 rule.

As a general matter, we cannot provide binding legal advice to taxpayers unless they request a private letter ruling as described in Revenue Procedure 2015-1, 2015-1 Internal Revenue Bulletin 1. However, I may provide the following general information.

Gross income means all income from whatever source derived, including compensation for services, including fees, commissions, fringe benefits, and similar items [section 61(a)(1) of the Code]. Consequently, we presume a fringe benefit provided by an employer to an employee to be income to the employee, unless another section of the Code specifically excludes it from gross income.

Gross income does not include any benefit that is a "qualified transportation fringe" [section 132(a)(5) of the Code]. Qualified transportation fringes include transportation an employer provides to an employee in a commuter highway vehicle if the transportation

is for travel between the employee's residence and place of employment [section 132(f)(1)(A)].

A commuter highway vehicle is any highway vehicle that meets the following conditions:

- Has a seating capacity of at least 6 adults (not including the driver)
- At least 80 percent of the mileage use can reasonably be expected to be
    - For transporting employees between their residences and their place of employment
    - Used on trips during which the number of employees transported for such purposes is at least 50 percent of the adult seating capacity (not including the driver) [Code section 132(f)(5)(B)]

These requirements are sometimes called "the 80/50 rule." The 80/50 rule does not include a requirement that the employee use the vanpool at least 50 percent of the time. Rather, it requires that employees in the vanpool fill at least 50 percent of the adult seating capacity, not including the driver.

Qualified transportation fringes also include "transit passes" [section 132(f)(1)(B)]. A transit pass includes any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price), if the transportation is provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle in which the seating capacity is at least 6 adults, not including the driver [section 132(f)(5)(A)(ii)].

The Treasury Regulations explain how the qualified transportation fringe rules apply to vanpools. Employer and employee-operated vanpools, as well as private or public transit-operated vanpools, may constitute qualified transportation fringes. The 3 types of vanpools are:

- **Employer-operated vanpool** - The employer either purchases or leases vans to enable employees to commute together to the employer's place of business or the employer contracts with and pays a third party to provide the vans and pays some or all of the costs of operating the vans. If an employer-operated van meets the definition of a commuter highway vehicle, then the value (up to the statutory monthly limit) of an employer-operated vanpool used by an employee is a nontaxable qualified transportation fringe [Treasury Regulation section 1.132-9(b) Q/A-21(b)].

- **Employee-operated vanpool** - The employees, independent of their employer, operate a van to commute to their places of employment. If the van meets the definition of a commuter highway vehicle, then the employer's cash reimbursement to employees for expenses incurred in connection with an employee-operated vanpool (up to the statutory monthly limit) is a nontaxable qualified transportation fringe [Treasury Regulation section 1.132-9(b) Q/A-21(c)]. The substantiation rules for cash reimbursements found in Treasury Regulation 1.132-9(b) Q/A-16(c) apply.

- **Private or public transit-operated vanpool** - Public transit authorities or a person in the business of transporting persons for compensation or hire owns or operates the vanpool. The van must seat at least 6 adults, not including the driver.

If a vanpool is an employer-operated or employee-operated vanpool, the van must comply with the 80/50 rule for the value of the benefit, or the employer's reimbursements of the employee's costs, to qualify as transportation fringes excludable from income and employment taxes.

If a vanpool is a private or public transit-operated vanpool, the van must seat at least 6 adults, not including the driver. The 80/50 rule does not apply to private or public transit-operated vanpools.

While your constituent indicated he is a member of a private transit-operated vanpool, which is a factual question, his employer may have concluded that the carpool is an employee-operated vanpool and as such, is subject to the 80/50 rule.

In addition, while section 132(f) does list the requirements necessary for employer provided transit benefits excluded from income and employment taxes, employers are free to impose additional restrictions. [See Regulation section1.132-9 Q/A 19.]

I hope this information is helpful. If you have any additional questions, please contact me or at .

Sincerely,

Lynne A. Camillo
Branch Chief, Employment Tax Branch 2
(TEGE Associate Chief Counsel)