

### Reg. Section 1.61-21(a)(4)(i)

#### Taxation of fringe benefits.

(a) Fringe benefits--(1) In general. Section 61(a)(1) provides that, except as otherwise provided in subtitle A of the Internal Revenue Code of 1986, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. For an outline of the regulations under this section relating to fringe benefits, see paragraph (a)(7) of this section. Examples of fringe benefits include: an employer-provided automobile, a flight on an employer-provided aircraft, an employer-provided free or discounted commercial airline flight, an employer-provided vacation, an employer-provided discount on property or services, an employer-provided membership in a country club or other social club, and an employer-provided ticket to an entertainment or sporting event.

(2) Fringe benefits excluded from income. To the extent that a particular fringe benefit is specifically excluded from gross income pursuant to another section of subtitle A of the Internal Revenue Code of 1986, that section shall govern the treatment of that fringe benefit. Thus, if the requirements of the governing section are satisfied, the fringe benefits may be excludable from gross income. Examples of excludable fringe benefits include qualified tuition reductions provided to an employee (section 117(d)); meals or lodging furnished to an employee for the convenience of the employer (section 119); benefits provided under a dependent care assistance program (section 129); and no-additional-cost services, qualified employee discounts, working condition fringes, and de minimis fringes (section 132). Similarly, the value of the use by an employee of an employer-provided vehicle or a flight provided to an employee on an employer-provided aircraft may be excludable from income under section 105 (because, for example, the transportation is provided for medical reasons) if and to the extent that the requirements of that section are satisfied. Section 134 excludes from gross income "qualified military benefits." An example of a benefit that is not a qualified military benefit is the personal use of an employer-provided vehicle. The fact that another section of subtitle A of the Internal Revenue Code addresses the taxation of a particular fringe benefit will not preclude section 61 and the regulations thereunder from applying, to the extent that they are not inconsistent with such other section. For example, many fringe benefits specifically addressed in other sections of subtitle A of the Internal Revenue Code are excluded from gross income only to the extent that they do not exceed specific dollar or percentage limits, or only if certain other requirements are met. If the limits are exceeded or the requirements are not met, some or all of the fringe benefit may be includible in gross income pursuant to section 61. See paragraph (b)(3) of this section.

(3) Compensation for services. A fringe benefit provided in connection with the performance of services shall be considered to have been provided as compensation for such services. Refraining from the performance of services (such as pursuant to a covenant not to compete) is deemed to be the performance of services for purposes of this section.



(4) Person to whom fringe benefit is taxable--(i) In general. A taxable fringe benefit is included in the income of the person performing the services in connection with which the fringe benefit is furnished. Thus, a fringe benefit may be taxable to a person even though that person

did not actually receive the fringe benefit. If a fringe benefit is furnished to someone other than the service provider such benefit is considered in this section as furnished to the service provider, and use by the other person is considered use by the service provider. For example, the provision of an automobile by an employer to an employee's spouse in connection with the performance of services by the employee is taxable to the employee. The automobile is considered available to the employee and use by the employee's spouse is considered use by the employee.

(ii) All persons to whom benefits are taxable referred to as employees. The person to whom a fringe benefit is taxable need not be an employee of the provider of the fringe benefit, but may be, for example, a partner, director, or an independent contractor. For convenience, the term "employee" includes any person performing services in connection with which a fringe benefit is furnished, unless otherwise specifically provided in this section.

(5) Provider of a fringe benefit referred to as an employer. The "provider" of a fringe benefit is that person for whom the services are performed, regardless of whether that person actually provides the fringe benefit to the recipient. The provider of a fringe benefit need not be the employer of the recipient of the fringe benefit, but may be, for example, a client or customer of the employer or of an independent contractor. For convenience, the term "employer" includes any provider of a fringe benefit in connection with payment for the performance of services, unless otherwise specifically provided in this section.

(6) Effective date. Except as otherwise provided, this section is effective as of January 1, 1989 with respect to fringe benefits provided after December 31, 1988. See § 1.61-2T for rules in effect from January 1, 1985, to December 31, 1988.

(7) Outline of this section. The following is an outline of the regulations in this section relating to fringe benefits:

§ 1.61-21 (a) Fringe benefits.

- (1) In general.
- (2) Fringe benefits excluded from income.
- (3) Compensation for services.
- (4) Person to whom fringe benefit is taxable.
- (5) Provider of a fringe benefit referred to as an employer.
- (6) Effective date.
- (7) Outline of this section.

§ 1.61-21 (b) Valuation of fringe benefits

- (1) In general.
- (2) Fair market value.
- (3) Exclusion from income based on cost.
- (4) Fair market value of the availability of an employer-provided vehicle.
- (5) Fair market value of chauffeur services.
- (6) Fair market value of a flight on an employer-provided piloted aircraft.
- (7) Fair market value of the use of an employer-provided aircraft for which the employer does not furnish a pilot.

§ 1.61-21 (c) Special valuation rules.

- (1) In general.
- (2) Use of the special valuation rules.
- (3) Election to use the special valuation rules.
- (4) Application of section 414 [26 USCS § 414] to employers.
- (5) Valuation formulae contained in the special valuation rules.
- (6) Modification of the special valuation rules.
- (7) Special accounting rule.

§ 1.61-21 (d) Automobile lease valuation rule.

- (1) In general.
- (2) Calculation of Annual Lease Value.
- (3) Services included in, or excluded from, the Annual Lease Value Table.
- (4) Availability of an automobile for less than an entire calendar year.
- (5) Fair market value.
- (6) Special rules for continuous availability of certain automobiles.
- (7) Consistency rules.

§ 1.61-21 (e) Vehicle cents-per-mile valuation rule.

- (1) In general.
- (2) Definition of vehicle.
- (3) Services included in, or excluded from, the cents-per-mile rate.
- (4) Valuation of personal use only.
- (5) Consistency rules.

§ 1.61-21 (f) Commuting valuation rule.

- (1) In general.
- (2) Special rules.
- (3) Commuting value.
- (4) Definition of vehicle.
- (5) Control employee defined -- Non-government employer.
- (6) Control employee defined -- Government employer.
- (7) "Compensation" defined.

§ 1.61-21 (g) Non-commercial flight valuation rule.

- (1) In general.
- (2) Eligible flights and eligible aircraft.
- (3) Definition of a flight.

- (4) Personal and non-personal flights.
- (5) Aircraft valuation formula.
- (6) Discretion to provide new formula.
- (7) Aircraft multiples.
- (8) Control employee defined -- Non-government employer.
- (9) Control employee defined -- Government employer.
- (10) "Compensation" defined.
- (11) Treatment of former employees.
- (12) Seating capacity rule.
- (13) Erroneous use of the non-commercial flight valuation rule.
- (14) Consistency rules.

§ 1.61-21 (h) Commercial flight valuation rule.

- (1) In general.
- (2) Space-available flight.
- (3) Commercial aircraft.
- (4) Timing of inclusion.
- (5) Consistency rules.

§ 1.61-21 (i) [Reserved]

§ 1.61-21 (j) Valuation of meals provided at an employer-operated eating facility for employees.

- (1) In general.
- (2) Valuation formula.

§ 1.61-21 (k) Commuting valuation rule for certain employees.

- (1) In general.
- (2) Trip-by-trip basis.
- (3) Commuting value.
- (4) Definition of employer-provided transportation.
- (5) Unsafe conditions.
- (6) Qualified employee defined.
- (7) Example.
- (8) Effective date.

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