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To: Bureau Assistant Directors for Administration
Bureau Chief Financial Officers

From: Daniel L. Fletcher
Director, Office of Financial Management

Subject: Relocation - Mileage rate adjustment for En Route POV mileage

The Federal Travel Regulations 302-4.300, states that the reimbursable rate for en route mileage will be the same as the IRS deductible rate for miles driven when moving to a new job or duty station. The Internal Revenue Service has released Revenue Procedure 2009-054 (copy attached), which has established the new deductible rate, for calendar year 2010, of $.165 per mile, for miles driven when moving to a new job or duty station. The deductible rate is effective January 1, 2010.

The reimbursable rate for relocation en route POV mileage will be adjusted from the current rate of $.24 per mile, to $.165 per mile, effective January 1, 2010.

If you have any questions concerning this guidance, please contact Robert Smith, at robert_smith@ios.doi.gov.

Attachment

cc: Financial Statement Guidance Team
Finance Officers Partnership

Cancelled FMMs: FMM 2009-047

Additional FMMs on the Subject:

2009-046 Property Management Services
2009-048 Permanent Change of Station Policy Guide
2009-051 Rules of Procedure for Transportation Rate Cases and Rules of Procedure for Travel and Relocation Expenses Cases
2009-052 Contracting for Relocation Services - FTR Amendment 62
2009-079 Permanent Change of Station En Route Mileage Allowances

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 62, 162, 170, 213, 217, 274, 1016; 1.62-2, 1.162-17, 1.170A-1, 1.213-1, 1.217-2, 1.274-5, 1.1016-3.)

Rev. Proc. 2009-54

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2008-72, 2008-2 C.B. 1286, and provides optional standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This revenue procedure also provides rules under which the amount of ordinary and necessary expenses of local travel or transportation away from home that are paid or incurred by an employee are deemed substantiated under § 1.274-5 of the Income Tax Regulations if a payor (an employer, its agent, or a third party) provides a mileage allowance under a reimbursement or other expense allowance arrangement. The substantiation methods described in this revenue procedure are not mandatory. A taxpayer may use actual allowable expense amounts to substantiate expenses if the taxpayer maintains adequate records or other sufficient

evidence. The Internal Revenue Service prospectively adjusts the business and medical and moving standard mileage rates annually (to the extent warranted).

SECTION 2. SUMMARY OF STANDARD MILEAGE RATES

.01 *Standard mileage rates*

(1) Business (section 5 below)	50 cents per mile
(2) Charitable contribution (section 7 below)	14 cents per mile
(3) Medical and moving (section 7 below)	16.5 cents per mile

.02 *Determination of standard mileage rates.* An independent contractor on behalf of the Service conducts an annual study of the fixed and variable costs of operating an automobile to determine the business and medical and moving standard mileage rates reflected in this revenue procedure. The charitable contribution standard mileage rate is set by § 170(i) of the Internal Revenue Code.

SECTION 3. BACKGROUND AND CHANGES

.01 Under § 162(a), a taxpayer may deduct the ordinary and necessary expenses the taxpayer pays or incurs during the taxable year in carrying on any trade or business. An employee or self-employed individual may deduct the cost of operating an automobile to the extent that it is used in a trade or business. Under § 262, a taxpayer may not deduct any portion of the cost of operating an automobile attributable to personal use.

.02 Section 274(d) provides, in part, that a taxpayer may not deduct expenses for travel or listed property unless the taxpayer complies with certain substantiation requirements. Under § 280F(d)(4), listed property includes passenger automobiles and any other property used as a means of transportation.

.03 Under § 1.274-5(g) and (j), the Commissioner may prescribe rules and establish

methods for taxpayers to use mileage rates and allowances to substantiate the amount of ordinary and necessary expenses of using a vehicle for local transportation and transportation while traveling away from home. Under these rules, mileage allowances that comply with reasonable business practice are treated as (1) equivalent to substantiation, by adequate records or other sufficient evidence, of the amount of transportation expenses for purposes of § 1.274-5(c), and (2) satisfying the requirements of an adequate accounting to the employer of the amount of the expenses for purposes of § 1.274-5(f).

.04 Section 62(a)(2)(A) allows an employee, in determining adjusted gross income, a deduction for the expenses allowed by Part VI (§ 161 and following), subchapter B, chapter 1 of the Code, the employee pays or incurs in performing services as an employee under a reimbursement or other expense allowance arrangement with a payor.

.05 Section 62(c) provides that an arrangement is not treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it--

(1) Does not require the employee to substantiate the expenses to the payor, or

(2) Allows the employee to retain any amount in excess of the substantiated expenses.

The substantiation requirements described in § 62(c) do not apply to an expense to the extent that the Commissioner provides that substantiation is not required.

.06 Under § 1.62-2(c), a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses as specified in the

regulations. If an arrangement meets these requirements, all amounts paid under the arrangement are treated as paid under an accountable plan and are excluded from income and wages. If an arrangement does not meet one or more of these requirements, all amounts paid under the arrangement are treated as paid under a nonaccountable plan and are included in the employee's gross income, must be reported as wages or compensation on the employee's Form W-2, and are subject to the withholding and payment of employment taxes. Section 1.62-2(e)(2) provides that substantiation of certain business expenses in accordance with rules prescribed under § 1.274-5(g) are treated as substantiation of the amount of the expenses for purposes of § 1.62-2. Under § 1.62-2(f)(2), the Commissioner may prescribe rules under which an arrangement providing mileage allowances is treated as satisfying the requirement of returning amounts in excess of expenses, even though the employee is not required to return the portion of the allowance for miles of travel substantiated, if the allowance is reasonably calculated not to exceed the amount of the employee's expenses and the employee is required to return the portion of the allowance for miles of travel not substantiated.

.07 Section 1.62-2(h)(2)(i)(B) provides that if a payor pays a mileage allowance under an arrangement that meets the requirements of § 1.62-2(c)(1), the portion, if any, of the allowance that relates to miles of travel substantiated in accordance with § 1.62-2(e), that exceeds the amount of the employee's expenses deemed substantiated for the travel pursuant to rules prescribed under § 274(d) and § 1.274-5(g), and that the employee is not required to return, is subject to withholding and payment of employment taxes. *See* §§ 31.3121(a)-3, 31.3231(e)-1(a)(5), 31.3306(b)-2, and 31.3401(a)-4 of the

Employment Tax Regulations.

.08 This revenue procedure includes modifications to Rev. Proc. 2008-72 as follows:

(1) Section 5.01 contains revisions to the business standard mileage rate.

(2) Section 7.02 contains revisions to the medical and moving standard mileage rate.

SECTION 4. DEFINITIONS

.01 *Standard mileage rate.* The term "standard mileage rate" means the amount the Service provides for optional use by taxpayers to substantiate the amount of--

(1) Deductible costs of operating for business purposes automobiles (including vans, pickups, or panel trucks) they own or lease, or

(2) Deductible costs of operating automobiles for charitable, medical, or moving expense purposes.

.02 *Transportation expenses.* The term "transportation expenses" means the expenses of operating an automobile for local transportation or transportation away from home.

.03 *Mileage allowance.* The term "mileage allowance" means a payment under a reimbursement or other expense allowance arrangement that is--

(1) Paid for the ordinary and necessary business expenses incurred, or that the payor reasonably anticipates will be incurred, by an employee for transportation expenses in performing services as an employee of the employer,

(2) Reasonably calculated not to exceed the amount of the expenses or the anticipated expenses, and

(3) Paid at the applicable standard mileage rate, a flat rate or stated schedule, or

in accordance with any other Service-specified rate or schedule.

.04 *Flat rate or stated schedule.* A mileage allowance is paid at a flat rate or stated schedule if it is paid on a uniform and objective basis for the expenses described in section 4.03 of this revenue procedure. The allowance may be paid periodically at a fixed rate, at a cents-per-mile rate, at a variable rate based on a stated schedule, at a rate that combines any of these rates, or on any other basis that is consistently applied and accords with reasonable business practice. Thus, for example, a periodic payment at a fixed rate to cover the fixed costs (including depreciation or lease payments, insurance, registration and license fees, and personal property taxes) of driving an automobile in performing services as an employee of the employer, coupled with a periodic payment at a cents-per-mile rate to cover the variable costs (including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs) of using an automobile for those purposes, is an allowance paid at a flat rate or stated schedule. Likewise, a periodic payment at a variable rate based on a stated schedule for different locales to cover the costs of driving an automobile in performing services as an employee is an allowance paid at a flat rate or stated schedule.

.05 *Lease period.* The term "lease period" includes renewal periods.

SECTION 5. BUSINESS STANDARD MILEAGE RATE

.01 *In general.* The standard mileage rate for transportation expenses is 50 cents per mile for all miles of business use.

.02 *Use of the business standard mileage rate.* A taxpayer may use the business standard mileage rate for an automobile that a taxpayer either owns or leases. A taxpayer generally may deduct an amount equal to either the business standard

mileage rate times the number of business miles traveled or the actual costs (both fixed and variable) the taxpayer pays or incurs that are allocable to traveling those business miles.

.03 *Business standard mileage rate in lieu of fixed and variable costs.* A taxpayer computes a deduction using the business standard mileage rate on a yearly basis and in lieu of computing the fixed and variable costs of the automobile allocable to business purposes (except as provided in section 9.06 of this revenue procedure). Items such as depreciation or lease payments, maintenance and repairs, tires, gasoline (including all taxes thereon), oil, insurance, and license and registration fees are included in fixed and variable costs for this purpose.

.04 *Parking fees, tolls, interest, and taxes.* A taxpayer may deduct, as separate items, parking fees and tolls attributable to use of the automobile for business purposes. A taxpayer also may deduct interest relating to the purchase of the automobile and state and local personal property taxes as separate items to the extent allowable under § 163 or § 164, respectively. Under § 163(h)(2)(A), interest is nondeductible personal interest if it is paid or incurred on indebtedness properly allocable to the trade or business of performing services as an employee. Section 164 provides that state and local taxes a taxpayer pays or incurs in connection with an acquisition or disposition of property are treated as part of the cost of the acquired property or as a reduction in the amount realized on the disposition of the property. If the automobile is operated less than 100 percent for business purposes, a taxpayer must allocate the business and nonbusiness portion of the allowable taxes and interest deduction.

.05 *Depreciation.* For automobiles a taxpayer owns and has placed in service for

business purposes, and for which the taxpayer used the business standard mileage rate for any year, 16 cents per mile is treated as depreciation for 2003 and 2004, 17 cents per mile for 2005 and 2006, 19 cents per mile for 2007, 21 cents per mile for 2008 and 2009, and 23 cents per mile for 2010 for those years in which the taxpayer used business standard mileage rate. If the taxpayer used actual costs for one or more of those years, these rates do not apply to any year in which the taxpayer used actual costs. The depreciation described above reduces the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016.

.06 *Limitations.*

(1) A taxpayer may not use the business standard mileage rate to compute the deductible expenses of (a) automobiles used for hire, such as taxicabs, or (b) five or more automobiles owned or leased by a taxpayer and used simultaneously (such as in fleet operations).

(2) A taxpayer may not use the business standard mileage rate to compute the deductible business expenses of an automobile a taxpayer leases unless the taxpayer uses either the business standard mileage rate or a fixed and variable rate allowance (FAVR allowance) (as provided in section 8 of this revenue procedure) to compute the deductible business expenses of the automobile for the lease period.

(3) A taxpayer may not use the business standard mileage rate to compute the deductible expenses of an automobile for which the taxpayer has (a) claimed depreciation using a method other than straight-line for its estimated useful life, (b) claimed a § 179 deduction, (c) claimed the additional first-year depreciation allowance under, for example, § 168(k) or § 168(n), or (d) used the Accelerated Cost Recovery

System (ACRS) under former § 168 or the Modified Accelerated Cost Recovery System (MACRS) under current § 168. By using the business standard mileage rate, the taxpayer has elected to exclude the automobile (if owned) from MACRS pursuant to § 168(f)(1). If, after using the business standard mileage rate, the taxpayer uses actual costs, the taxpayer must use straight-line depreciation for the automobile's remaining estimated useful life (subject to the applicable depreciation deduction limitations under § 280F).

(4) A taxpayer who is an employee of the United States Postal Service may not use the business standard mileage rate and this revenue procedure to compute the amount of the taxpayer's deductible automobile expenses incurred in performing services involving the collection and delivery of mail on a rural route if the taxpayer receives qualified reimbursements (as defined in § 162(o)) for the expenses. *See* § 162(o) for the rules that apply to these qualified reimbursements.

SECTION 6. RESERVED

SECTION 7. CHARITABLE AND MEDICAL AND MOVING STANDARD MILEAGE RATES

.01 *Charitable.* Section 170(i) provides a standard mileage rate of 14 cents per mile for purposes of computing the charitable contribution deduction for use of an automobile in rendering gratuitous services to a charitable organization under § 170.

.02 *Medical and moving.* The standard mileage rate is 16.5 cents per mile for use of an automobile (1) to obtain medical care described in § 213, or (2) as part of a move for which the expenses are deductible under § 217.

.03 *Charitable or medical and moving standard mileage rates in lieu of variable*

expenses. A deduction computed using the applicable standard mileage rate for charitable, medical, or moving expense miles is in lieu of all variable expenses (including gasoline and oil) of the automobile allocable to those purposes. Costs for items such as depreciation or lease payments, insurance, and license and registration fees are not deductible, and are not included in the charitable or medical and moving standard mileage rates.

.04 *Parking fees, tolls, interest, and taxes*. A taxpayer may deduct, as separate items, parking fees and tolls attributable to the use of the automobile for charitable, medical, or moving expense purposes. Interest relating to the purchase of the automobile and state and local personal property taxes are not deductible as charitable, medical, or moving expenses, but they may be deducted as separate items to the extent allowable under § 163 or § 164, respectively.

SECTION 8. FIXED AND VARIABLE RATE ALLOWANCE

.01 *In general*.

(1) The ordinary and necessary expenses an employee pays or incurs in driving an automobile the employee owns or leases in performing services as an employee of the employer are deemed substantiated (in an amount determined under section 9 of this revenue procedure) when a payor reimburses those expenses using a FAVR allowance. A FAVR allowance is a mileage allowance using a flat rate or stated schedule that combines periodic fixed and variable rate payments that meet all the requirements of this section 8.

(2) A payor must base the amount of a FAVR allowance on data that (a) is derived from the base locality, (b) reflects retail prices paid by consumers, and (c) is

reasonable and statistically defensible in approximating the actual expenses employees receiving the allowance would incur as owners of the standard automobile.

.02 *Computation of FAVR allowance.*

(1) *FAVR allowance.* A FAVR allowance includes periodic fixed payments and periodic variable payments. A payor may maintain more than one FAVR allowance. A FAVR allowance that uses the same payor, standard automobile (or an automobile of the same make and model that is comparably equipped), retention period, and business use percentage is considered one FAVR allowance, even though other features of the allowance may vary. A FAVR allowance also includes any optional high mileage payments. However, optional high mileage payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes when paid. *See* section 9.05 of this revenue procedure. An optional high mileage payment covers the additional depreciation for a standard automobile attributable to business miles driven and substantiated by the employee for a calendar year in excess of the annual business mileage for that year. If an employee is covered by the FAVR allowance for less than the entire calendar year, the annual business mileage may be prorated on a monthly basis for purposes of the preceding sentence.

(2) *Periodic fixed payment.* A periodic fixed payment covers the projected fixed costs (including depreciation or lease payments, insurance, registration and license fees, and personal property taxes) of driving the standard automobile in performing services as an employee of the employer in a base locality, and must be paid at least quarterly. A payor may compute a periodic fixed payment by (a) dividing the total

projected fixed costs of the standard automobile for all years of the retention period, determined at the beginning of the retention period, by the number of periodic fixed payments in the retention period, and (b) multiplying the resulting amount by the business use percentage.

(3) *Periodic variable payment.* A periodic variable payment covers the projected variable costs (including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs) of driving a standard automobile in performing services as an employee of the employer in a base locality, and must be paid at least quarterly. A payor may compute a periodic variable payment rate for a computation period by dividing the total projected variable costs for the standard automobile for the computation period, determined at the beginning of the computation period, by the computation period mileage. A computation period may be any period of a year or less. Computation period mileage is the total mileage (business and personal) a payor reasonably projects a standard automobile will be driven during a computation period and equals the retention mileage divided by the number of computation periods in the retention period. For each business mile an employee substantiates for the computation period, a payor must make a periodic variable payment at a rate that does not exceed the rate for that computation period.

(4) *Base locality.* A base locality is the particular geographic locality or region of the United States in which an employee generally pays or incurs the costs of driving an automobile in performing services as an employee of the employer. Thus, for purposes of determining the amount of fixed costs, the base locality is generally the geographic locality or region in which the employee resides. For purposes of determining the

amount of variable costs, the base locality is generally the geographic locality or region in which the employee drives the automobile in performing services as an employee of the employer.

(5) *Standard automobile.* A standard automobile is the automobile a payor selects on which a specific FAVR allowance is based.

(6) *Standard automobile cost.* The standard automobile cost for a calendar year may not exceed 95 percent of the sum of (a) the retail dealer invoice cost of the standard automobile in the base locality, and (b) state and local sales or use taxes on the purchase of the automobile. The standard automobile cost may not exceed $27,300.

(7) *Annual mileage.* Annual mileage is the total mileage (business and personal) a payor reasonably projects an employee will drive a standard automobile during a calendar year. Annual mileage equals the annual business mileage divided by the business use percentage.

(8) *Annual business mileage.* Annual business mileage is the mileage a payor reasonably projects an employee will drive a standard automobile in performing services as an employee of the employer during the calendar year, but may not be less than 6,250 miles for a calendar year. Annual business mileage equals the annual mileage multiplied by the business use percentage.

(9) *Business use percentage.* A payor determines the business use percentage by dividing the annual business mileage by the annual mileage. The business use percentage may not exceed 75 percent. In lieu of demonstrating the reasonableness of the business use percentage based on records of total mileage and business mileage

driven by employees annually, a payor may use a business use percentage that is less than or equal to the following percentages for a FAVR allowance that is paid for the following annual business mileage:

Annual business mileage	*Business use percentage*
6,250 or more but less than 10,000	45 percent
10,000 or more but less than 15,000	55 percent
15,000 or more but less than 20,000	65 percent
20,000 or more	75 percent

(10) *Retention period.* A retention period is the period in calendar years a payor selects during which the payor expects an employee to drive a standard automobile in performing services as an employee of the employer before the automobile is replaced. The period may not be less than two calendar years.

(11) *Retention mileage.* Retention mileage is the annual mileage multiplied by the number of calendar years in the retention period.

(12) *Residual value.* The residual value of a standard automobile is the projected amount for which it could be sold at the end of the retention period after being driven the retention mileage. The Service will accept the following safe harbor residual values for a standard automobile computed as a percentage of the standard automobile cost:

Retention period	*Residual value*
2 years	70 percent
3 years	60 percent
4 years	50 percent

.03 *FAVR allowance in lieu of fixed and variable costs.*

(1) A reimbursement computed using a FAVR allowance is in lieu of the employee's deduction of all the fixed and variable costs the employee pays or incurs in driving the automobile in performing services as an employee of the employer, except as provided in section 9.06 of this revenue procedure. Items such as depreciation or lease payments, maintenance and repairs, tires, gasoline (including all taxes thereon), oil, insurance, license and registration fees, and personal property taxes are included in fixed and variable costs for this purpose.

(2) An employee may deduct, as separate items, parking fees and tolls attributable to the employee driving the standard automobile in performing services as an employee of the employer. Similarly, an employee may deduct, as a separate item, interest relating to the purchase of the standard automobile to the extent that the interest is an allowable deduction under § 163.

.04 *Depreciation.*

(1) A payor may not provide a FAVR allowance for an automobile for which an employee has (a) claimed depreciation using a method other than straight-line for its estimated useful life, (b) claimed a § 179 deduction, (c) claimed the additional first-year depreciation allowance under, for example, § 168(k) or § 168(n), or (d) used ACRS under former § 168 or MACRS under current § 168. If an employee uses actual costs for an owned automobile that has been covered by a FAVR allowance, the employee must use straight-line depreciation for the automobile's remaining estimated useful life (subject to the applicable depreciation deduction limitations under § 280F).

(2) Except as provided in section 8.04(3) of this revenue procedure, the total amount of the depreciation component for the retention period a payor includes in

computing the periodic fixed payments for that retention period may not exceed the excess of the standard automobile cost over the residual value of the standard automobile. In addition, the total amount of the depreciation component may not exceed the sum of the annual § 280F limitations on depreciation in effect at the beginning of the retention period that apply to the standard automobile during the retention period.

(3) If the depreciation component of periodic fixed payments exceeds the limitations in section 8.04(2) of this revenue procedure, the Service will treat that section as satisfied if the total annual amount of the FAVR (periodic fixed and variable) payments a payor makes to an employee driving 80 percent of the annual business mileage of the standard automobile does not exceed the business standard mileage rate for that year (under section 5.01 of the applicable revenue procedure) multiplied by 80 percent of the annual business mileage of the standard automobile.

(4) The depreciation included in each periodic fixed payment portion of a FAVR allowance paid with respect to an automobile reduces the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016. *See* section 8.07(2) of this revenue procedure for the requirement that the employer report the depreciation component of a periodic fixed payment to the employee.

.05 *FAVR allowance limitations.*

(1) A payor may provide a FAVR allowance only to an employee who substantiates to the payor for a calendar year at least 5,000 miles driven in performing services as an employee of the employer or, if greater, 80 percent of the annual business mileage of that FAVR allowance. If the employee is covered by the FAVR

allowance for less than the entire calendar year, the payor may prorate these limits on a monthly basis.

(2) A payor may not provide a FAVR allowance to a control employee (as defined in § 1.61-21(f)(5) and (6), excluding the $100,000 limitation in paragraph (f)(5)(iii)).

(3) A payor may not provide a FAVR allowance if at any time during a calendar year a majority of the employees the FAVR allowance covers are management employees.

(4) A payor may not provide a FAVR allowance to any employee unless at all times during a calendar year FAVR allowances provided by the payor cover at least five employees in total.

(5) A payor may provide a FAVR allowance only for an automobile (a) the employee receiving the payment owns or leases, (b) the cost of which, as a new vehicle (whether or not purchased new by the employee), was at least 90 percent of the standard automobile cost included in determining the FAVR allowance for the first calendar year the employee receives the allowance for that automobile, and (c) for which the model year does not differ from the current calendar year by more than the number of years in the retention period.

(6) A payor may not provide a FAVR allowance for an automobile an employee leases for which the employee has used actual expenses to compute the deductible business expenses of the automobile for any year during the lease period.

(7) The insurance cost component of a FAVR allowance must be based on the rates charged in the base locality for insurance coverage on the standard automobile during the current calendar year without considering rate-increasing factors such as

poor driving records or young drivers.

(8) A payor may provide a FAVR allowance only to an employee whose insurance coverage limits on the automobile for which the FAVR allowance is paid are at least equal to the insurance coverage limits used to compute the periodic fixed payment under that FAVR allowance.

.06 *Employee reporting.* Within 30 days after a FAVR allowance initially covers an employee's automobile, or again covers the automobile if coverage has lapsed, the employee by written declaration must provide the payor with the following information: (1) the make, model, and year of the employee's automobile, (2) written proof of the insurance coverage limits on the automobile, (3) the odometer reading of the automobile, (4) if owned, the purchase price of the automobile or, if leased, the price at which the automobile is ordinarily sold by retailers (the gross capitalized cost of the automobile), and (5) if owned, whether the employee has claimed depreciation for the automobile using any of the depreciation methods prohibited by section 8.04(1) of this revenue procedure or, if leased, whether the employee has computed deductible business expenses for the automobile using actual expenses. The employee must provide the information in (1), (2), and (3) to the payor within 30 days after the beginning of each calendar year that a FAVR allowance covers the employee's automobile.

.07 *Payor recordkeeping and reporting.*

(1) The payor or its agent must maintain written records stating (a) the statistical data and projections on which the FAVR allowance payments are based, and (b) the information the employees provided under section 8.06 of this revenue procedure.

(2) Within 30 days of the end of each calendar year, the payor must provide each

employee covered by a FAVR allowance during that year with a statement that lists the amount of depreciation included in each periodic fixed payment portion of the FAVR allowance paid during that calendar year to an automobile owner and explains that by receiving a FAVR allowance the employee has elected to exclude the automobile from the Modified Accelerated Cost Recovery System under § 168(f)(1). For automobile lessees, the statement must explain that by receiving the FAVR allowance the employee may not compute the deductible business expenses of the automobile using actual expenses for the lease period.

.08 *Failure to meet section 8 requirements.* If an employee receives a mileage allowance that fails to meet one or more of the requirements of this section 8, the employee may not be treated as covered by any FAVR allowance of the payor during the period of the failure. Nevertheless, the expenses to which that mileage allowance relates may be deemed substantiated using the method described in sections 5, 9.01(1), and 9.02 of this revenue procedure to the extent the requirements of those sections are met.

SECTION 9. APPLICATION

.01 If a payor pays a mileage allowance in lieu of reimbursing actual transportation expenses an employee incurs or may incur, the amount of the expenses that is deemed substantiated to the payor is either:

(1) For any mileage allowance other than a FAVR allowance, the lesser of the amount paid under the mileage allowance or the applicable standard mileage rate in section 5.01 of this revenue procedure multiplied by the number of business miles the employee substantiates; or

(2) For a FAVR allowance, the amount paid under the FAVR allowance less the sum of (a) any periodic variable rate payment that relates to miles in excess of the business miles the employee substantiates and that the employee fails to return to the payor although required to do so, (b) any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return to the payor although required to do so, and (c) any optional high mileage payments.

.02 If the amount of transportation expenses is deemed substantiated under the rules provided in section 9.01 of this revenue procedure, and the employee actually substantiates to the payor the elements of time, place (or use), and business purpose of the transportation expenses in accordance with paragraphs (b)(2) (travel away from home) and (b)(6) (listed property, which includes passenger automobiles and any other property used as a means of transportation) of § 1.274-5T, and paragraph (c) of § 1.274-5, the employee is deemed to satisfy the adequate accounting requirements of § 1.274-5(f) as well as the requirement to substantiate by adequate records or other sufficient evidence for purposes of § 1.274-5(c).

.03 An arrangement providing mileage allowances will be treated as satisfying the requirement of § 1.62-2(f)(2) on returning amounts in excess of expenses as follows:

(1) For a mileage allowance (other than a FAVR allowance) paid only at a cents-per-mile rate, the requirement to return excess amounts is treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62-2(g)) any portion of the allowance that relates to miles of travel not substantiated by the employee, even though the arrangement does not require the employee to return the

portion of the allowance that relates to the miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated. For example, assume a payor provides an employee an advance mileage allowance of $120.00 based on an anticipated 200 business miles at 60 cents per mile (at a time when the business standard mileage rate is 50 cents per mile), and the employee substantiates 120 business miles. The requirement to return excess amounts is treated as satisfied if the employee is required to return the portion of the allowance that relates to the 80 unsubstantiated business miles ($40.00) even though the employee is not required to return the portion of the allowance ($12.00) that exceeds the amount of the employee's expenses deemed substantiated under section 9.01 of this revenue procedure ($60.00) for the 120 substantiated business miles. However, the $12.00 excess portion of the allowance is treated as paid under a nonaccountable plan as discussed in section 9.05.

(2) For a mileage allowance (other than a FAVR allowance) paid other than only at a cents-per-mile rate, the requirement to return excess amounts is treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62-2(g)) any portion of the allowance that exceeds the product of the standard mileage rate and the number of miles of travel the employee substantiates. For example, assume a payor provides an employee an advance mileage allowance of $400 per month plus 20 cents per mile based on an anticipated 2000 miles for a total of $800 (at a time when the business standard mileage rate is 50 cents per mile), and the employee substantiates 1000 business miles. The requirement to return excess amounts is treated as satisfied if the employee is required to return $300, the portion of the allowance that exceeds the product of the standard mileage rate and the miles

substantiated ($500).

(3) For a FAVR allowance, the requirement to return excess amounts is treated as satisfied if the employee is required to return, within a reasonable period of time (as defined in § 1.62-2(g)), (a) the portion (if any) of the periodic variable payment received that relates to miles in excess of the business miles the employee substantiates, and (b) the portion (if any) of a periodic fixed payment that relates to a period during which the employee was not covered by the FAVR allowance.

.04 An employee is not required to include in gross income the portion of a mileage allowance received from a payor that is less than or equal to the amount deemed substantiated under section 9.01 of this revenue procedure, provided the employee substantiates in accordance with section 9.02. *See* § 1.274-5T(f)(2)(i). Assuming that the remaining requirements for an accountable plan provided in § 1.62-2 are satisfied, that portion of the allowance is treated as paid under an accountable plan, is not reported as wages or other compensation on the employee's Form W-2, and is exempt from withholding and payment of employment taxes. *See* § 1.62-2(c)(2) and (c)(4).

.05 An employee is required to include in gross income the portion of a mileage allowance received from a payor that exceeds the amount deemed substantiated under section 9.01 of this revenue procedure. *See* § 1.274-5T(f)(2)(ii). In addition, the excess portion of the allowance is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes. *See* § 1.62-2(c)(3)(ii), (c)(5), and (h)(2)(i)(B).

.06 If an employee's substantiated expenses are less than the employee's actual

expenses, the following rules apply:

(1) Except as otherwise provided in section 9.06(2) of this revenue procedure on leased automobiles, if the amount of the expenses deemed substantiated under the rules provided in section 9.01 of this revenue procedure is less than the amount of the employee's business transportation expenses, the employee may claim an itemized deduction for the amount by which the business transportation expenses exceed the amount that is deemed substantiated, provided the employee substantiates all the business transportation expenses (not just the excess over the business standard mileage rate), includes on Form 2106, Employee Business Expenses, the deemed substantiated portion of the mileage allowance received from the payor, and includes in gross income the portion (if any) of the mileage allowance received from the payor that exceeds the amount deemed substantiated. *See* § 1.274-5T(f)(2)(iii). However, for purposes of claiming this itemized deduction, the employee is not required to substantiate the amount of the expenses if the employee is claiming a deduction that is equal to or less than the applicable standard mileage rate multiplied by the number of business miles the employee substantiated minus the amount deemed substantiated under section 9.01 of this revenue procedure. The itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions in § 67.

(2) An employee whose business transportation expenses for a leased automobile are deemed substantiated under section 9.01(1) of this revenue procedure (relating to an allowance other than a FAVR allowance) may not claim a deduction based on actual expenses under section 9.06(1) unless the employee does so consistently beginning with the first business use of the automobile after December 31,

1997. An employee whose business transportation expenses for a leased automobile are deemed substantiated under section 9.01(2) of this revenue procedure (relating to a FAVR allowance) may not claim a deduction based on actual expenses.

.07 An employee may deduct an amount computed under section 5.01 of this revenue procedure only as an itemized deduction. This itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions in § 67.

.08 A self-employed individual may deduct an amount computed under section 5.01 of this revenue procedure in determining adjusted gross income under § 62(a)(1).

SECTION 10. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES

.01 The portion of a mileage allowance (other than a FAVR allowance), if any, that relates to the miles of business travel substantiated and that exceeds the amount deemed substantiated for those miles under section 9.01(1) of this revenue procedure is treated as paid under a nonaccountable plan and is subject to withholding and payment of employment taxes. *See* § 1.62-2(h)(2)(i)(B).

(1) In the case of a mileage allowance paid as a reimbursement, the excess described in section 10.01 of this revenue procedure is subject to withholding and payment of employment taxes in the payroll period in which a payor reimburses the expenses for the business miles substantiated. *See* § 1.62-2(h)(2)(i)(B)(2).

(2) In the case of a mileage allowance paid as an advance, the excess described in section 10.01 of this revenue procedure is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the business miles for which the advance was paid are substantiated. *See* § 1.62-2(h)(2)(i)(B)(3). If some or all of the business miles for which the advance was

paid are not substantiated within a reasonable period of time and the employee does not return the portion of the allowance that relates to those miles within a reasonable period of time, the portion of the allowance that relates to those miles is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. *See* § 1.62-2(h)(2)(i)(A).

(3) In the case of a mileage allowance that is not computed on the basis of a fixed amount per mile of travel (for example, a mileage allowance that combines periodic fixed and variable rate payments, but that does not satisfy the requirements of section 8 of this revenue procedure), the payor must compute periodically (no less frequently than quarterly) the amount, if any, that exceeds the amount deemed substantiated under section 9.01(1) of this revenue procedure by comparing the total mileage allowance paid for the period to the standard mileage rate in section 5.01 of this revenue procedure multiplied by the number of business miles the employee substantiated for the period. Any excess is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. *See* § 1.62-2(h)(2)(i)(B)(4).

(4) For example, assume a payor provides employees a mileage allowance under an arrangement that otherwise meets the requirements of an accountable plan at a rate of 60 cents per mile (when the business standard mileage rate is 50 cents per mile). The payor does not require the return of the portion of the allowance that exceeds the business standard mileage rate for the business miles substantiated (10 cents). In June, the payor advances an employee $300.00 for 500 miles to be traveled during the month. In July, the employee substantiates to the payor 400 business miles traveled in

June and returns $60.00 to the payor for the 100 business miles not traveled. The amount deemed substantiated for the 400 miles traveled is $200.00 and the employee is not required to return $40.00. No later than the first payroll period following the payroll period in which the 400 business miles traveled are substantiated, the payor must withhold and pay employment taxes on $40.00.

.02 The portion of a FAVR allowance, if any, that exceeds the amount deemed substantiated for those miles under section 9.01(2) of this revenue procedure is subject to withholding and payment of employment taxes. *See* § 1.62-2(h)(2)(i)(B).

(1) Any periodic variable rate payment that relates to miles in excess of the business miles an employee substantiates and that the employee fails to return within a reasonable period, or any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return within a reasonable period, is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. *See* § 1.62-2(h)(2)(i)(A).

(2) Any optional high mileage payment is subject to withholding and payment of employment taxes when paid.

.03 All payments to an employee under a mileage allowance are treated as paid under a nonaccountable plan if the arrangement evidences a pattern of abuse. An arrangement evidences a pattern of abuse if, for example, it has no process to determine when an allowance exceeds the amount that may be deemed substantiated and the arrangement routinely pays allowances in excess of the amount that may be deemed substantiated without (1) requiring actual substantiation or repayment of the

excess amount, or (2) treating the excess allowances as wages for employment tax purposes. See § 62(c), § 1.62-2(k), and Rev. Rul. 2006-56, 206-2 C.B. 874. Thus, these payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes. See §§ 1.62-2(c)(3), (c)(5), and (h)(2).

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective for (1) deductible transportation expenses paid or incurred on or after January 1, 2010, and (2) mileage allowances or reimbursements paid to an employee or to a charitable volunteer (a) on or after January 1, 2010, and (b) for transportation expenses the employee or charitable volunteer pays or incurs on or after January 1, 2010.

SECTION 12. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2008-72 is superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Bernard P. Harvey of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Harvey at (202) 622-4930 (not a toll-free call).