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INSURANCE - PERSONAL AUTOMOBILE LIABILITY - OPERATORS OF GOVERNMENT VEHICLES - APPROPRIATION AVAILABILITY THE EXPENSE OF COMMERCIAL LIABILITY COVERAGE TO CIVILIAN EMPLOYEES WHO AS "HIGH MILEAGE DRIVERS" ARE ASSIGNED GOVERNMENT VEHICLES FOR OFFICIAL USE, DRIVING THE VEHICLES HOME UNDER THE AUTHORITY OF 5 U.S.C. 78 (C) (2) AT THE CLOSE OF A WORKDAY IN ORDER TO START OUT THE NEXT MORNING DIRECTLY FROM HOME, MAY NOT BE REIMBURSED FROM APPROPRIATED FUNDS, THE PERSONAL LIABILITY OCCURRING OUTSIDE THE SCOPE OF EMPLOYMENT, AND THE 1961 AMENDMENT TO THE FEDERAL TORT CLAIMS ACT, 28 U.S.C. 2679, RELIEVING EMPLOYEES OF PERSONAL LIABILITY IN THE OPERATION OF GOVERNMENT VEHICLES BY MAKING THE REMEDY AGAINST THE UNITED STATES THE EXCLUSIVE REMEDY OF THE COMPLAINANT, HAVING RESTRICTED RELIEF TO ACCIDENTS OCCURRING TO WITHIN THE SCOPE OF EMPLOYMENT AND HAVING REJECTED A PROPOSAL TO AUTHORIZE THE PROCUREMENT OF PERSONAL LIABILITY INSURANCE FOR EMPLOYEES WHOSE OFFICIAL DUTIES REQUIRE THE OPERATION OF A GOVERNMENT MOTOR VEHICLE, IN THE ABSENCE OF SPECIFIED LEGISLATIVE AUTHORITY, APPROPRIATED FUNDS ARE NOT AVAILABLE FOR THE PURCHASE OF INSURANCE.

TO THE SECRETARY OF THE TREASURY, MARCH 4, 1966:

IN A LETTER OF JANUARY 26, 1966, THE HONORABLE ERNEST C. BETTS, JR., DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATION, REQUESTED OUR DECISION ON THE AVAILABILITY OF INTERNAL REVENUE SERVICE APPROPRIATIONS TO REIMBURSE IRS EMPLOYEES THE EXPENSE OF HAVING THE COVERAGE OF THEIR COMMERCIAL LIABILITY INSURANCE EXTENDED TO THE OPERATION OF GOVERNMENT VEHICLES.

BECAUSE THEIR DUTIES REQUIRE CONSIDERABLE AREA TRAVEL, THE EMPLOYEES INVOLVED, REFERRED TO AS ,HIGH MILEAGE DRIVERS," ARE ASSIGNED CARS FOR THEIR OFFICIAL USE. AN EMPLOYEE WITH AN ASSIGNED VEHICLE IS ADMINISTRATIVELY PERMITTED, PRESUMABLY WHEN WARRANTED, AND UNDER AUTHORITY OF 5 U.S.C. 78 (C) (2), TO DRIVE THE CAR HOME AT THE CLOSE OF THE WORKDAY, SO THAT HE CAN START OUT THE NEXT MORNING DIRECTLY FROM HIS HOME, RATHER THAN HAVING TO TRAVEL TO HEADQUARTERS TO PICK UP THE GOVERNMENT CAR. THE EVENT OF AN ACCIDENT IN GOING TO AND FROM HIS HOME THE QUESTION MAY ARISE IN A GIVEN SITUATION AS TO WHETHER, FOR THE PURPOSE OF THE FEDERAL TORT CLAIMS ACT (28 U.S.C. 2671 ET SEQ.), THE TRAVEL WAS WITHIN THE EMPLOYEE'S SCOPE OF EMPLOYMENT. TO SAFEGUARD AGAINST PERSONAL LIABILITY IN THE EVENT IT IS DETERMINED BY THE UNITED STATES ATTORNEY THAT THE TRAVEL, AT THE TIME OF THE ACCIDENT, WAS BEYOND THE SCOPE OF EMPLOYMENT AND THUS OUTSIDE THE FEDERAL TORT CLAIMS ACT PROVIDING RELIEF FROM PERSONAL LIABILITY, EMPLOYEES WITH ASSIGNED CARS ARE ADMINISTRATIVELY ENCOURAGED TO PURCHASE RIDERS ON THEIR PERSONAL INSURANCE POLICIES TO COVER THAT CONTINGENCY. THE ANNUAL PREMIUM OF THE RIDERS IS ABOUT $3 A YEAR FOR THE USUAL MINIMUM COVERAGE, AND SLIGHTLY HIGHER FOR GREATER COVERAGE. IN SUBMITTING THE QUESTION OF THE USE OF IRS APPROPRIATED

FUNDS THE CONTENTION IS ADVANCED THAT THE EXPENSE OF THE INSURANCE RIDERS SHOULD BE CONSIDERED A GOVERNMENT EXPENSE, AS IT WOULD NOT BE INCURRED BUT FOR THE USE OF A GOVERNMENT CAR.

ESSENTIALLY WHAT WE HAVE HERE IS THE EXPENSE OF INSURANCE TO COVER AN EMPLOYEE FOR PERSONAL LIABILITY OCCURRING OUTSIDE THE SCOPE OF HIS EMPLOYMENT. ALTHOUGH, AS POINTED OUT IN THE LETTER OF THE DEPUTY ASSISTANT SECRETARY, THE QUESTION OF SCOPE OF EMPLOYMENT IS DETERMINED BY REFERENCE TO THE APPLICABLE STATE LAW, NO CASE IS MENTIONED WHERE THE AUTHORIZED TRAVEL TO AND FROM THE EMPLOYEE'S HOME WAS HELD TO BE OUTSIDE THE SCOPE OF EMPLOYMENT SO AS TO DEPRIVE THE EMPLOYEE OF THE RELIEF FROM LIABILITY GRANTED BY THE FEDERAL TORT CLAIMS ACT.

THE CONGRESS, BY PUBLIC LAW 87-258, APPROVED SEPTEMBER 21, 1961, 75 STAT. 539, 28 U.S.C. 2679, AMENDED THE FEDERAL TORT CLAIMS ACT TO RELIEVE EMPLOYEES OF PERSONAL LIABILITY RESULTING FROM THE OPERATION OF GOVERNMENT MOTOR VEHICLES. IT DID SO BY MAKING THE REMEDY AGAINST THE UNITED STATES THE EXCLUSIVE REMEDY OF THE COMPLAINANT, BUT DELIBERATELY RESTRICTED THE REMEDY TO ACCIDENTS OCCURRING WHILE THE EMPLOYEE WAS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT. BY ADOPTING PUBLIC LAW 87-258, THE CONGRESS, IN EFFECT, REJECTED A LEGISLATIVE PROPOSAL TO AUTHORIZE THE PROCUREMENT OF PERSONAL LIABILITY INSURANCE FOR EMPLOYEES WHOSE OFFICIAL DUTIES REQUIRED THEIR OPERATION OF MOTOR VEHICLES. SEE H.R. 7122, 87TH CONG., 1ST SESS.; H.REPT. NO. 297, 87TH CONG., 1ST SESS., ON H.R. 2883 WHICH BECOME PUBLIC LAW 87-258.

IN VIEW OF THE FOREGOING, WE PERCEIVE NO VALID BASIS FOR CONSIDERING THE EXPENSE INVOLVED AS A NECESSARY EXPENSE OF THE IRS PERMITTING THE USE OF ITS APPROPRIATED FUNDS. MOREOVER, IT IS A WELL-ESTABLISHED GENERAL RULE THAT IN THE ABSENCE OF SPECIFIC LEGISLATIVE AUTHORITY APPROPRIATED FUNDS ARE NOT AVAILABLE FOR THE PURCHASE OF INSURANCE. 39 COMP. GEN. 145. CONSEQUENTLY, THE QUESTION SUBMITTED MUST BE ANSWERED IN THE NEGATIVE.