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Notice 2019-34, IRB 2019-22 1257 -- IRC Sec(s). 61, 05/08/2019

Notices

**Notice 2019-34, IRB 2019-22 1257, 05/08/2019, IRC
Sec(s). 61**

Gross income—special valuation rules—employer-provided vehicles—maximum vehicle values—interim guidance.

Headnote:

IRS provided maximum vehicle FMVs for use with fleet-average and vehicle cents-per-mile special valuation rules under Reg § 1.61-21(d) and Reg § 1.61-21(e) for 2019. For 2019, maximum value used to determine value of personal use of employer-provided vehicle is \$50,400. Taxpayers may rely on this guidance until proposed regs are published.

Reference(s): ¶ 615.028(5); Code Sec. 61;

Full Text:

This  Notice 2019-34 provides the maximum fair market value of a vehicle for use with the fleet-average and vehicle cents-per-mile special valuation rules under  Treas. Reg. § 1.61-21(d) and  (e), respectively, for 2019. These special valuation rules may be used to value an employee's personal use of an employer-provided vehicle for income and employment tax purposes.

I. Purpose

This  Notice 2019-34 provides the maximum vehicle value for 2019 for purposes of the special valuation rules provided in  Treas. Reg. § 1.61-21(d) and  (e) that may be used to determine the value of personal use of an employer-provided vehicle. This  Notice 2019-34 also provides information about the way the Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) intend to publish this maximum vehicle value in the future. Additionally, this  Notice 2019-34 provides temporary relief from the consistency requirements in  Treas. Reg. § 1.61-21(e)(5) for use with the vehicle cents-per-mile valuation rule. Finally, this  Notice 2019-34 allows flexibility with respect to the  Treas. Reg. § 1.61-21(d)(5)(v)(B) rules relating to the period of use for the fleet-average valuation rule, which is an optional component of the automobile lease valuation rule under  Treas. Reg. § 1.61-21(d).

II. Background

If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use generally must be included in the employee's income.  Internal Revenue Code § 61(a)(1);  Treas. Reg. § 1.61-21.

A. The Vehicle Cents-Per-Mile Rule

A. For employer-provided vehicles made available to employees for personal use that meet the requirements of  Treas. Reg. § 1.61-21(e)(1), generally the value of the personal use may be determined under the vehicle cents-per-mile valuation rule of  Treas. Reg. § 1.61-21(e). However,  Treas. Reg. § 1.61-21(e)(1)(iii) currently provides that the value of the personal use may not be determined under the vehicle cents-per-mile valuation rule for a calendar year if the fair market value of the vehicle (determined pursuant to  Treas. Reg. § 1.61-21(d)(5)(i) through  (iv)) on the first date the vehicle is made available to the employee exceeds a base value of \$12,800 that is adjusted annually under  section 280F(d)(7).  Treas. Reg. § 1.61-21(e)(5)(i) states that an employer must adopt the vehicle cents-per-mile valuation rule by the first day on which the vehicle is used by an employee of the employer for personal use (or, if the commuting valuation rule of  Treas. Reg. § 1.61-21(f) is used when the vehicle is first used by an employee of the employer for personal use and the employer switches to the vehicle cents-per-mile valuation rule, the first day on which the commuting valuation rule is not used).  Treas. Reg. § 1.61-21(e)(5)(ii) provides, in part, that once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employer, the rule must be used by the employer for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of  Treas. Reg. § 1.61-21(f), use the commuting valuation rule with respect to the vehicle.

B. The Fleet-Average Valuation Rule

B. For employer-provided automobiles available to employees for personal use for an entire year, generally the value of the personal use may be determined under the automobile lease valuation rule of  Treas. Reg. § 1.61-21(d). Under this valuation rule, the value of the personal use is the Annual Lease Value. Provided the requirements of  Treas. Reg. § 1.61-21(d)(5)(v) are met, 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. The fleet-average value is the average of the fair market values of all the automobiles in the fleet. However,  Treas. Reg. § 1.61-21(d)(5)(v)(D) provides that the value of an employee's personal use of an automobile may not be determined under the fleet-average valuation rule for a calendar year if the fair market value of the automobile (determined pursuant to  Treas. Reg. § 1.61-21(d)(5)(i) through  (iv)) on the first date the automobile is made available to an employee exceeds the base value of \$16,500, as adjusted annually for inflation pursuant to  section 280F(d)(7).

 Treas. Reg. § 1.61-21(d)(5)(v)(B) generally provides that the fleet-average valuation rule may be used by an employer as of January 1 of any calendar year following the calendar year in which the employer acquires a sufficient number of automobiles to total a fleet of 20 or more, each one satisfying the maximum value limitation of  Treas. Reg. § 1.61-21(d)(5)(v)(D). The Annual Lease Value calculated for automobiles in the fleet, based on the fleet-average value, shall remain in effect for the period that begins with the first January 1 the fleet-average valuation rule is applied by the employer to the automobiles in the fleet and ends on December 31 of the subsequent calendar year. The Annual Lease Value for each

subsequent two-year period is calculated by determining the fleet-average value of the automobiles in the fleet as of the first January 1 of that period. An employer may cease using the fleet-average valuation rule as of any January 1.

C. Notice 2019-08

C.  Notice 2019-08 provides interim guidance on new procedures using  section 280F(d) (7), as modified by sections 11002 and 13202 of the Tax Cuts and Jobs Act, Pub. L. No. 115-97 (the “Act”), for calculating the inflation adjustments to the maximum vehicle values for use with the special valuation rules under  Treas. Reg. § 1.61-21(d) and  (e). Additionally,  Notice 2019-08 states that the IRS and the Treasury Department anticipate that further guidance on these issues will be issued in the form of proposed regulations and expect that the regulations will be consistent with the rules set forth in  Notice 2019-08.

 Notice 2019-08 states that, consistent with the substantial increase in the dollar limitations on depreciation deductions under  section 280F(a), as modified by section 13202(a)(1) of the Act, the IRS and the Treasury Department intend to amend  Treas. Reg. § 1.61-21(d) and  (e) to incorporate a higher base value of \$50,000 as the maximum value for use of the vehicle cents-per-mile and fleet-average valuation rules effective for the 2018 calendar year.

 Notice 2019-08 further states that the IRS and the Treasury Department intend that the regulations will be modified to provide that this \$50,000 base value will be adjusted annually using  section 280F(d)(7) for 2019 and subsequent years.  Notice 2019-08 also provides

that, for 2018, the maximum value for use of the vehicle cents-per-mile and fleet-average valuation rules is \$50,000. Finally,  Notice 2019-08 provides that, for 2018 and 2019, the IRS and the Treasury Department will not publish separate maximum values for trucks and vans for use with the vehicle cents-per-mile and fleet-average valuation rules.

D. The Maximum Standard Automobile Cost for an Allowance Under a FAVR Plan

D. Rev. Proc. 2010-51, 2010-51 I.R.B. 883, provides rules for using optional standard mileage rates in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. Section 2.12(1) of Rev. Proc. 2010-51 provides that the IRS publishes both the standard mileage rates for the use of an automobile for business, charitable, medical, and moving expense purposes, and the maximum standard automobile cost for purposes of an allowance under a fixed and variable rate (FAVR) plan, in a separate annual notice.

When  Treas. Reg. § 1.61-21(d) and  (e) are amended to incorporate a higher base value of \$50,000 as the maximum value for use of the vehicle cents-per-mile and fleet-average valuation rules, the IRS and the Treasury Department expect that the maximum value for use of the vehicle cents-per-mile and fleet-average valuation rules for 2019 and subsequent years will be the same as the maximum standard automobile cost for purposes of an allowance under a FAVR plan. The maximum standard automobile cost for purposes of an

allowance under a FAVR plan and the maximum value for use of the vehicle cents-per-mile and fleet-average valuation rules will each be calculated using the base value of \$50,000, adjusted annually in accordance with  section 280F(d)(7). Accordingly, the IRS and the Treasury Department anticipate that once  Treas. Reg. § 1.61-21(d) and  (e) are amended, the maximum value for use of the vehicle cents-per-mile and fleet-average valuation rules will be published in the annual notice providing the standard mileage rates for the use of an automobile for business, charitable, medical, and moving expense purposes and the maximum standard automobile cost for purposes of an allowance under a FAVR plan.

E. Notice 2019-02

E.  Notice 2019-02, 2019-02 I.R.B. 281, provides the optional 2019 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes.  Section 5 of Notice 2019-02 states that, for purposes of computing the allowance under a FAVR plan, the standard automobile cost for 2019 may not exceed \$50,400.

III. Guidance

Based on the foregoing:

- (1) The maximum value of an employer-provided vehicle (including cars, vans and trucks) first made available to employees for personal use in calendar year 2019 for which the vehicle cents-per-mile valuation rule provided under  Treas. Reg. § 1.61-21(e) may be applicable is \$50,400.
- (2) The maximum value of an employer-provided automobile (including vans and trucks) first made available to employees for personal use in calendar year 2019 for which the fleet-average valuation rule provided under  Treas. Reg. § 1.61-21(d)(5)(v) may be applicable is \$50,400.

Furthermore, the Treasury Department and the IRS intend to revise  Treas. Reg. § 1.61-21(e) to provide that if an employer did not qualify under  Treas. Reg. § 1.61-21(e)(5) to adopt the vehicle cents-per-mile valuation rule on the first day on which a vehicle was used by an employee of the employer for personal use because, under the rules in effect before 2018, the vehicle had a fair market value in excess of the maximum permitted in accordance with  Treas. Reg. § 1.61-21(e)(1)(iii), the employer may first adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year based on the maximum fair market value of a vehicle for purposes of the vehicle cents-per-mile valuation rule set forth in  Notice 2019-08 or this  Notice 2019-34, as applicable. Similarly, the IRS and Treasury Department intend that the proposed regulations will further provide that if the commuting valuation rule of  Treas. Reg. § 1.61-21(f) was used when the vehicle was first used by an employee of the employer for personal use, and the employer did not qualify to switch to the

vehicle cents-per-mile rule on the first day on which the commuting valuation rule was not used because, under the rules in effect before 2018, the vehicle had a fair market value in excess of the maximum permitted in accordance with  Treas. Reg. § 1.61-21(e)(1)(iii), the employer may adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year based on the maximum fair market value of a vehicle for purposes of the vehicle cents-per-mile valuation rule set forth in  Notice 2019-08 or this  Notice 2019-34, as applicable. However, consistent with  Treas. Reg. § 1.61-21(e)(5), an employer that adopts the vehicle cents-per-mile valuation rule must continue to use the rule for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of  Treas.Reg. § 1.61-21(f), use the commuting valuation rule with respect to the vehicle.

In addition, with respect to an employer that did not qualify to use the fleet-average valuation rule prior to January 1, 2019, because the maximum value limitation of  Treas. Reg. § 1.61-21(d)(5)(v)(D) prior to 2018 could not be met, the Treasury Department and the IRS intend to revise  Treas. Reg. §1.61-21(d) to provide that an employer may adopt the fleet-average valuation rule for 2018 or 2019, provided the requirements of  § 1.61-21(d)(5)(v) are met for that year using the maximum vehicle values set forth in  Notice 2019-08 or this  Notice 2019-34, respectively.

Employer-provided vehicles are noncash fringe benefits under  section 3501(b). 
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). No regulations have been issued under  section 3501(b) that supersede the announcement. Thus,  Announcement 85-113 generally is applicable to current payments of noncash fringe benefits, including vehicles.

 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 subsequent calendar year.

Employers that wish to use the vehicle cents-per-mile rule or the fleet-average valuation rule for 2019 based on the maximum values set forth in this notice may use the rules in  Announcement 85-113 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 amounts (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 for information on these adjustment and refund claim processes).

Until revised final regulations are published under  Treas. Reg. § 1.61-21(d) and  (e), taxpayers may rely on the interim guidance provided in this  Notice 2019-34.

Request For Comments

Interested parties are invited to submit comments on this notice by July 29, 2019. Comments should include a reference to  Notice 2019-34. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulation.gov (type IRS-2019-34 in the search field on the **regulations.gov** homepage to find this notice and submit comments).

Alternatively, submissions may be sent to CC:PA:LPD:PR ( Notice 2019-34), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR ( Notice 2019-34), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044. All comments submitted by the public in response to this notice will be available for public inspection and copying in their entirety.

IV. Drafting Information

The principal author of this notice is Gabriel Minc of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information

regarding this notice contact Mr. Minc at (202) 317-4774 (not a toll-free call).

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