

Reg. Section 1.280F-6(b)(2)(ii)

Special rules and definitions.

(a) Deductions of employee -- (1) In general. Employee use of listed property shall not be treated as business/investment use (as defined in paragraph (d)(3) of this section) for purposes of determining the amount of any recovery deduction allowable (including any deduction under section 179 [26 USCS § 179]) to the employee unless that use is for the convenience of the employer and required as a condition of employment.

(2) "Convenience of the employer" and "condition of employment" requirements -- (i) In general. The terms "convenience of the employer" and "condition of employment" generally have the same meaning for purposes of section 280F [26 USCS § 280F] as they have for purposes of section 119 [26 USCS § 119] (relating to the exclusion from gross income for meals or lodging furnished for the convenience of the employer).

(ii) "Condition of employment." In order to satisfy the "condition of employment" requirement, the use of the property must be required in order for the employee to perform the duties of his or her employment properly. Whether the use of the property is so required depends on all the facts and circumstances. Thus, the employer need not explicitly require the employee to use the property. Similarly, a mere statement by the employer that the use of the property is a condition of employment is not sufficient.

(iii) "Convenience of employer". [Reserved]

(3) Employee use. For purposes of this section, the term "employee use" means any use in connection with the performance of services by the employee as an employee.

(4) Examples. The principles of this paragraph are illustrated in the following examples:

Example 1. A is employed as a courier with W, which provides local courier services. A owns and uses a motorcycle to deliver packages to downtown offices for W. W does not provide delivery vehicles and explicitly requires all of its couriers to own a car or motorcycle for use in their employment with the company. A's use of the motorcycle for delivery purposes is for the convenience of W and is required as a condition of employment.

Example 2. B is an inspector for X, a construction company with many construction sites in the local area. B is required to travel to the various construction sites on a regular basis; B uses her automobile to make these trips. Although X does not furnish B an automobile, X does not explicitly require B to use her own automobile. However, X reimburses B for any costs she incurs in traveling to the various job sites. B's use of her own automobile in her employment is for the convenience of X and is required as a condition of employment.

Example 3. Assume the same facts as in example (2), except that X makes an automobile available to B who chooses to use her own automobile and receive reimbursement. B's use of her own automobile is not for the convenience of X and is not required as a condition of employment.

Example 4. C is a pilot for Y, a small charter airline. Y requires its pilots to obtain x hours of flight time annually in addition to the number of hours of flight time spent with the airline. Pilots can usually obtain these hours by flying with a military reserve unit or by flying part-time with another airline. C owns his own airplane. C's use of his airplane to obtain the required flight hours is not for the convenience of the employer and is not required as a condition of employment.

Example 5. D is employed as an engineer with Z, an engineering contracting firm. D occasionally takes work home at night rather than working late in the office. D owns and uses a computer which is virtually identical to the one she uses at the office to complete her work at home. D's use of the computer is not for the convenience of here employer and is not required as a condition of employment.

(b) Listed property -- (1) In general. Except as otherwise provided in paragraph (b)(5) of this section, the term "listed property" means:

(i) Any passenger automobile (as defined in paragraph (c) of this section),


(ii) Any other property used as a means of transportation (as defined in paragraph (b)(2) of this section),

(iii) Any property of a type generally used for purposes of entertainment, recreation, or amusement, and

(iv) Any computer or peripheral equipment (as defined in section 168(i)(2)(B) [26 USCS § 168(i)(2)(B)]), and

(v) Any other property specified in paragraph (b)(4) of this section.

(2) Means of transportation -- (i) In general. Except as otherwise provided in paragraph (b)(2)(ii) of this section, property used as a "means of transportation" includes trucks, buses, trains, boats, airplanes, motorcycles, and any other vehicles for transporting persons or goods.

 (ii) Exception. The term "listed property" does not include any vehicle that is a qualified nonpersonal use vehicle as defined in section 274(i) [26 USCS § 274(i)] and § 1.274-5(k).

(3) Property used for entertainment, etc. -- (i) In general. Property of a type generally used for purposes of entertainment, recreation, or amusement includes property such as photographic, phonographic, communication, and video recording equipment.

(ii) Exception. The term "listed property" does not include any photographic, phonographic, communication, or video recording equipment of a taxpayer if the equipment is use either exclusively at the taxpayer's regular business establishment or in connection with the taxpayer's principal trade or business.

(iii) Regular business establishment. The regular business establishment of an employee is the regular business establishment of the employer of the employee. For purposes of this paragraph (b)(3), a portion of a dwelling unit is treated as a regular business establishment if the requirements of section 280A(c)(1) [26 USCS § 280A(c)(1)] are met with respect to that portion.

(4) Other property. [Reserved]

(5) Exception for computers. The term "listed property" shall not include any computer (including peripheral equipment) used exclusively at a regular business establishment. For purposes of the preceding sentence, a portion of a dwelling unit shall be treated as a regular business establishment if (and only if) the requirements of section 280A(c)(1) [26 USCS § 280A(c)(1)] are met with respect to that portion.

(c) Passenger automobile -- (1) In general. Except as provided in paragraph (c)(3) of this section, the term "passenger automobile" means any 4-wheeled vehicle which is:

- (i) Manufactured primarily for use on public streets, roads, and highways, and
- (ii) Rated at 6,000 pounds gross vehicle weight or less.

(2) Parts, etc. of automobile. The term "passenger automobile" includes any part, component, or other item that is physically attached to the automobile or is traditionally included in the purchase price of an automobile. The term does not include repairs that are not capital expenditures within the meaning of section 263 [26 USCS § 263].

(3) Exception for certain vehicles. The term "passenger automobile" shall not include any:

(i) Ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business,

(ii) Vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire, or

(iii) Truck or van that is a qualified nonpersonal use vehicle as defined under § 1.274-5T(k).

(d) Business use percentage -- (1) In general. The term "business use percentage" means the percentage of the use of any listed property which is qualified business use as described in paragraph (d)(2) of this section.

(2) Qualified business use -- (i) In general. Except as provided in paragraph (d)(2)(ii) of this section, the term "qualified business use" means any use in a trade or business of the taxpayer. The term "qualified business use" does not include use for which a deduction is allowable under section 212 [26 USCS § 212]. Whether the amount of qualified business use exceeds 50 percent is determinative of whether the investment tax credit and the accelerated percentages under section 168 [26 USCS § 168] are available for listed property (or must be recaptured). See § 1.280F-3T.

(ii) Exception for certain use by 5-percent owners and related persons -- (A) In general. The term "qualified business use" shall not include:

(1) Leasing property to any 5-percent owner or related person,

(2) Use of property provided as compensation for the performance of services by a 5-percent owner or related person, or

(3) Use of property provided as compensation for the performance of services by any person not described in paragraph (d)(2)(ii)(A)(2) of this section unless an amount is properly reported by the taxpayer as income to such person and, where required, there was withholding under chapter 24.

Paragraph (d)(2)(ii)(A)(1) of this section shall apply only to the extent that the use of the listed property is by an individual who is a related party or a 5-percent owner with respect to the owner or lessee of the property.

(B) Special rule for aircraft. Paragraph (d)(2)(ii)(A) of this section shall not apply with respect to any aircraft if at least 25 percent of the total use of the aircraft during the taxable year consists of qualified business use not described in paragraph (d)(2)(ii)(A).

(C) Definitions. For purposes of this paragraph:

(1) 5-percent owner. The term "5-percent owner" means any person who is a 5-percent owner with respect to the taxpayer (as defined in section 416 (i)(1)(B)(i) [26 USCS § 416 (i)(1)(B)(i)]).

(2) Related person. The term "related person" means any person related to the taxpayer (within the meaning of section 267(b) [26 USCS § 267(b)]).

(3) Business/investment use -- (i) In general. The term "business/investment use" means the total business or investment use of listed property that may be taken into account for purposes of computing (without regard to section 280F(b) [26 USCS § 280F(b)]) the percentage of cost recovery deduction for a passenger automobile or other listed property for the taxable year. Whether the accelerated percentages under section 168 [26 USCS § 168] (as opposed to use of the straight line method of cost recovery) are available with respect to listed property or must be recaptured is determined, however, by reference to qualified business use (as defined in paragraph (d)(2) of this section) rather than by reference to business/investment use. Whether a particular use of property is a business or investment use shall generally be determined under the rules of section 162 or 212 [26 USCS § 162 or 212].

(ii) Entertainment use. The use of listed property for entertainment, recreation, or amusement purposes shall be treated as business use to the extent that expenses (other than interest and property tax expenses) attributable to that use are deductible after application of section 274 [26 USCS § 274].

(iii) Employee use. See paragraph (a) of this section for requirements to be satisfied for employee use of listed property to be considered business/investment use of the property.

(iv) Use of taxpayer's automobile by another person. Any use of the taxpayer's automobile by another person shall not be treated, for purposes of section 280F [26 USCS § 280F], as use in a trade or business under section 162 [26 USCS § 162] unless that use:

(A) Is directly connected with the business of the taxpayer,

(B) Is properly reported by the taxpayer as income to the other person and, where required, there was withholding under chapter 24, or

(C) Results in a payment of fair market rent.

For purposes of this paragraph (d)(4)(iv)(C), payment to the owner of the automobile in connection with such use is treated as the payment of rent.

(4) Predominantly used in qualified business use -- (i) Definition. Property is predominantly used in a qualified business use for any taxable year if the business use percentage (as defined in paragraph (d)(1) of this section) is greater than 50 percent.

(ii) Special rule for transfers at death. Property does not cease to be used predominantly in a qualified business use by reason of a transfer at death.

(iii) Other dispositions of property. [Reserved]

(5) Examples. The following examples illustrate the principles set forth in this paragraph.

Example 1. E uses a home computer 50 percent of the time to manage her investments. The computer is listed property within the meaning of section 280F(d)(4) [26 USCS § 280F(d)(4)]. E also uses the computer 40 percent of the time in her part-time consumer research business. Because E's business use percentage for the computer does not exceed 50 percent, the computer is not predominantly used in a qualified business use for the taxable year. Her aggregate

business/investment use for purposes of determining the percent of the total allowable straight line depreciation that she can claim is 90 percent.

Example 2. Assume that E in example (1) uses the computer 30 percent of the time to manage her investments and 60 percent of the time in her consumer research business. E's business use percentage exceeds 50 percent. Her aggregate business/investment use for purposes of determining her allowable investment tax credit and cost recovery deductions is 90 percent.

Example 3. F is the proprietor of a plumbing contracting business. F's brother is employed with F's company. As part of his compensation, F's brother is allowed to use one of the company automobiles for personal use. The use of the company automobiles by F's brother is not a qualified business use because F and F's brother are related parties within the meaning of section 267(b) [26 USCS § 267(b)].

Example 4. F, in example (3), allows employees unrelated to him to use company automobiles as part of their compensation. F, however, does not include the value of these automobiles in the employees' gross income and F does not withhold with respect to the use of these automobiles. The use of the company automobiles by the employees in this case is not business/investment use.

Example 5. X Corporation owns several automobiles which its employees use for business purposes. The employees are also allowed to take the automobiles home at night. However, the fair market value of the use of the automobile for any personal purpose, e.g., commuting to work, is reported by X as income to the employee and is withheld upon by X. The use of the automobile by the employee, even for personal purposes, is a qualified business use the respect to X.

(e) Method of allocating use of property -- (1) In general. For purposes of section 280F [26 USCS § 280F], the taxpayer shall allocate the use of any listed property that is used for more than one purpose during the taxable year to the various uses in the manner prescribed in paragraph (e) (2) and (3) of this section.

(2) Passenger automobiles and other means of transportation. In the case of a passenger automobile or any other means of transportation, the taxpayer shall allocate the use of the property on the basis of mileage. Thus, the percentage of use in a trade or business for the year shall be determined by dividing the number of miles the vehicle is driven for purposes of that trade or business during the year by the total number of miles the vehicle is driven during the year for any purpose.

(3) Other listed property. In the case of other listed property, the taxpayer shall allocate the use of that property on the basis of the most appropriate unit of time the property is actually used (rather than merely being available for use). For example, the percentage of use of a computer in a trade or business for a taxable year is determined by dividing the number of hours the computer is used for business purposes during the year by the total number of hours the computer is used for any purpose during the year.

(f) Effective date -- (1) In general. Except as provided in paragraph (f)(2) of this section, this section applies to property placed in service by a taxpayer on or after July 7, 2003. For regulations applicable to property placed in service before July 7, 2003, see § 1.280F-6T as in effect prior to July 7, 2003 (§ 1.280F-6T as contained in 26 CFR part 1, revised as of April 1, 2003).

(2) Property placed in service before July 7, 2003. The following rules apply to property that is described in paragraph (c)(3)(iii) of this section, was placed in service by the taxpayer before

July 7, 2003, and was treated by the taxpayer as a passenger automobile under § 1.280F-6T as in effect prior to July 7, 2003 (pre-effective date vehicle):

(i) Except as provided in paragraphs (f)(2)(ii), (iii), and (iv) of this section, a pre-effective date vehicle will be treated as a passenger automobile to which section 280F(a) [26 USCS § 280F(a)] applies.

(ii) A pre-effective date vehicle will be treated as property to which section 280F(a) [26 USCS § 280F(a)] does not apply if the taxpayer adopts that treatment in determining depreciation deductions on the taxpayer's original return for the year in which the vehicle is placed in service.

(iii) A pre-effective date vehicle will be treated, to the extent provided in this paragraph (f)(2)(iii), as property to which section 280F(a) [26 USCS § 280F(a)] does not apply if the taxpayer adopts that treatment on an amended Federal tax return in accordance with this paragraph (f)(2)(iii). This paragraph (f)(2)(iii) applies only if, on or before December 31, 2004, the taxpayer files, for all applicable taxable years, amended Federal tax returns (or qualified amended returns, if applicable (for further guidance, see *Rev. Proc. 94-69 (1994-2 C.B. 804)* and § 601.601(d)(2)(ii)(b) of this chapter)) treating the vehicle as property to which section 280F(a) [26 USCS § 280F(a)] does not apply. The applicable taxable years for this purpose are the taxable year in which the vehicle was placed in service by the taxpayer (or, if the period of limitation for assessment under section 6501 [26 USCS § 6501] has expired for such year or any subsequent year (a closed year), the first taxable year following the most recent closed year) and all subsequent taxable years in which the vehicle was treated on the taxpayer's return as property to which section 280F(a) [26 USCS § 280F(a)] applies. If the earliest applicable taxable year is not the year in which the vehicle was placed in service, the adjusted depreciable basis of the property as of the beginning of the first applicable taxable year is recovered over the remaining recovery period. If the remaining recovery period as of the beginning of the first applicable taxable year is less than 12 months, the entire adjusted depreciable basis of the property as of the beginning of the first applicable taxable year is recovered in that year.

(iv) A pre-effective date vehicle will be treated, to the extent provided in this paragraph (f)(2)(iv), as property to which section 280F(a) [26 USCS § 280F(a)] does not apply if the taxpayer adopts that treatment on Form 3115, Application for Change in Accounting Method, in accordance with this paragraph (f)(2)(iv). The taxpayer must follow the applicable administrative procedures issued under § 1.446-1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, for example, see *Rev. Proc. 2002-9 (2002-1 C.B. 327)* and § 601.601(d)(2)(ii)(b) of this chapter). If the taxpayer files a Form 3115 treating the vehicle as property to which section 280F(a) [26 USCS § 280F(a)] does not apply, the taxpayer will be permitted to treat the change as a change in method of accounting under section 446(e) of the Internal Revenue Code [26 USCS § 446(e)] and to take into account the section 481 [26 USCS § 481] adjustment resulting from the method change. For purposes of Form 3115, the designated number for the automatic accounting method change authorized for this paragraph (f)(2)(iv) is 89.