INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2020–9
February 24, 2020

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADJUSTMENT TO BASIS

Rev Rul. 2020-5, page 454.

Rev. Rul. 2020-5 modifies Rev. Rul. 2009-13 and Rev. Rul. 2009-14 to reflect § 1016(a)(1)(B) of the Internal Revenue Code, which was added by section 13521 of the 2017 Tax Cuts and Jobs Act. Under §1016(a)(1)(B), the adjusted basis of an insurance contract is not reduced by the cost of insurance. Section 1016(a)(1)(B) reversed the position in Rev. Rul. 2009-13 and Rev. Rul. 2009-14 that the basis of an insurance contract is reduced by the cost of insurance.

INCOME TAX

T.D. 9893, page 449.

These regulations set forth the procedures for employers who choose to use special valuation rules to determine the amount to include in an employee's gross income for personal use of an employer-provided vehicle. To align with changes made by the Tax Cuts and Jobs Act, these final regulations update the procedures for determining the maximum vehicle values for use with the special valuation rules and describe how employers may adopt the special valuation rules for years 2018 and 2019.

Finding Lists begin on page ii.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part I

26 CFR 1.61-21 Taxation of Fringe Benefits

T.D. 9893

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Determination of the Maximum Value of a Vehicle for Use with the Fleet-Average and Vehicle Cents-Per-Mile Valuation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document sets forth final regulations regarding special valuation rules for employers and employees to use in determining the amount to include in an employee's gross income for personal use of an employer-provided vehicle. The final regulations reflect changes made by the Tax Cuts and Jobs Act (TCJA).

DATES: *Effective Date:* These regulations are effective February 5, 2020.

Applicability Date: For dates of applicability, see §1.61-21(d)(5)(v)(H) and §1.61-21(e)(6).

FOR FURTHER INFORMATION CONTACT: Stephanie Caden at (202) 317-4774 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income under section 61 of the Internal Revenue Code (the Code). In addition, benefits paid as remuneration for employment, including the personal use of employer-provided vehicles, generally are wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA) and the Collection of Income Tax at Source on Wages (federal income tax withholding). Sections 3121(a), 3306(b), and 3401(a).

The amount that must be included in the employee's income and wages for the personal use of an employer-provided vehicle generally is determined by reference to the vehicle's fair market value (FMV). However, for many years, §1.61-21 has provided special valuation rules for employer-provided vehicles (the prior final regulations).[1] If an employer chooses to use a special valuation rule, the special value is treated as the FMV of the benefit for income tax and employment tax purposes. §1.61-21(b)(4). As discussed further in this Background section of this preamble, two such special valuation rules, the fleet-average valuation rule and the vehicle cents-per-mile valuation rule, are set forth in §1.61-21(d)(5)(v) and §1.61-21(e), respectively. These two special valuation rules are subject to limitations, including that they may be used only in connection with vehicles having values that do not exceed a maximum amount set forth in the regulations.

Section 1.61-21(e)(1)(iii)(A) of the prior final regulations provided that the vehicle cents-per-mile valuation rule could be used only to value the personal use of a vehicle having a value no greater than $12,800 (the sum of the maximum recovery deductions allowable under section 280F(a)(2) for the recovery period of the vehicle). Section 1.61-21(d)(5)(v)(D) of the prior final regulations provided that the fleet-average valuation rule could be used only to value the personal use of vehicles having values no greater than $16,500. (The fleet-average valuation rule uses the term "automobile" rather than "vehicle." For convenience, this preamble uses the term "vehicle" except in specific discussions of the fleet-average valuation rule or the section 280F depreciation limitations.) Sections 1.61-21(d)(5)(v)(D) and 1.61-21(e)(1)(iii)(A) of the prior final regulations provided that each of these maximum values was adjusted annually pursuant to section 280F(d)(7).

1. *The Fleet-Average Valuation Rule*

The fleet-average valuation rule is an optional component of a special valuation rule called the automobile lease valuation rule set forth in §1.61-21(d). Under the automobile lease valuation rule, the value of the personal use of an employer-provided automobile available to an employee for an entire year is the portion of the annual lease value determined under the regulations (Annual Lease Value) relating to the availability of the automobile for personal use. Furthermore, provided the FMV of the automobile does not exceed the maximum value permitted under §1.61-21(d)(5)(v), an employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the Annual Lease Value of any automobile in the fleet.

The fleet-average value is the average of the fair market values of all the automobiles in the fleet. However, §1.61-21(d)(5)(v)(D) of the prior final regulations provided that the value of an employee's personal use of an automobile could not be determined under the fleet-average valuation rule for a calendar year if the FMV of the automobile on the first date the automobile was made available to the employee exceeded the base value of $16,500, as adjusted annually pursuant to section 280F(d)(7). Section 1.61-21(d)(5)(v)(D) provided that the first such adjustment would be for calendar year 1989, subject to minor modifications to the section 280F(d)(7) formula specified in the regulations. In other words, under the prior final regulations, the maximum value for use of the fleet-average valuation rule

[1] T.D. 8256, 54 FR 28576, July 6, 1989, as amended by T.D. 8389, 57 FR 1868, Jan. 16, 1992; T.D. 8457, 57 FR 62192, Dec. 30, 1992; T.D. 9597, 77 FR 45480, Aug. 1, 2012; T.D. 9849, 84 FR 9231, March 14, 2019.

was the base value of $16,500, as adjusted annually under section 280F(d)(7) every year since 1989.

Prior to enactment of TCJA, the automobile price inflation adjustment of section 280F(d)(7)(B) was calculated using the "new car" component of the Consumer Price Index (CPI) "automobile component." Beginning in 2005, the IRS began to calculate the price inflation adjustment for trucks and vans separately from cars using the "new truck" component of the CPI, and continued using the "new car" component of the CPI for automobiles other than trucks and vans. See Rev. Proc. 2005-48, 2005-32 I.R.B. 271. For 2017, the year of the enactment of TCJA, the maximum value for use of this rule was $21,100 for a passenger automobile and $23,300 for a truck or van. See Notice 2017-03, 2017-2 I.R.B. 368.

Section 1.61-21(d)(5)(v)(B) provides that the fleet-average valuation rule may be used by an employer as of January 1 of any calendar year following the calendar year in which the employer acquires a sufficient number of automobiles to total a fleet of 20 or more, each one satisfying the maximum value requirement of §1.61-21(d)(5)(v)(D). The Annual Lease Value calculated for automobiles in the fleet, based on the fleet-average value, must remain in effect for the period that begins with the first January 1 the fleet-average valuation rule is applied by the employer to the automobiles in the fleet and ends on December 31 of the subsequent calendar year. The Annual Lease Value for each subsequent two-year period is calculated by determining the fleet average value of the automobiles in the fleet as of the first January 1 of such period. An employer may cease using the fleet-average valuation rule as of any January 1.

2. *The Vehicle Cents-Per-Mile Valuation Rule*

Another special valuation rule is the vehicle cents-per-mile rule in §1.61-21(e). Under §1.61-21(e), if an employer provides an employee with the use of a vehicle that the employer reasonably expects will be regularly used in the employer's trade or business throughout the calendar year (or such shorter period as the vehicle may be owned or leased by the employer), or that satisfies the requirements of §1.61-21(e)(1)(ii) (i.e., the vehicle is actually driven at least 10,000 miles in the year and use of the vehicle during the year is primarily by employees), the value of the personal use may be determined based on the applicable standard mileage rate multiplied by the total number of miles the vehicle is driven by the employee for personal purposes.

Section 1.61-21(e)(1)(iii)(A) provides that the value of the personal use may not be determined under the vehicle cents-per-mile valuation rule for a calendar year if the fair market value of the vehicle on the first date the vehicle is made available to the employee exceeds the sum of the maximum recovery deductions allowable under section 280F(a) for a five-year period for an automobile first placed in service during that calendar year (whether or not the automobile is actually placed in service during that year), as adjusted by section 280F(d)(7). The prior final regulations provided that, under this rule, with respect to a vehicle placed in service in or after 1989, the limitation on value was $12,800, as adjusted under section 280F(d)(7). In other words, under the prior final regulations, the maximum value of a vehicle for use of the vehicle cents-per-mile valuation rule was the base value of $12,800, as adjusted annually under section 280F(d)(7) since 1989. As with the fleet-average valuation rule, beginning in 2005, the IRS calculated the price inflation adjustment for trucks and vans separately from cars. See Rev. Proc. 2005-48. For 2017, the maximum value for use of the vehicle cents-per-mile valuation rule was $15,900 for a passenger automobile and $17,800 for a truck or van. See Notice 2017-03.

Section 1.61-21(e)(5)(i) states that an employer must adopt the vehicle cents-per-mile valuation rule for a vehicle to take effect by the first day on which the vehicle is used by an employee of the employer for personal use (or, if another special valuation rule called the commuting valuation rule of §1.61-21(f) is used when the vehicle is first used by an employee of the employer for personal use, the first day on which the commuting valuation rule is not used). Section 1.61-21(e)(5)(ii) also provides, in part, that once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employer, the rule must be used by the employer for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of §1.61-21(f), use the commuting valuation rule with respect to the vehicle.

3. *TCJA Changes and the Maximum Vehicle Values for 2018 and 2019*

TCJA made the following amendments to the Code:

(1) For owners of passenger automobiles, section 280F(a), as modified by section 13202(a)(1) of TCJA, imposes dollar limitations on the depreciation deduction for the year the taxpayer places the passenger automobile in service and for each succeeding year. The amendments made by TCJA substantially increase the maximum annual dollar limitations on the depreciation deductions for passenger automobiles. The new dollar limitations are based on the depreciation, over a five-year recovery period, of a passenger automobile with a cost of $50,000 (formerly $12,800, as adjusted).

(2) Section 11002(d)(8) of TCJA amended section 280F(d)(7)(B) effective for tax years beginning after December 31, 2017. Pursuant to these amendments, the price inflation amount for automobiles (including trucks and vans) is calculated using both the CPI automobile component and the Chained Consumer Price Index for All Urban Consumers (C-CPI-U) automobile component.

a. *Notice 2019-08 – The Maximum Value for 2018*

To implement the changes described above, Notice 2019-08, 2019-3 I.R.B. 354, provides interim guidance for 2018 on new procedures for calculating the price inflation adjustments to the maximum vehicle values for use with the special valuation rules under §1.61-21(d) and (e) using section 280F(d)(7), as modified by sections 11002 and 13202 of the TCJA. Notice 2019-08 states that the Treasury Department and the IRS anticipate that further guidance will be issued in the form of proposed regulations and expect that the regulations will be consistent with the rules set forth in Notice 2019-08.

Notice 2019-08 provides that, consistent with the substantial increase in the dollar limitations on depreciation deductions under section 280F(a), as modified by section 13202(a)(1) of TCJA, the Treasury Department and the IRS intend to amend §1.61-21(d) and (e) to incorporate a higher base value of $50,000 as the maximum value for use of the vehicle cents-per-mile and fleet-average valuation rules effective for the 2018 calendar year. Notice 2019-08 further states that the Treasury Department and the IRS intend that the regulations will be modified to provide that this $50,000 base value will be adjusted annually using section 280F(d)(7) for 2019 and subsequent years. Accordingly, Notice 2019-08 provides that, for 2018, the maximum value for use of the vehicle cents-per-mile and fleet-average valuation rules is $50,000.

Finally, for 2018 and 2019, Notice 2019-08 provides that the Treasury Department and the IRS will not publish separate maximum values for trucks and vans for use with the fleet-average and vehicle cents-per-mile valuation rules. As noted above, TCJA amended section 280F(d)(7)(B) to make inflation adjustments based on the CPI and C-CPI-U automobile component. The C-CPI-U automobile component does not currently have separate components for new cars and new trucks. Accordingly, due to the lack of data, the Treasury Department and the IRS will publish only one maximum value of a vehicle for use with the vehicle cents-per-mile and fleet-average valuation rules beginning in 2019.

b. *Notice 2019-34 - The Maximum Vehicle Value for 2019*

Notice 2019-34, 2019-22 I.R.B. 1257, provides that the inflation-adjusted maximum value of an employer-provided vehicle (including cars, vans, and trucks) first made available to employees for personal use in calendar year 2019 for which the vehicle cents-per-mile valuation rule provided under §1.61-21(e), or the fleet-average valuation rule provided under §1.61-21(d), may be used, is $50,400. Notice 2019-34 also provides information about the manner in which the Treasury Department and the IRS intend to publish this maximum vehicle value in the future.

As noted in Notice 2019-34, Rev. Proc. 2010-51, 2010-51 I.R.B. 883, as modified by Rev. Proc. 2019-46, 2019-49 I.R.B. 1301, provides rules for using optional standard mileage rates in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. Section 2.12(1) of Rev. Proc. 2010-51 provides that the IRS publishes both the standard mileage rates for the use of an automobile for business, charitable, medical, and moving expense purposes, and the maximum standard automobile cost that may be used in computing the allowance under a fixed and variable rate (FAVR) plan, in a separate annual notice. See, e.g., Notice 2019-02, 2019-02 I.R.B. 281.

Notice 2019-34 indicates that, in amending §1.61-21(d) and (e) to incorporate a higher base value of $50,000 as the maximum value for use with the vehicle cents-per-mile and the fleet-average valuation rules, the IRS and Treasury Department expect that the maximum value for use of those rules for 2019 and subsequent years will be the same as the maximum standard automobile cost that may be used in computing the allowance under a FAVR plan. Accordingly, Notice 2019-34 provides that the maximum value for use with the fleet-average and vehicle cents-per-mile valuation rules will be published in the annual notice providing the standard mileage rates for use of an automobile for business, charitable, medical, and moving expense purposes and the maximum standard automobile cost that may be used in computing the allowance under a FAVR plan.

Notice 2019-34 also provides that the Treasury Department and the IRS intend to revise §1.61-21(d) to include a transition rule for any employer that did not qualify to use the fleet-average valuation rule prior to January 1, 2018 because the inflation-adjusted maximum value requirement of §1.61-21(d)(5)(v)(D), as published by the IRS in a notice or revenue procedure applicable to the year the automobile was first made available to any employee of the employer, was not met. In such a case, under the transition rule, the employer may adopt the fleet-average valuation rule for 2018 or 2019, provided the requirements of §1.61-21(d)(5)(v) are met for that year using the maximum values set forth in Notice 2019-08 ($50,000) or Notice 2019-34 ($50,400), respectively.

In addition, Notice 2019-34 states that the Treasury Department and the IRS intend to revise §1.61-21(e) to provide a transition rule for vehicles first made available to employees for personal use before calendar year 2018, if the employer did not qualify under §1.61-21(e)(5) to adopt the vehicle cents-per-mile valuation rule for the vehicle on the first day on which the vehicle was used by the employee for personal use because the fair market value of the vehicle exceeded the inflation-adjusted limitation of §1.61-21(e)(1)(iii) as published by the IRS in a notice or revenue procedure applicable to the year the vehicle was first used by the employee for personal use. In such a case, under the transition rule, the employer may first adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year based on the maximum fair market value of a vehicle for purposes of the vehicle cents-per-mile valuation rule set forth in Notice 2019-08 ($50,000) or Notice 2019-34 ($50,400), respectively.

Similarly, Notice 2019-34 also provides that the Treasury Department and the IRS intend to amend §1.61-21(e) to provide a transition rule for a vehicle first placed in service before calendar year 2018 if the commuting valuation rule of §1.61-21(f) was used when the vehicle was first used by an employee of the employer for personal use, and the employer did not qualify to switch to the vehicle cents-per-mile valuation rule on the first day on which the commuting valuation rule was not used because the vehicle had a fair market value in excess of the inflation-adjusted maximum permitted under §1.61-21(e)(1)(iii) as published by the IRS in a notice or revenue procedure applicable to the year the commuting valuation rule was first not used. Under the transition rule, the employer may adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year based on the maximum fair market value of the vehicle for purposes of the vehicle cents-per-mile valuation rule set forth in Notice 2019-08 or Notice 2019-34, respectively.

With respect to the transition rules described above, Notice 2019-34 adds that, consistent with §1.61-21(e)(5), an employer that adopts the vehicle cents-per-mile valuation rule must continue to use the rule for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of §1.61-21(f), use the commuting valuation rule with respect to the vehicle.

4. *Notice of Proposed Rulemaking*

On August 23, 2019, a notice of proposed rulemaking was published in the **Federal Register** (84 FR 44258) that was consistent with Notice 2019-08 and Notice 2019-34 and reflected changes made by TCJA to the depreciation limitations in section 280F. The notice of proposed rulemaking proposed revisions to §1.61-21(d) and §1.61-21(e) to increase, effective for the 2018 calendar year, the maximum base fair market value of a vehicle for use of the fleet-average and vehicle cents-per-mile valuation rules to $50,000. The proposed regulations further provided that the maximum fair market value of a vehicle for use of the fleet-average and vehicle cents-per-mile valuation rules will be adjusted annually under section 280F(d)(7), as amended by TCJA, and the adjusted maximum fair market value will be included in the annual notice published by the IRS providing the standard mileage rates for the use of an automobile for business, charitable, medical, and moving expense purposes and the maximum standard automobile cost for purposes of an allowance under a FAVR plan. See, e.g., Notice 2019-02. Additionally, the proposed regulations provide transition rules that permit employers that could not adopt the fleet-average or vehicle cents-per-mile valuation rules prior to 2018 (because a vehicle had a fair market value in excess of the maximum permitted under the prior final regulations), to use the special valuation rules for the first time in 2018 or 2019.

No public hearing on the proposed regulations was requested or held. No comments responding to the proposed regulations were received. Therefore, the proposed regulations are adopted as final regulations without substantive change.

Explanation of Provisions

These final regulations update the fleet-average and vehicle cents-per-mile valuation rules described in §1.61-21(d) and (e), respectively, to align the limitations on the maximum vehicle fair market values for use of these special valuation rules with the changes made by the TCJA to the depreciation limitations in section 280F. Specifically, consistent with the substantial increase in the dollar limitations on depreciation deductions under section 280F(a), these final regulations increase, effective for the 2018 calendar year, the maximum base fair market value of a vehicle for use of the fleet-average or vehicle cents-per-mile valuation rule to $50,000. Consistent with §§ 1.61-21(d)(5)(v)(D) and 1.61-21(e)(1)(iii)(A) of prior final regulations, the maximum fair market value of a vehicle for purposes of the fleet-average and vehicle cents-per-mile valuation rules is adjusted annually under section 280F(d)(7). This annual adjustment will be calculated in accordance with section 280F(d)(7) as amended by TCJA.

Consistent with the expectation expressed in Notice 2019-34 and in the notice of proposed rulemaking, the inflation-adjusted maximum fair market value for a vehicle for purposes of the fleet-average and vehicle cents-per-mile valuation rules will be included in the annual notice published by the IRS providing the standard mileage rates for the use of an automobile for business, charitable, medical, and moving expense purposes and the maximum standard automobile cost for purposes of an allowance under a FAVR plan. See, e.g., Notice 2019-02.

Furthermore, consistent with Notice 2019-34 and the proposed regulations, the following transition rules are included in these final regulations:

(1) With respect to the fleet-average valuation rule, if an employer did not qualify to use the fleet-average valuation rule prior to January 1, 2018, with respect to an automobile because the fair market value of the automobile exceeded the inflation-adjusted maximum value requirement of §1.61-21(d)(5)(v)(D), as published by the IRS in a notice or revenue procedure applicable to the year the automobile was first made available to any employee of the employer, the employer may adopt the fleet-average valuation rule for 2018 or 2019, provided the fair market value of the automobile does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively.

(2) With respect to the vehicle cents-per-mile valuation rule, for a vehicle first made available to any employee of the employer for personal use before calendar year 2018, if an employer did not qualify under §1.61-21(e)(5) to adopt the vehicle cents-per-mile valuation rule on the first day on which the vehicle was used by the employee for personal use because the fair market value of the vehicle exceeded the inflation-adjusted limitation of §1.61-21(e)(1)(iii), as published by the IRS in a notice or revenue procedure applicable to the year the vehicle was first used by the employee for personal use, the employer may first adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year with respect to the vehicle, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively. Similarly, if the commuting valuation rule of §1.61-21(f) was utilized when the vehicle was first used by an employee of the employer for personal use, and the employer did not qualify to switch to the vehicle cents-per-mile valuation rule on the first day on which the commuting valuation rule was not used because the vehicle had a fair market value in excess of the inflation-adjusted limitation of §1.61-21(e)(1)(iii), as published by the IRS in a notice or revenue procedure applicable to the year the commuting valuation rule was first not used, the employer may adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively. However, consistent with §1.61-21(e)(5), an employer that adopts the vehicle cents-per-mile valuation rule must continue to use the rule for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of §1.61-21(f), use the commuting valuation rule with respect to the vehicle.

Special Analyses

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the final regulations update existing regulations to comport with the statutory changes to section 280F made by the TCJA. Although the final regulations might affect a substantial number of small entities, the economic impact of the final regulations is not expected to be significant.

Since the current vehicle valuation rules in the regulations are tied to inflation adjustments under section 280F, the statutory changes to section 280F necessitate modifications to the procedures for calculating annual inflation adjustments to the maximum fair market value of a vehicle permitted for use with the fleet-average and vehicle cents-per-mile special valuation rules. These revised special valuation rules are consistent with the base values and methodology used for section 280F purposes and simplify the determination of the amount employers must include in employees' income and wages for income and employment tax purposes for the personal use of employer-provided vehicles. The modifications made by these final regulations to the maximum fair market value of a vehicle permitted for use with the fleet-average and vehicle cents-per-mile special valuation rules, and the transition rules provided in connection with these final regulations, increase the number of employers and employees that may take advantage of the special valuation rules, without increasing costs to the employer.

Pursuant to section 7805(f), the proposed regulations preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

The principal author of these regulations is Stephanie Caden of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Tax). However, other personnel from the IRS and the Treasury Department participated in their development.

Statement of Availability

The IRS Notices, Revenue Procedures and the Notice of Proposed Rulemaking cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov*.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is amended as follows:

PART 1-INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805***

Par. 2. Section 1.61-21 is amended by revising paragraph (d)(5)(v)(D), adding paragraphs (d)(5)(v)(G) and (H), revising paragraph (e)(1)(iii)(A), revising paragraph (e)(5)(i), and adding paragraphs (e)(5)(vi) and (e)(6), to read as follows:

§1.61-21 Taxation of fringe benefits.

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(d) ***

(5) ***

(v) ***

(D) *Limitations on use of fleet-average rule*. The rule provided in this paragraph (d)(5)(v) may not be used for any automobile the fair market value of which (determined pursuant to paragraphs (d)(5)(i) through (iv) of this section as of the first date on which the automobile is made available to any employee of the employer for personal use) exceeds $50,000, as adjusted by section 280F(d)(7). The first such adjustment shall be for calendar year 2019. In addition, the rule provided in this paragraph (d)(5)(v) may only be used for automobiles that the employer reasonably expects will regularly be used in the employer's trade or business. For rules concerning when an automobile is regularly used in the employer's business, see paragraph (e)(1)(iv) of this section.

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(G) *Transition rule for 2018 and 2019*. Notwithstanding paragraph (d)(5)(v)(B) of this section, an employer that did not qualify to use the fleet-average valuation rule prior to January 1, 2018, with respect to any automobile (including a truck or van) because the fair market value of the vehicle exceeded the inflation-adjusted maximum value requirement of paragraph (d)(5)(v)(D) of this section, as published by the IRS in a notice or revenue procedure applicable to the year the vehicle was first made available to any employee of the employer, may adopt the fleet-average valuation rule for 2018 or 2019 with respect to the vehicle, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively.

(H) *Applicability date*. Paragraphs (d)(5)(v)(D), and (G) of this section apply to taxable years beginning on or after February 5, 2020. Notwithstanding the first sentence of this paragraph (d)(5)(v)(H), any taxpayer may choose to apply paragraph (d)(5)(v)(G) of this section beginning on or after January 1, 2018.

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(e) ***

(1) ***

(iii) ***

(A) *In general*. The value of the use of an automobile (as defined in paragraph (d)(1)(ii) of this section) may not be determined under the vehicle cents-per-mile valuation rule of this paragraph (e) for a calendar year if the fair market value of the automobile (determined pursuant to paragraphs (d)(5)(i) through (iv) of this section as of the first date on which the automobile is made available to any employee of the employer for personal use) exceeds $50,000, as adjusted by section 280F(d)(7). The first such adjustment shall be for calendar year 2019.

* * * * *

(5) ***

(i) *Use of the vehicle cents-per-mile valuation rule by an employer*. An employer must adopt the vehicle cents-per-mile valuation rule of this paragraph (e) for a vehicle to take effect by the first day on which the vehicle is used by an employee of the employer for personal use (or, if the commuting valuation rule of paragraph (f) of this section is used when the vehicle is first used by an employee of the employer for personal use, the first day on which the commuting valuation rule is not used).

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(vi) *Transition rule for 2018 and 2019*. For a vehicle first made available to any employee of an employer for personal use before calendar year 2018, an employer that did not qualify under this paragraph (e)(5) to adopt the vehicle cents-per-mile valuation rule on the first day on which the vehicle is used by the employee for personal use because the fair market value of the vehicle exceeded the inflation-adjusted limitation of paragraph (e)(1)(iii) of this section, as published by the IRS in a notice or revenue procedure applicable to the year the vehicle was first used by the employee for personal use, may first adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively. Similarly, for a vehicle first made available to any employee of the employer for personal use before calendar year 2018, if the commuting valuation rule of paragraph (f) of this section was used when the vehicle was first used by the employee for personal use, and the employer did not qualify to switch to the vehicle cents-per-mile valuation rule of this paragraph (e) on the first day on which the commuting valuation rule of paragraph (f) of this section was not used because the vehicle had a fair market value in excess of the inflation-adjusted limitation of paragraph (e)(1)(iii) of this section, as published by the IRS in a notice or revenue procedure applicable to the year the commuting valuation rule was first not used, the employer may adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively. However, in accordance with paragraph (e)(5)(ii) of this section, an employer that adopts the vehicle cents-per-mile valuation rule pursuant to this paragraph (e)(5)(vi) must continue to use the rule for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with regard to the vehicle.

(6) *Applicability date.* Paragraphs (e)(1)(iii)(A) and (e)(5)(i) and (vi) of this section apply to taxable years beginning on or after February 5, 2020. Notwithstanding the first sentence of this paragraph (e)(6), any taxpayer may choose to apply paragraph (e)(5)(vi) of this section beginning on or after January 1, 2018.

* * * * *

Sunita Lough,
Deputy Commissioner for Services and Enforcement.

Approved: January 17, 2020.

David J. Kautter,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on February 04, 2020, 8:45 a.m., and published in the issue of the Federal Register for February 05, 2020, 85 FR 6424)

Section 1016.—Adjustments to basis

Rev. Rul. 2020-05

ISSUE

After the amendment of § 1016(a) of the Internal Revenue Code (Code) by section 13521 of Public Law No. 115-97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), what is the amount of A's and B's income recognized upon the sale of the life insurance contracts described in Situation 2 of Rev. Rul. 2009-13, 2009-21 I.R.B. 1029; Situation 3 of Rev. Rul. 2009-13; and Situation 2 of Rev. Rul. 2009-14, 2009-21 I.R.B. 1031?

LAW AND ANALYSIS

Sections 1011 and 1012 of the Code provide that the adjusted basis for determining gain or loss is generally the cost of property adjusted as provided in § 1016, except as otherwise provided in subchapters O (§§ 1011 through 1092), C (§§ 301 through 386), K (§§ 701 through 777), and P (§§ 1201 through 1298) of chapter 1 of the Code.

Section 1016(a) provides that proper adjustment must be made for expenditures, receipts, losses, or other items properly chargeable to capital account. Section 13521 of the TCJA amended § 1016(a) to provide that, in determining the basis of a life insurance contract or an annuity contract, no adjustment is made for mortality, expense, or other reasonable charges incurred under the contract. See § 1016(a)(1)(B). This amendment is effective for transactions entered into on or after August 26, 2009 (the effective date of Rev. Rul. 2009-13 with respect to Situations 2 and 3).

Rev. Rul. 2009-13 and Rev. Rul. 2009-14 apply § 1016 (prior to its amendment by the TCJA) to determine the adjusted basis of life insurance contracts under §§ 1011 and 1012 in several factual situations.

In Situation 2 of Rev. Rul. 2009-13, A, an individual, entered into a life insurance contract with cash value on January 1 of Year 1. Under the contract, A was the insured, and the named beneficiary was a member of A's family. On June 15 of Year 8, A sold the contract to B, an unrelated person who would suffer no economic loss upon A's death, for $80,000. Prior to the sale of the contract, A had paid $64,000 in premiums. The cost of insurance charges collected by the issuer was $10,000 as of the date of the sale. Situation 2 of Rev. Rul. 2009-13 provides that if a taxpayer holds a life insurance contract for purposes of insurance protection, it is necessary to reduce the taxpayer's basis in the contract by that portion of the premium paid for the contract that was expended for the provision of insurance before the sale in order to measure the taxpayer's gain upon the sale of the contract. Therefore, Situation 2 of Rev. Rul. 2009-13 provides that A must reduce A's basis in the contract by the cost of insurance. As a result, A's adjusted basis as of the date of the sale was $54,000 ($64,000 premiums paid less $10,000 expended as cost of insurance). Because A sold the contract for $80,000, Rev. Rul. 2009-13 holds with respect to Situation 2 that A must recognize $26,000 of income on the sale of the contract ($80,000 amount realized less $54,000 adjusted basis of the contract).

In Situation 3 of Rev. Rul. 2009-13, the contract was a level premium fifteen-year term life insurance contract without cash surrender value. The monthly premium for the term life insurance contract was $500, A held the contract for 89.5 months, and A paid premiums totaling $45,000 as of the date of the sale. A sold the contract for $20,000 to B, an unrelated person who would suffer no economic loss upon A's death. Situation 3 of Rev. Rul. 2009-13 provides that A must reduce A's basis in the contract by the cost of insurance, which is presumed to equal the monthly premiums under the contract. A's adjusted basis in the contract as of the date of the sale was therefore $250 ($45,000 total premiums paid less $44,750 cost of insurance protection). Because A sold the contract for $20,000, Rev. Rul. 2009-13 holds with respect to Situation 3 that A must recognize $19,750 of income on the sale of the term life insurance contract ($20,000 amount realized on the sale less $250 adjusted basis of the contract).

In Situation 2 of Rev. Rul. 2009-14, the facts are the same as in Situation 3 of Rev. Rul. 2009-13, except that B purchased the contract for $20,000 from A and then, at the end of the following year, sold the contract to C, a person unrelated to either A or B, for $30,000. Before selling the contract, B paid a total of $9,000 in premiums. In Situation 2 of Rev. Rul. 2009-14, B, unlike A in Situation 3 of Rev. Rul. 2009-13, was not required to reduce B's basis by the cost of insurance because B was wholly unrelated to the insured, did not purchase the life insurance contract for protection against economic loss upon the insured's death, purchased the contract solely with a view to profit, and enjoyed no insurance protection from the contract. B's cost basis was $29,000, the sum of what B paid for the contract and the premiums B paid to keep the contract in force ($20,000 purchase price plus $9,000 in premiums). B's adjusted basis was $29,000 ($29,000 cost basis with no adjustment for cost of insurance), and B recognized $1,000 of income on the sale of the contract to C ($30,000 amount realized on sale less $29,000 adjusted basis of the contract).

The analysis and holdings relating to A's adjusted basis in the contract in Situations 2 and 3 in Rev. Rul. 2009-13 and the analysis relating to B's adjusted basis in the contract in Situation 2 in Rev. Rul. 2009-14 are inconsistent with the language of § 1016(a)(1)(B), added to the Code by the TCJA. Under § 1016(a)(1)(B), the cost basis of a life insurance contract is not reduced by the cost of insurance, regardless of why the contract is purchased. Rev. Rul. 2009-13 and Rev. Rul. 2009-14 are therefore modified to the extent they are inconsistent with the rule set forth in § 1016(a)(1)(B).

In Situations 2 and 3 in Rev. Rul. 2009-13, under § 1016(a)(1)(B), as added by the TCJA, A is not required to reduce A's basis in the contract by the cost of insurance. Accordingly, in Situation 2 of Rev. Rul. 2009-13, A's adjusted basis in the contract equals the premiums paid. A must recognize $16,000 of income on the sale of the contract ($80,000 amount realized on sale less $64,000 adjusted basis). In Situation 3 of Rev. Rul. 2009-13, A's adjusted basis in the contract equals the premiums paid. A will recognize a $25,000 loss on the sale of the contract ($20,000 amount realized on the sale less $45,000 adjusted basis). A will not be permitted to deduct the loss unless the loss is incurred under § 165(c)(1) or (2).

In Situation 2 of Rev. Rul. 2009-14, B is not required to reduce B's basis in the contract by the cost of insurance because B was wholly unrelated to the insured, did not purchase the life insurance contract for protection against economic loss upon the insured's death, purchased the contract solely with a view to profit, and enjoyed no insurance protection from the contract. Under § 1016(a)(1)(B), as added by the TCJA, B is not required to reduce B's basis in the contract by the cost of insurance, regardless of why the insurance contract is purchased. Accordingly, the outcome for B in Situation 2 of Rev. Rul. 2009-14 does not change, but B's situation is no longer distinguishable from that of A in Situation 3 of Rev. Rul. 2009-13 with regards to the treatment of cost of insurance charges.

HOLDINGS

1. In Situation 2 of Rev. Rul. 2009-13, A recognizes $16,000 of income upon the sale of the life insurance contract, of which $14,000 is ordinary income, and $2,000 is long-term capital gain.[2]

2. In Situation 3 of Rev. Rul. 2009-13, A recognizes a long-term capital loss of $25,000 upon the sale of the life insurance contract.

3. In Situation 2 of Rev. Rul. 2009-14, B recognizes $1,000 of long-term capital gain upon the sale of the life insurance contract.

EFFECT ON OTHER DOCUMENTS

This revenue ruling modifies Rev. Rul. 2009-13 and Rev. Rul. 2009-14.

EFFECTIVE DATE

Consistent with the effective date of the TCJA amendment to § 1016(a), this revenue ruling is effective for transactions entered into on or after August 26, 2009. See § 7805(b)(8). A change in the internal revenue laws that is made retroactive to earlier taxable years does not automatically permit a claim for a refund for such a year when the claim is barred by the period of limitations. See *United States v. Zacks*, 375 U.S. 59 (1963). Congress did not amend the statute of limitations set forth in § 6511 or otherwise express an intent to waive or extend the period of limitations for the retroactive change made to § 1016(a) by section 13521 of the TCJA.

DRAFTING INFORMATION

The principal author of this revenue ruling is Megan McGuire of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact Ms. McGuire at (202) 317-6995 (not a toll-free number).

[2] Section 13521 of the TCJA only applies to determine a taxpayer's adjusted basis in a life insurance contract under § 1016. Section 13521 of the TCJA does not affect the analysis in Situations 2 and 3 of Rev. Rul. 2009-13 and Situation 2 of Rev. Rul. 2009-14 with respect to the character of any income or loss recognized by a taxpayer on the sale of a life insurance contract.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

Finding List of Current Actions on Previously Published Items[1]

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

Internal Revenue Service
Washington, DC 20224

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INTERNAL REVENUE BULLETIN

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