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2009 Automobile Rules

Computation of Personal Use

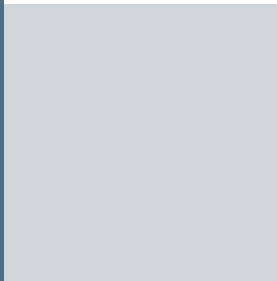




Table of Contents

Substantiation Requirements	3
Employer’s Reliance on Employee Records	4
Determination of Annual Value of an Employer-Provided Automobile	4
Automobile Lease Valuation Rule	4
Vehicle Cents-Per-Mile Valuation Rule	5
Commuting Valuation Rule	6
The Ten Month Rule	6
Withholding Elections and Requirements	7
Reporting Requirements	7
Tax Return Information	8
Exhibit 1A	9
Sample Notice to Employees	
Exhibit 1B	10
Vehicle Information Summary	
Exhibit 1C	11
Annual Lease Value Table	
Exhibit 1D	12
Worksheet for Computing Additional Compensation for Personal Use of Employer Provided Automobile During Calendar Year 2009	

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2009 Automobile Rules: Computation of Personal Use

The taxable income resulting from the personal use of automobiles provided by an employer is computed by the employer using guidelines established in Internal Revenue Service regulations and must be reported on a Form W-2, Employee Wage and Tax Statement. This information is required to enable the employees to prepare their individual tax returns. The employee is to receive a Form W-2 no later than February 1, 2010.

The rules for computing the personal use of an employer provided automobile have not changed from 2008. However, some of the rates used in computing the taxable income have changed. In order to compute the taxable income, the following steps must be taken on each automobile, which is provided to an employee.

- The employer must obtain a written statement from each employee of the total mileage and that portion which is either business or personal. Each employee should be advised of what constitutes personal use and what is required to substantiate business use. A sample statement is attached as Exhibit 1B.
- The employer must value the personal use of the automobile (including fuel) as explained later in this release.

If the employer made an election to value the personal use of the automobile under one of the special valuation rules, or elected not to withhold income tax, the employer must have notified the employee of these elections by January 31 of the applicable calendar year or 30 days after the employer first provides the benefit to the employee. Employees need not be notified of the employer's intent to continue using a particular valuation method previously elected.

Substantiation Requirements

The IRS has published rules for the substantiation of the business use of autos made available by an employer for use by an employee. In general, the employee must include in gross income the personal use portion of the value of the automobile. The business use portion for which the employee provides adequate substantiation is not included in gross income. If the employer includes 100% of the value of the auto in the employee's gross income, the employee may deduct, on his personal return, the percentage of the total value that can be substantiated as business. The deduction is a miscellaneous itemized deduction and subject to reduction by 2% of adjusted gross income.

A taxpayer must have sufficient information to substantiate the amount, time, use and business purpose of submitted expenses or use. Taxpayers should maintain and be able to produce such substantiation that will constitute proof of each expenditure or use. A contemporaneous log is not required, but a record of the elements of an expenditure or of a business use of the auto made at or near the time of the expenditure or use, supported by sufficient documentary evidence, has a high degree of credibility not present with respect to a statement prepared later.

To meet the "adequate records" requirements, the IRS says that a taxpayer shall maintain an account book, diary, log, statement of expense, trip sheets, or similar record, and documentary evidence which, in combination, are sufficient to establish each element of an expenditure or use. It is not necessary to record information in an account book, or similar record which duplicates information reflected on a receipt so long as the account book, etc. and receipt complement each other in an orderly manner.

If a taxpayer fails to maintain an adequate record, then the taxpayer must establish the elements of an expenditure or use by a written or oral statement and other corroborative evidence sufficient to establish the elements. For example, a taxpayer may maintain an adequate record for portions of a taxable year and use that record to substantiate the annual business use of an automobile only if the taxpayer can demonstrate by other evidence that the periods for which the adequate record is maintained are representative of the taxable year.



The taxpayer may substantiate concurrent or repetitious expenditures or uses as a single item in certain cases. Amounts expended for gasoline or repairs for an automobile may be aggregated. If these expenses are aggregated, the taxpayer need not prove the business purpose of each expense, but may prorate the expenses based on the total business use of the property. Similarly, a taxpayer may consider a round trip or an uninterrupted period of business use as a single use.

Employer's Reliance on Employee Records

An employer substantiates its deduction for business use of automobiles provided to employees by either of two methods. First, the employer may show that, based on adequate records maintained by the employees or on other evidence corroborating the employees' statements, all or a portion of the use of the auto by employees is in the employer's trade or business, and that if any employee used the car for personal purposes, the employer included an appropriate amount in the employee's income. Alternatively, the employer may treat all use by employees as personal use and include an appropriate amount in the employees' income.

An employer may rely on adequate records submitted by its employees or, the employer may rely on a statement submitted by the employee that provides sufficient information to allow the employer to determine the business use. The employer cannot use the statement if he knows, or has reason to know, that the statement is not based on adequate records or sufficient corroborative evidence. The employer must retain a copy of the substantiation used to compute the taxable income if submitted by the employee. **If the employer relies on the employee's statement, the employer must retain a copy of the statement and the employee must retain a copy of the adequate records or other evidence.**

Determination of Annual Value of an Employer-Provided Automobile

Current regulations provide optional special methods to determine the taxable income reportable for personal use of an auto. If these special methods are not used, the employer must determine the costs the employee would have incurred if he had leased or rented a comparable automobile, on comparable terms, for a comparable period. If the employer elects to use a special valuation method, then the employer must notify the employee of the election by the later of January 31 of the calendar year for which the election is to apply or 30 days after the employer first provides the benefit to the employee. A sample notification is attached as Exhibit 1A.

If the employer elected to use a special valuation rule in a prior year and notified the affected employee in the prescribed manner, the employer need not notify the employee that the same valuation rule will be continued. The special valuation rules must be adopted by the first period in which the vehicle is used by an employee for personal use. **Once a special valuation rule is adopted, it must be used for all subsequent periods in which the automobile is used by the employee.**

The amount that would otherwise be reported as income may be reimbursed by the employee to avoid inclusion. An employee may determine the amount of such reimbursement using the same special valuation method elected by his employer or using the general rule described above. The remainder of this release will relate to the special rules based on the assumption that personal use will be reported as the employee's taxable income.

Automobile Lease Valuation Rule

This rule requires the determination of the total annual value of operating an automobile. The employee's personal use percentage is then applied to this value to determine the employee's taxable income. There are two main components, Annual Lease Value and Fuel Costs, the total of which is the value of the auto.



Annual Lease Value

Annual Lease Value is determined from a table provided by the IRS based on the fair market value of the auto when placed in service. The table is attached as Exhibit 1C. Fair market value is the amount a person would pay to purchase the automobile in an arms-length transaction from a third party. All purchase fees (i.e., sales taxes and title fees) are included. Fair market value does not necessarily mean the amount that you paid to purchase the automobile. There is a safe-harbor value. If you purchased the automobile in an arms-length transaction, the cost, including purchase expenses, is the safe-harbor value. If you lease the automobile, the safe-harbor value is the manufacturers invoice price plus options plus 4% the manufacturers suggested retail price, less 8% (including purchase expenses), or the retail value reported by a nationally recognized pricing source, if reasonable. The fair market value of the auto is not adjusted annually. The annual lease value will remain in effect for the period that begins with the first date the special valuation rule is applied by the employer to the automobile, and ends on December 31 of the fourth full calendar year following that date. If the auto is still in use in the fifth year, a new fair market value and a corresponding annual lease value are determined. For example, an auto placed in service and valued in 2004 will be revalued on January 1, 2009. If the employer transfers an automobile from one employee to another employee for a valid business purpose, the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of January 1 of the year of transfer. Sales taxes and title fees are included as part of the purchase price. For a leased or a revalued auto, fair market value can be determined by any nationally recognized publication that periodically reports such retail values.

The Annual Lease Value includes the value of insurance, repairs, tires and other operating expenses. If one of these services is not provided by the employer, the lease value may not be reduced by the value of these services.

Fuel Costs

Fuel Costs can be determined by an actual cost allocation or based on 5.5 cents per mile for the personal mileage of the employee.

If the employer provides any service such as a chauffeur, with respect to the automobile, the service must be valued separately and added to the amount computed above.

If the auto is provided to the employee for less than an entire calendar year, the value is prorated over the part of the year that the auto is in use. If the auto is available to the employee for a period of less than thirty days, a **daily** lease value is computed based on the annual lease value multiplied by four times the number of days of the availability and divided by 365. When the period of availability is more than seven days but less than 30, the value of the benefit, at the taxpayer's election, may be calculated under the regular prorated annual lease value method as if the car had been available for 30 days. The formula for this proration would be the annual lease value times 30/365 days.

Vehicle Cents-Per-Mile Valuation Rule

The personal use of a company auto may be valued using the cents-per-mile rule if the following two requirements are met:

Requirement 1

- The employer reasonably expects the vehicle will be regularly used in the employer's trade or business throughout the calendar year, or
- The vehicle is driven at least 10,000 miles (business and/or personal) during the year and is used primarily by the employees.



Requirement 2

The fair market value of the vehicle on the first day it is made available to the employee does not exceed the sum of the depreciation limits for the auto for the first five years of service. For an automobile first made available to an employee in 2009, the fair market value may not exceed \$15,000. The limitation of the fair market value of autos made available during 2008 was \$15,000.

Under this method the value of the personal use is determined by multiplying the standard mileage rate provided by the Internal Revenue Service by the personal miles driven. The standard mileage rate is 55 cents per mile for 2009. Unlike the lease value tables, the mileage rate includes the value of fuel. If the employer does not provide fuel, the rate may be reduced by 5.5 cents per mile.

Once elected, the cents-per-mile valuation rule must be used until the vehicle no longer meets the previously outlined requirements. At that point, the employer may then use the lease valuation rule. There is one exception: employers are allowed to alternate the use of the commuting valuation rule and the cents-per-mile rule for the same vehicle.

The cents-per-mile rule may only be used to value the miles driven for personal purposes. The employer may not include in the employee's income 100% (all business and personal miles) of the value of the vehicle using the standard mileage rule.

The use of this cents-per-mile valuation rule is limited. If you think this rule may apply in your situation, we recommend that you contact us before you implement it.

Commuting Valuation Rule

If the following requirements are met, the personal use of an employer-provided vehicle may be computed as \$1.50 per one-way commute:

- The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business;
- For bona fide noncompensatory business reasons, the employer requires the employee to commute in the vehicle;
- The employer has established a written policy under which the employee may not use the vehicle for personal purposes other than commuting and de minimis personal use (i.e., stopping for lunch between business stops or a personal stop to or from work);
- The employee using the vehicle for commuting is not: 1) an officer who is paid at least \$95,000; 2) a director; 3) one percent or greater owner of the employer; 4) or receives \$195,000 or more in compensation for 2009.

A worksheet for computing the value of the personal use of the auto is attached as Exhibit 1D. All four methods for calculating the value are shown on the worksheet. The method used in most cases will be the Automobile Lease Valuation Rule.

The Ten Month Rule

Generally, the value of the personal use of an employer-provided automobile (for a calendar year) must be determined by January 31 of the following year. However, a special accounting rule is available as an alternative. Basically, the special rule allows the employer to treat the value of the personal use of the automobile provided during the last two months of the calendar year or any shorter period as paid during the following calendar year. Under this special rule, the employer could treat the value of the automobile provided in November and December of 2008 as being paid in 2009. For 2009, the value would be determined from November 1, 2008 through October 31, 2009. If an employer uses this special rule, there are conformity rules, which must also be met.



Withholding Elections and Requirements

Employers may elect, for employment tax purposes, to treat the income from the personal use of employer-provided automobiles as paid on: a pay period, quarterly, semi-annual, annual, or other basis. The benefit of the personal use of the auto must be treated as paid not less frequently than annually. A different election can be made for each employee and the election for each employee can be changed from year to year.

For federal income tax purposes, an employer may add the value of the personal use of the auto to the regular wages for a payroll period and compute withholding taxes on the total. A flat 25% income tax withholding rate can be used as an alternative. An employer may elect not to withhold income taxes if he notifies the employee in writing of the election and includes the value of the personal use of the automobile on a timely furnished Form W2. The notice must be in writing and must be provided to the employee by the later of January 31 of the year for which the election is to apply or within 30 days after the date the employer first provides a vehicle to the employee. This notice must be provided to the employee **each year** that the election not to withhold income taxes is made by the employer. See Exhibit 1A.

Employers **must** withhold the applicable Social Security and Medicare taxes with respect to the value of the personal use of the automobile. If, however, an annual election is made with respect to when the personal use of the automobile is paid and if the employee has already reached the Social Security tax base for wages, then no Social Security tax withholding will be required. There is no limit on the Medicare wage base.

Both income tax (if the election regarding withholding has not been made by the employer) and Social Security and Medicare taxes should be withheld on the date or dates (pay period, quarterly, semi-annually, annually, or other) that the employer has elected to treat the benefit as paid. Deposits by the employer of the withheld taxes are due under the regular rules for tax deposits.

When the tax deposit is due, if the employer has not actually collected the taxes from the employee, then the employer may pay the taxes due. The employer must then recover the taxes from the employee. For any calendar year, the employer must collect the withholding taxes from the employee before April 1 of the following year. If the taxes are not collected by this date, then the taxes paid by the employer must be treated as additional compensation to the employee.

Reporting Requirements

The calculated value of the personal use of the employer-provided automobile must be reported on Form W-2. A separate Form W-2 may be used to report the value of the personal use or it may be added to the employee's regular Form W-2. The value must be reported in Box 1 (Wages, tips, other compensation); Box 3 (Social security wages) if applicable **and** Box 5 (Medicare wages and tips). Box 2 (Federal income tax withheld), Box 4 (Social security tax withheld) if applicable and Box 6 (Medicare tax withheld) should also be completed. The employer must notify the affected employees of the valuation rule that has been used and of the period for which it applies. If 100% of the value of the vehicle is reported it must be identified as such **and reported in Box 14**. This notice must be provided at or near the time the employer provides the employee with the Form W-2.

The value of the personal use of the employer-provided automobile is subject to federal and state unemployment taxes as well as withholding taxes; therefore, the value will have to be reflected on the employer's Form 941, 940, and the appropriate state unemployment tax return. If the employer treats the value as paid on an annual basis, then the fourth quarter Form 941 will reflect the entire amount of that value. If a method other than the annual basis is elected by the employer, then the first, second, and third quarter Forms 941 may also be affected.



Tax Return Information

Employers must include certain information on their tax returns about the business use of vehicles and other listed property. Taxpayers that claim a deduction or credit with respect to any vehicle are required to provide the date that the vehicle was placed in service, information about the number of miles driven for various purposes, the percent of business use, **whether evidence to support the business use is available, and whether that evidence is written.**



Exhibit 1A

Sample Notice to Employees

TO: (Employee)
FROM: (Employer)
DATE: January XX, 2010
RE: **Employer-Provided Vehicle**

(Employer Name) has elected for 2010 not to withhold any federal or state income tax from the value of the personal use of the vehicle, which has been provided to you. However, Social Security and Medicare tax will be withheld if applicable.

You may wish to revise your Form W-4 to cover the additional income for the personal use of the vehicle provided to you. This additional income will be reported on your W-2 at the end of the year.

(Employer Name) has also elected to treat the value of the personal use of the vehicle as paid on a (pay period, quarterly, semi-annual, or other) basis for 2010.

(Employer Name) has elected for 2010 to use a special valuation rule in calculating the value of the personal use of the vehicle, which has been provided to you. The special valuation rule used will be either the automobile lease valuation rule, vehicle cents-per-mile rule, or the commuting valuation rule, depending on which yields the least amount of taxable income.

In order to use this special valuation rule, you must provide (Employer Name) with a written statement to substantiate your business use of the vehicle during 2010. This statement must include your total mileage for the year, broken down between business, commuting, and other personal miles. Attached is a statement, which you may use to submit this information at year-end.

In general, if you do not submit a written statement to (Employer Name), the value of the personal use will be computed using 100% as the personal use portion.



Exhibit 1C

Annual Lease Value Table

Automobile Fair Market Value	Annual Lease Value
\$ 0 to 999	\$ 600
1,000 to 1,999	850
2,000 to 2,999	1,100
3,000 to 3,999	1,350
4,000 to 4,999	1,600
5,000 to 5,999	1,850
6,000 to 6,999	2,100
7,000 to 7,999	2,350
8,000 to 8,999	2,600
9,000 to 9,999	2,850
10,000 to 10,999	3,100
11,000 to 11,999	3,350
12,000 to 12,999	3,600
13,000 to 13,999	3,850
14,000 to 14,999	4,100
15,000 to 15,999	4,350
16,000 to 16,999	4,600
17,000 to 17,999	4,850
18,000 to 18,999	5,100
19,000 to 19,999	5,350
20,000 to 20,999	5,600
21,000 to 21,999	5,850
22,000 to 22,999	6,100
23,000 to 23,999	6,350
24,000 to 24,999	6,600
25,000 to 25,999	6,850
26,000 to 27,999	7,250
28,000 to 29,999	7,750
30,000 to 31,999	8,250
32,000 to 33,999	8,750
34,000 to 35,999	9,250
36,000 to 37,999	9,750
38,000 to 39,999	10,250
40,000 to 41,999	10,750
42,000 to 43,999	11,250
44,000 to 45,999	11,750
46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13,250
52,000 to 53,999	13,750
54,000 to 55,999	14,250
56,000 to 57,999	14,750
58,000 to 60,000	15,250

For vehicles having a fair market value in excess of \$60,000, the Annual Lease Value = (\$.25 x the fair market value of the automobile) + \$500.

