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THE WHITE HOUSE
WASHINGTON

2-4

TO: John Roberts

FROM: CHRISTOPHER HICKS

For your review,

Astp.

Thanks



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
Washington, D.C. 20503

February 4, 1986

MEMORANDUM FOR

FROM: Christopher Hicks
Deputy Assistant to the President
for Administration and Director,
Office of Administration

SUBJECT: Supplemental W-2 Forms Reporting Taxable Income
Attributable to Use of a Government Vehicle

Due to a change in the tax law effective January 1, 1985, for which regulations were issued on December 23, 1985, the commuting value of a government-provided vehicle and driver is now considered to be a "fringe benefit" taxable to the employee to whom the vehicle and driver are provided. Furthermore, the taxable benefits are required to be reported by the employer as compensation on a W-2 (Wage and Tax Statement) form. Accordingly, I have enclosed a supplemental W-2 that reflects the commuting value of your government supplied vehicle and driver for the period of time you were employed by (Agency) during 1985.

The valuation reflected on this supplemental W-2 is subject to adjustment, based on information which you may be in a position to furnish. If you believe that such an adjustment is necessary, please contact my office by February 17.

I have also enclosed with this memorandum the following information which may prove useful to you.

1. A copy of the December 23, 1985 IRS regulations on the taxation of fringe benefits;
2. A brief summary of the pertinent provisions of the regulations and an explanation of the formula which the Office of Administration used in placing a value on the commuting benefit; and,
3. The data and calculation used in computing your taxable commuting benefit for 1985.

You may wish to share the regulations and other information with your tax accountant or attorney.

If you have any questions about any of the information we have furnished you, you may wish to contact Arnold Intrater, General Counsel for the Office of Administration (456-6226) or Ursula Pearson, Director, Financial Management Division (395-7244).

TAXATION OF COMMUTING VALUE OF
AVAILABILITY OF AN EMPLOYER (GOVERNMENT)
FURNISHED VEHICLE

Background Information

In 1975, the IRS issued a discussion draft of Proposed Regulations which dealt with the issue of the taxability of various employer-provided fringe benefits -- including the use of a company car by an employee. This tentative effort to address a very sensitive tax issue was withdrawn. From 1975 to 1984, Congress placed a moratorium on the issuance of regulations covering fringe benefits. Finally, in the Deficit Reduction Act of 1984, Congress addressed the issue by amending the tax code to make fringe benefits taxable as compensation for income tax and withholding purposes unless the fringe benefit qualified for an exclusion under the Code. The 1984 Act was made applicable for the tax year beginning January 1, 1985.

The IRS's initial efforts at issuing regulations pursuant to the 1984 Act raised a storm of protest. The focal point of the protests was over the requirement to keep detailed contemporaneous records. The initial regulations were withdrawn, and Congress amended the code to provide for less stringent record-keeping requirements. The IRS issued its current regulations on December 23, 1985.

1985 Tax Status of the Vehicle Fringe Benefit

Under the 1984 Act, the use of a company car is a working condition fringe benefit. As such, the car is excludable from the income of an employee to the extent that the use of the car would be excludable from an employee's income as an ordinary or necessary business expense.

In the case of a Federal official this means that the availability of a government vehicle constitutes taxable compensation only to the extent of your "personal use" of the automobile. "Personal use" is defined to include commuting from home to work and back, as well as such other incidental personal use as may be applicable.

This tax is applicable for the 1985 tax year. However, as described below, the recordkeeping requirements are less stringent for 1985 than will be the case for 1986 and beyond. Furthermore, the IRS has provided several special rules that may be used to value the taxable benefit to an employer of government furnished transportation.

Valution Methods

The regulations provide three special rules that are available to the employer and the employee for placing a value on the taxable benefit derived from the use of an employer (government) furnished vehicle.

If these special rules are not used, then the taxpayer is required to use general valuation principles -- the cost to a hypothetical person of leasing from a hypothetical third party, the same or comparable vehicle on the same or comparable terms in the geographic area in which the vehicle is available for use. [Temporary Regulations page 52286, column three paragraph (4).]*

The three special rules are described briefly below.

1. Commuting Special Valuation Rule. [Temporary Regulations page 52292, column three, paragraph (b)]. This rule allows a taxpayer to value the commuting benefit at \$3.00 a day. It is not, however, available to a taxpayer who also is provided with a driver (chauffeur).
2. Vehicle Cent-Per-Mile Valuation Rule. [Temporary Regulations, page 52291, middle column, paragraph (e)]. This rule allows a valuation of the personal use of an automobile at a flat rate of 21 cents per mile for the first 15,000 miles. It is available only if the automobile is driven at least 10,000 miles a year and only if the fair market value of the car is less than \$12,800 (for 1985). It appears that under this valuation method, the fact that the employee has a chauffeur is not relevant, but this method was not used because the mileage and fair market value tests were not met.
3. Automobile Lease Valuation Rule. [Temporary Regulations, page 52258, middle column, paragraph (d)]. This method is the one used by the Office of Administration in computing your taxable income. In brief, this valuation system provides a formula for determining the annual lease value of an automobile based on the automobile's fair market value. That figure is then reduced by the percentage that the automobile is used for business purposes. In addition, a cost of fuel at 5.5 cents per mile and, more significantly, the value of a driver must be added to determine the total value of the commuting benefit to the employee. The Annual Lease Valuation Rule specifically provides that the fair market value of a driver must be added to the Annual Lease value. [Temporary Regulations, page 52289, column two, bottom (c)(iii)].

* All page references to the Temporary Regulations are to the December 23, 1985 issue of the Federal Regulations (52286), which of three columns the information appears in (column three) and what the closest paragraph designation is (4).

Exception For Security Concerns.

If an automobile is made available for bona-fide business oriented security concerns, the cost of security related elements of the automobile are eliminated from the valuation of the automobile for personal tax purposes. [Temporary Regulations, page 52305, column one, paragraph (m).] This includes elimination of the cost of a driver. The commuting value of the vehicle, however, is still taxable.

The security concern test requires that there be an overall security program on a 24-hour basis. The program needs to include some form of controlling access to the employee's residence. A guard at home is not necessary -- an alarm system is sufficient to meet the regulating requirement. [Temporary Regulations, page 52305, last column, paragraph (b)(iii)].

VALUATION FORMULA FOR OFFICIALS IN THE
EXECUTIVE OFFICE OF THE PRESIDENT

The Office of Administration used the Annual Lease Valuation Formula [Temporary Regulations, page 52289, column two, paragraph (d)]* for purposes of computing the compensation to be shown on the enclosed W-2 form. This document describes how the formula was applied and what assumptions were used in computing the figures on the attached worksheet that bears your name.

The Annual Lease Formula bases the taxable benefit of the commuting use of an employer-furnished automobile on three elements:

1. The percentage of the annual lease value attributable to personal use of an automobile;
2. A charge of 5.5 cents per mile for fuel provided by the employer; and
3. The value of a chauffeur's service.

I. Annual Lease Value

The annual lease value is derived from the fair market value of the employer-provided automobile as follows:

Sticker Price: Furnished by the leasing company.

Fair Market Value: A 10 percent reduction of the sticker price in accordance with guidance furnished by the leasing company.

Annual Lease Value: The IRS provides a chart at Temporary Regulations, page 52288, column three.

Note on page references: Page references are to the December 23, 1985 Temporary Regulations (T.R.) by page number, column designation and closest paragraph reference -- these are not technical legal references.

Personal Commuting Time: The Office of Administration made the assumptions that the average workday for an official in the Executive Office of the President is 11 hours, not including commuting time, and that the work year is 260 workdays. Commuting time, based on an estimate of the mileage from your home to the White House complex, was calculated using the following assumptions: For a commuting distance of 5 miles or less -- one-half hour per round trip; 6 to 10 miles -- one-hour per round trip; in excess of 10 miles -- one and a half hour per round trip.

The ratio of commuting time to total time (11 hours plus commuting time) is the percentage of personal use (i.e., commuting use) of the automobile. That percentage was applied to the annual lease value. If you were not employed in the Executive Office of the President or the White House for the full year, the calculations were adjusted to reflect a value only for the days that you were employed. The calculations were not adjusted, however, for days that you were employed but did not commute (e.g. absence from Washington on official business).

Underlying this time formula is a general assumption that the balance of use of a government vehicle, other than for commuting, is for official purposes. This conforms with the conditions under which a government vehicle is made available to an official.

II. Cost of Fuel

The Annual Lease Formula requires that fuel provided by an employer be valued at 5.5 cents per commuting mile. [Temporary Regulations, page 52289, middle column, paragraph (b).] Cost of fuel was determined by multiplying 5.5 cents times actual miles of round trip commute by days worked.

The figure for the days worked used in this portion of the formula is based on the assumption that the automobile is available all year (260 workdays), and that it was in use by the official five days a week, every week.

As in paragraph I, this formula does not try to determine whether an official was working on weekends nor does it take into account vacations or official absences from Washington. The regulations preclude the reduction of the value to the employer if the automobile was available to an employee, but not used for personal reasons (e.g., vacations). [Temporary Regulations, page 52289, last column, paragraph (b).]

III. Cost of a Chauffeur

The regulations are silent as to a method for computing the value of a chauffeur (other than providing the general rule that one may use evidence of comparable availability to determine fair market value).

Informal calls to chauffeur services revealed that a driver for a service is paid somewhere between \$4 and \$9 an hour on the average. Most chauffeur services charge in excess of \$35 an hour for transportation. Cab fares are considerably less and arrangements can be made for daily transportation.

The Office of Administration did not explore these options further. Rather, it was determined to use a basic formula that valued the use of a driver based on the actual hourly based salary of an Executive Office of the President driver. We used the hourly rate of an entry level driver on the assumption that, for tax purposes, the employee may value the basic service provided and need not have inputted to him the additional costs to the employer of a driver's longevity. Thus, for officials using a White House fleet automobile, the basic hourly rate used is \$7.47. For other Executive Office of the President officials, the rate of \$10.76 was used.

The hourly rate was multiplied by the round trip commuting time and number of days to arrive at the total cost of a chauffeur.

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR THOMAS E. HARVEY
GENERAL COUNSEL AND CONGRESSIONAL LIAISON
UNITED STATES INFORMATION AGENCY

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal

Thank you for your letter of January 21, concerning Director Wick's interest in being designated to receive portal-to-portal transportation under the legislative proposal currently pending before Congress. I agree with you that any such requests are premature and will remain so until the bill becomes law. I remain hopeful that we will secure passage of a bill, but any consideration of designation requests at this time could do nothing but jeopardize those chances.

FFF/JGR:jmk
cc: FFFielding
✓JGRoberts
subject
chron.

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Portal-to-Portal: Wick Request

Following up on our conversation concerning the placement of the Brooks' portal-to-portal bill on the suspension calendar, you may not be surprised to learn that we have already received a pitch for Presidential designation of eligibility for the service. It comes from Director Wick, through his General Counsel Tom Harvey. Harvey indicates that he told the Director the request was "precipitous," but the Director wanted Harvey to solicit your views.

The attached reply agrees with Harvey that it would be premature to consider requests for designation under a bill that has not yet been enacted.

Attachment

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

JR TN001

- O - OUTGOING
 - H - INTERNAL
 - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Thomas E. Harvey

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Effect of H.R. 3614 (postal-to-postal transportation bill) on Charles Wick

ROUTE TO:		ACTION		DISPOSITION	
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
	<u>CUHOLL</u>	<u>ORIGINATOR</u>	<u>8610127</u>		<u>1 1</u>
	<u>CUAT 18</u>	<u>D</u>	<u>8610128</u>	<u>WS 1</u>	<u>586102108</u>
			<u>1 1</u>		<u>1 1</u>
			<u>1 1</u>		<u>1 1</u>
			<u>1 1</u>		<u>1 1</u>

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOP).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

**United States
Information
Agency**

Washington, D. C. 20541



USIA

January 21, 1986

379954 *CH*

Dear Fred:

As you know, Jack Brooks' Committee on Government Operations has reported out H.R. 3614 which would modify the current restrictions on use of government vehicles for home-to-work transportation by allowing the President to designate sixteen individuals — in addition to the Cabinet officers — for such transportation. Companion legislation is currently pending before the Senate Governmental Affairs Committee. It is anyone's guess when this may become law.

Recently I discussed this with Director Wick. He suggested that I present the case for his use of home-to-work transportation to White House Chief of Staff Don Regan. My own counsel to him was that this was precipitous, any action being of necessity some ways off. He asked that I seek your counsel on this.

Were we to present the matter to Regan at this time, I would propose to do that via a letter substantially along the lines of the enclosed draft.

I would welcome your thoughts on this, Fred, and will, when received, pass them on to the Director.

With best regards to you.

Sincerely,

A handwritten signature in dark ink that reads "Tom Harvey". The signature is written in a cursive style with a large initial "T".

Thomas E. Harvey
General Counsel and
Congressional Liaison

The Honorable
Fred Fielding
Counsel to the President
The White House

Dear Don:

As you surely know, the House Committee on Government Operations has reported out H.R. 3614, a bill which will restrict the use of government vehicles for transportation of government employees between their residences and places of employment. That bill provides that, up to sixteen individuals, in addition to those specifically named in statute, may be designated by the President to receive such transportation. Companion legislation (S. 1842) is currently pending before the Senate Governmental Affairs Committee. My own understanding is that it is likely that such legislation will be reported out, and in due time, most likely within the year, enacted into law.

When that occurs, I know that you will be approached by several of our colleagues seeking to be designated as individuals entitled to such transportation. I would like to set forth for you at this time the case why I personally believe that the interests of government would be best served were such a vehicle to be made available to me.

Each morning a USIA courier brings cable traffic received during the previous evening to my home so that I may review that prior to the Secretary of State's morning meeting held at 8:15 a.m. It would be particularly helpful were I able to return to State with the Agency driver, rather than, as I am presently doing, retaining the services of a commercial chauffeur while the Agency driver goes to State to await the conclusion of that meeting.

The Honorable
Donald Regan
Chief of State
The White House

In the evening, as do you, Mary Jane and I more often than not find ourselves attending official social functions at embassies and elsewhere around Washington. Currently I am dismissing the Agency driver after he drops us there and am again retaining the services of a commercial chauffeur to return us to our home at the end of the evening.

To retain the Agency driver would provide a number of significant benefits to me personally, and I believe to the government. It would enable me to remain in close contact, should it be necessary that I be contacted via the automobile telephone. I often have occasion to take classified documents for review upon my return home. Were the Agency driver (who has a security clearance) to remain with me, I could leave those in the automobile.

When, at some future time, it becomes appropriate for the President to make a determination with regard to the use of government vehicles for home-to-work transportation, in making recommendations to him, I do hope you will give every favorable consideration to what I feel is a very compelling case why I, as Director of the United States Information Agency, should have such transportation available to me.

With warmest best wishes to you.

Sincerely,

Charles Z. Wick
Director

9/11/86
7/8



STATEMENT OF ADMINISTRATION POLICY

February 28, 1986
(House)

H.R. 3614 - Restrictions on the Use of Government Vehicles
(Brooks (D) Texas and 4 others)

The Administration supports House passage of H.R. 3614 but may seek to amend the bill in the Senate to conform it more closely to the Administration's proposal, which was transmitted to the Congress on July 31, 1985.

* * * * *

(Not to be Distributed Outside Executive Office of the President)

The Legislative Reference Division prepared this draft Statement of Administration Policy in consultation with GC (Cooney). H.R. 3614 is the product of lengthy discussions between the General Accounting Office, OMB GC (Horowitz), and the House Government Operations Committee. The bill is based, in part, on draft legislation transmitted to the Congress by OMB on July 31, 1985. The OMB proposal was itself the result of a 1983 ruling of the Comptroller General that the practices of some Executive branch agencies in providing home-to-office ("portal-to-portal") transportation to certain senior officials were inconsistent with existing statutory limitations regarding transportation of this nature.

As reported by the House Committee on Government Operations, H.R. 3614 would generally increase the number of persons eligible for portal-to-portal transportation, to, in the words of the Committee's report, "reflect current needs of the government and to establish consistent and practical limitations on the use of government vehicles by the Executive Branch." It would clarify, once and for all, who is, and who is not, eligible for portal-to-portal transportation. A side-by-side comparison of existing law, OMB's draft bill, and H.R. 3614 is attached.

A number of agencies have advised that they find certain provisions of H.R. 3614 objectionable. Some (e.g., the Justice Department) want additional officials added to the list of those eligible for portal-to-portal transportation. Others (e.g., the Department of Transportation), find the bill's requirements regarding portal-to-portal transportation in emergencies to be unduly limiting. It is for this reason that this draft position statement indicates that the Administration may propose additional amendments in the Senate.

LEGISLATIVE REFERENCE DIVISION DRAFT

2/20/86

PORTAL-TO-PORTAL TRANSPORTATION
COMPARISON OF EXISTING LAW, OMB'S PROPOSAL OF JULY 31, 1985, AND H.R. 3614

CURRENT LAW

OMB'S PROPOSAL

H.R. 3614

The President and U.S. Trade Representative

The President, VP, WH Chief of Staff, and National Security Advisor

President, VP, up to 6 other EOP employees, designated by Pres., plus U.S. Trade Rep. and Dep. Trade Rep.

Cabinet Secretaries

Cabinet Secretaries, Dep. Secs., anyone else the President deems to have Cabinet-level status

Cabinet Secretaries and Dep. Secs.

3 State Dept. officials (Dep. Sec., head of AID, and the head of ACDA)

Officials at Level II of the Executive Schedule (a total of about 13, not including Dep. Cabinet Secs.)

Up to 10 additional employees of Exec. Branch, designated by the President

CIA Director and Dep. Director

Director of FBI

CIA and FBI Directors; Chairman of the Federal Reserve

3 officials of DOD (Dep. Sec., members of JCS, Undersecs., and Army/AF/Navy Secs.)

Members of the JCS plus Commandant of the Coast Guard

Dep. Sec. of DOD, members of JCS, Undersecs., Army/Navy/AF Secs., Coast Guard Command.

Principal diplomatic and consular officials

Principal diplomatic and consular officials

Principal diplomatic and consular officials abroad, plus UN Ambassador

Medical officers on out-patient service

Medical officers on out-patient service

Certain employees doing fieldwork

Certain employees doing fieldwork

Certain employees doing fieldwork

Head of GAO and other congressional employees, as determined by Congress

Justices of the Supreme Court, as determined by Chief Justice

PORTAL-TO-PORTAL TRANSPORTATION
COMPARISON OF EXISTING LAW, OMB'S PROPOSAL OF JULY 31, 1985, AND H.R. 3614

CURRENT LAW	OMB'S PROPOSAL	H.R. 3614
The President and U.S. Trade Representative	The President, VP, WH Chief of Staff, and National Security Advisor	President, VP, up to 6 other EOP employees, designated by Pres., plus U.S. Trade Rep. and Dep. Trade Rep.
Cabinet Secretaries	Cabinet Secretaries, Dep. Secs., anyone else the President deems to have Cabinet-level status	Cabinet Secretaries and Dep. Secs.
3 State Dept. officials (Dep. Sec., head of AID, and the head of ACDA)	Officials at Level II of the Executive Schedule (a total of about 13, not including Dep. Cabinet Secs.)	Up to 10 additional employees of Exec. Branch, designated by the President
CIA Director and Dep. Director	Director of FBI	CIA and FBI Directors; Chairman of the Federal Reserve
9 officials of DOD (Dep. Sec., members JCS, Undersecs., and Army/AF/Navy Secs.)	Members of the JCS plus Commandant of the Coast Guard	Dep. Sec. of DOD, members of of JCS, Undersecs., Army/Navy/AF Secs., Coast Guard Command.
Principal diplomatic and consular officials	Principal diplomatic and consular officials	Principal diplomatic and consular officials abroad, plus UN Ambassador
Medical officers on out-patient service	Medical officers on out-patient service	
Certain employees doing fieldwork	Certain employees doing fieldwork Head of GAO and other congressional employees, as determined by Congress Justices of the Supreme Court, as determined by Chief Justice	Certain employees doing fieldwork