

employee may deduct that value multiplied by the percentage of the total use of the vehicle that is in connection with the employer's trade or business (business value). For taxable years beginning before January 1, 1990, the employee may deduct the business value from gross income in determining adjusted gross income. For taxable years beginning on or after January 1, 1990, the employee may deduct the business value only as a miscellaneous itemized deduction in determining taxable income, subject to the 2-percent floor provided in section 67. If the employer determines the value of the noncash fringe benefit under a special accounting rule that allows the employer to treat the value of benefits provided during the last two months of the calendar year or any shorter period as paid during the subsequent calendar year, then the employee must determine the deduction allowable under this paragraph (b) without regard to any use of the benefit during those last two months or any shorter period. The employee may not use a cents-per-mile valuation method to determine the deduction allowable under this paragraph (b).

[T.D. 8451, 57 FR 57669, Dec. 7, 1992; 57 FR 60568, Dec. 21, 1992]

§ 1.162-25T Deductions with respect to noncash fringe benefits (temporary).

(a) *Employer.* If an employer includes the value of a noncash fringe benefit in an employee's gross income, the employer may not deduct this amount as compensation for services, but rather may deduct only the costs incurred by the employer in providing the benefit to the employee. The employer may be allowed a cost recovery deduction under section 168 or a deduction under section 179 for an expense not chargeable to capital account, or, if the noncash fringe benefit is property leased by the employer, a deduction for the ordinary and necessary business expense of leasing the property.

(b) [Reserved]

(c) *Examples.* The following examples illustrate the provisions of this section.

Example (1). On January 1, 1986, X Company owns and provides the use of an automobile

with a fair market value of \$20,000 to E, an employee, for the entire calendar year. Both X and E compute taxable income on the basis of the calendar year. Seventy percent of the use of the automobile by E is in connection with X's trade or business. If X uses the special rule provided in § 1.61-2T for valuing the availability of the automobile and takes into account the amount excludable as a working condition fringe, X would include \$1,680 (\$5,600, the Annual Lease Value, less 70 percent of \$5,600) in E's gross income for 1986. X may not deduct the amount included in E's income as compensation for services. X may, however, determine a cost recovery deduction under section 168, subject to the limitations under section 280F, for taxable year 1986.

Example (2). The facts are the same as in example (1), except that X includes \$5,600 in E's gross income, the value of the noncash fringe benefit without taking into account the amount excludable as a working condition fringe. X may not deduct that amount as compensation for services, but may determine a cost recovery deduction under section 168, subject to the limitations under section 280F. For purposes of determining adjusted gross income, E may deduct \$3,920 (\$5,600 multiplied by the percent of business use).

[T.D. 8061, 50 FR 46013, Nov. 6, 1985, as amended by T.D. 8063, 50 FR 52312, Dec. 23, 1985; T.D. 8276, 54 FR 51026, Dec. 12, 1989; T.D. 8451, 57 FR 57669, Dec. 7, 1992]

§ 1.162-27 Certain employee remuneration in excess of \$1,000,000.

(a) *Scope.* This section provides rules for the application of the \$1 million deduction limit under section 162(m) of the Internal Revenue Code. Paragraph (b) of this section provides the general rule limiting deductions under section 162(m). Paragraph (c) of this section provides definitions of generally applicable terms. Paragraph (d) of this section provides an exception from the deduction limit for compensation payable on a commission basis. Paragraph (e) of this section provides an exception for qualified performance-based compensation. Paragraphs (f) and (g) of this section provide special rules for corporations that become publicly held corporations and payments that are subject to section 280G, respectively. Paragraph (h) of this section provides transition rules, including the rules for contracts that are grandfathered and