

STATE CONTROLLER TECHNICAL GUIDANCE

TAXABILITY OF STATE-OWNED VEHICLES

I. Authority

U.S. Code, Title 26, §2162(a), 262, and 274(d) (Internal Revenue Code)
IRS Reg §1.132-6 De minimis fringes
IRS Publication 15-B Employer's Tax Guide to Fringe Benefits
IRS Publication 5137 Fringe Benefit Guide, Office of Federal, State, and Local Governments
CRS 24-30-1112 Permanent assignment of vehicles
CRS 24-30-1113 Assignment of vehicles to state agency officers or employees

II. Purpose of this Technical Guidance

The Office of the State Controller is providing this technical guidance to inform all State Agencies and Institutions of Higher Education of tax issues related to state-assigned vehicles. State Agencies and Institutions of Higher Education are responsible for compliance with all IRS regulations and should consult a tax advisor as they deem necessary. State agencies in the Executive Branch shall follow this guidance and State Controller Policy entitled "Tax Reporting for State-Assigned Vehicles."

III. Definitions

1. **Clearly Marked Police, Fire, or Public Safety Officer Vehicle** - A vehicle, owned or leased by a governmental unit, or any agency or instrumentality thereof, that is required to be used for commuting by a police officer, fire fighter, or public safety officer (as defined in §402(l)(4)(C)) who, when not on a regular shift, is on call at all times, provided that any personal use (other than commuting) of the vehicle outside the limit of the police officer's arrest powers or the fire fighter's or public safety officer's obligation to respond to an emergency is prohibited by such governmental unit. A police, fire, or public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a police, fire, or public safety officer vehicle. A marking on a license plate is not a clear marking for purposes of this paragraph. 26 CFR 1.274-5 Substantiation Requirements
2. **Control Employee** - For government employer, a Control Employee is either of the following:
 - a. A government employee whose compensation is equal to or exceeds the Federal Government Executive Level V. See the Office of Personnel Management website at www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/ for Executive & Senior Level Employee Pay Tables – Rates of Pay for Executive Schedule.
 - b. An elected official. (IRS Publication 15-B, 1 CCR 103-1, Section 3.1.03)
3. **Business Use** – Use of a vehicle for a State Purpose. The employee must document the business use of a vehicle.
4. **Commuting** – Travel between an officer's or employee's personal residence to one or more regular places of business.

5. **Cost Comparison** – A comparison of the cost of using a State vehicle compared with the cost of reimbursing the employee for using the employee’s personal vehicle for a State Purpose.
6. **De Minimis Personal Use** – Includes infrequent use of a vehicle for personal use. For example, a stop for a personal errand on the way between a work location and the employee’s home. Use of a State-owned vehicle for commuting for more than once a month is not considered de minimis personal use.
7. **Law Enforcement Officer** - An individual who is employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension or detention of persons for such crimes), who is authorized by law to carry firearms, execute search warrants, and to make arrests (other than merely a citizen’s arrest), and who regularly carries firearms (except when it is not possible to do so because of the requirements of undercover work). The term “Law Enforcement Officer” may include an arson investigator if the investigator otherwise meets the requirements of this paragraph. If the individual is allowed to use the vehicle as a courtesy and for commuting purposes, it does not qualify as a nonpersonal use vehicle, and the commuting value is income subject to income tax withholding. 26 CFR 1.274-5 and IRS FAQs
8. **Public Safety Officer** - A public safety officer is an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as described above, or a firefighter, chaplain, or member of a rescue squad or ambulance crew. (IRS Fringe Benefit Guide, 26 CFR 1.174-5)
9. **Maximum automobile value** – The maximum value is published by the IRS each year and is one of the criteria for using the Cents Per Mile Rule. The State has decided not to use the Cents Per Mile Rule. IRS Regulations sections 1.61-21(e)(1)(iii)(B) and (C).
10. **Qualified Non-personal Use Vehicle** – Any vehicle which, by reason of its design, is not likely to be used more than a de minimis amount for personal purposes. Vehicles which are Qualified Nonpersonal Use Vehicles include the following: Clearly Marked Police, Fire, and Public Safety Officer Vehicles, ambulances used as such or hearses used as such, any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds, bucket trucks (cherry pickers), cement mixers, combines, cranes and derricks, delivery trucks with a seating only for the driver or only for the driver plus a folding jump seat, dump trucks including garbage trucks, flatbed trucks, forklifts, passenger buses used as such with a capacity of at least 20 passengers, qualified moving vans, qualified specialized utility repair trucks specifically designed and used to carry heavy tools, testing equipment or parts and the employer requires the employee to drive the truck home in order to be able to respond in emergency situations for purposes of restoring or maintain electricity, gas, telephone, water, sewer, or steam utility service, refrigerated trucks, school buses, tractors and other special purpose farm vehicles, Unmarked Law Enforcement Vehicles, and such other vehicles as the IRS Commissioner may designate. 26 CFR 1.274-5
11. **Personal Use** – All use of a vehicle that is not for State business. Commuting is considered personal use and a taxable fringe benefit by the IRS.

12. **Requirement to commute** – The employer requires the employee to commute for bona fide non-compensatory business reasons. The employee is on call while commuting in the State vehicle and this enables the employee to meet an essential job function. The employee could not perform his or her duties without commuting in a state vehicle. These requirements are included in the employee’s job description. For example, a transportation employee, who is on call 24 hours a day to respond to road emergencies, is required by his or her employer to commute in a vehicle outfitted with communications or other equipment the employee would need if called out at night. If an employee could perform his or her duties in the employee’s personal vehicle, then the employee is not required to commute.
13. **Standard mileage rate** – This is the rate published by the IRS each year. See IRS website: <https://www.irs.gov/tax-professionals/standard-mileage-rates>. For State agency reimbursements, see OSC website: <https://www.colorado.gov/pacific/osc/mileage-reimbursement-rate>.
14. **State Purpose** – An activity carried out by an employee on behalf of the State and that furthers the State’s interest. Also referred to as “Business Use” by the IRS.
15. **State Vehicle** – Any vehicle owned or leased by the State that is used by an employee.
16. **Traveling Away from Home** – A Traveler is traveling away from home if:
 - i. The Traveler’s duties require him/her to be away from the Traveler’s Regular Work Location (Metropolitan Area) substantially longer than an ordinary day’s work and *and*
 - ii. The Traveler needs to sleep or rest to meet the demands of his/her work while away from home.
17. **Unmarked Law Enforcement Vehicles** - The substantiation requirements of IRS section 274(d) (business and personal use) do not apply to officially authorized uses of an unmarked vehicle by a “Law Enforcement Officer”. To qualify for this exception, any personal use must be authorized by the Federal, State, county, or local governmental agency or department that owns or leases the vehicle and employs the officer, and must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips cannot qualify as an authorized use. 26 CFR 1.274-5

V. Eligibility

1. An employee in the Executive Branch must meet all of the conditions in CRS 24-30-1113(2)(a). See OSC Policy entitled “Use of State-Owned Vehicles.”
2. Other branches of government and institutions of higher education may have other criteria. At a minimum, the criteria should include a requirement that the employee uses the vehicle for a legitimate State purpose.

V. Non-taxable uses of State-owned vehicles

Employees shall not be subject to a taxable fringe benefit if any of the following conditions are met (see Taxability of State-Owned Vehicles Flow Chart):

1. Employee uses the State vehicle to drive from employee's home to one work location or multiple work locations for no more than one a day per month, or
2. Employee uses a State motorpool vehicle to travel for a State Purpose, or
3. Employee does not have an assigned office and their commuting is to temporary work locations, unless it occurs on the weekend, or
4. Employee uses a Clearly Marked Police, Fire, or Public Safety Officer Vehicle, or
5. Employee uses an Unmarked Law Enforcement Vehicle and is the employee a Law Enforcement Officer, or
6. Employee drives any other Qualified Nonpersonal Use Vehicle.

VI. Taxable uses of State-owned vehicles

If an employee's use is not included in the non-taxable uses of State-owned vehicles, then the employee's use is taxable.

VII. Distinction between Commuting and Traveling Away from Home

1. Commuting

- a. Commuting use of a State-owned vehicle is taxable to an employee.
- b. Employees who use a State-owned vehicle and commute for more than one day a month, any day(s) in excess of one day per month is taxable to the employee.

- 2. Traveling Away from Home** – Use of a State-owned vehicle while traveling away from home is not commuting and is not taxable to an employee. See example 1 below.

VIII. Valuation Methods

State agencies will use either of the following IRS rules to determine the taxable amount to be included in the employee's income:

1. **Commuting Rule** - All the following conditions must be met to use the Commuting Rule
 - a. Department requires the employee to commute in the vehicle (Requirement to Commute).
 - b. Department has a written policy under which employee cannot use the vehicle for personal purposes other than for commuting or De Minimis Personal Use.
 - c. Employee does not use the vehicle for a Personal purpose other than commuting and De Minimis Personal Use.
 - d. Employee who uses the vehicle is not a Control Employee.

2. Lease Value Rule

If employee does not meet the conditions of the Commuting Rule, and the employee substantiates personal and business miles, then use the Lease Value Rule to determine the value of the state vehicle.

X. Documentation Requirements

1. **Commuting Rule** – - An employee must document the State Purpose of using the state vehicle. See OSC Policy entitled, “Use of State-Owned Vehicles.”
2. **Lease Value Rule** - An employee must document the business and personal mileage. For business use, the employee must also document the time and place of travel, and the business purpose of the travel. See OSC Policy entitled, “Use of State-Owned Vehicles.”

X. Valuation of Taxable Benefit

1. Commuting Rule

- a. Multiply each one-way commute (that is from home to work or from work to home) by \$1.50.
- b. This must be based on actual one-way commutes (cannot use 40 one-way commutes per month unless this is equal to the actual one-way commutes).
- c. Include this amount in the employee’s wages as imputed income each month.

2. Lease Value Rule

- a. Determine the fair market value (FMV) of the automobile on the first date it is available to any employee for personal use. For State agencies, State Fleet Management will determine the FMV.
- b. Using Table 3-1 in IRS Publication 15-B for the appropriate calendar year, read down column (1) until you come to the dollar range within which the FMV of the automobile falls. Then read across to column (2) to find the annual lease value. Multiply this value by 1/12 to calculate the monthly lease value.
- c. Multiply the monthly lease value by the percentage of personal miles out of total miles driven by the employee in that month.
- d. The annual lease value does not include the value of fuel. If the Department pays for fuel, the Department must include the value of fuel separately in the employee’s wages. The Department may value fuel at FMV or at 5.5 cents per mile for all miles driven by the employee.
- e. Employee must substantiate business and personal use of the vehicle. For business use the employee must have written records made at the time of each business use that includes:
 - i. Business purpose
 - ii. Time and place of travel
 - iii. Mileage
- f. The percentage of personal miles is equal to the total personal miles driven each month divided by total miles driven for each month.

VII. Examples

- **Example 1: Employee travel to conference**

- **Situation:** Employee works in Denver and lives in Parker (suburb south of Denver). Employee has a conference in Colorado Springs beginning Tuesday and ending Wednesday. Employee picks up a state vehicle in Denver on Monday evening and drives to Colorado Springs for the conference on Tuesday morning. Employee drives home after the conference on Wednesday evening. Employee drives the state vehicle from home to Denver on Thursday. The State vehicle was at the employee's home for two days in the month (Monday and Wednesday evening).
- **Result:** Based upon the information presented in this situation, the use of the vehicle should not be considered taxable to the employee. The employee used the vehicle to get to and from a conference as part of their work duties. Based upon IRS regulations, "If an employer provides a vehicle that is used by an employee exclusively for business purposes and the substantiation requirements are met, there are no tax consequences or reporting required for that use. The use is treated as a working condition fringe benefit. Employees should maintain records to substantiate that all vehicle use was for business. *Reg. § 1.132-6(e)(2)*"

- **Example 2: Employees who do not have a regular place of work and either have a home office or work out of their vehicles.**

- **Examples of this situation include:**
 - Brand Inspectors - These employees drive in state-owned unmarked vehicles from their homes to different farms/ranches around the state. Their regions cover large sections of the state and they conduct their administrative work either at home or in their vehicles.
 - Human Services Inspectors - These employees drive in state-owned unmarked vehicles from their homes to different work sites (generally other homes) around their region. Their regions cover large sections of the state and they conduct their administrative work either at home or in their vehicles.
 - Local Affairs Regional Managers - These employees drive in state-owned unmarked vehicles from their homes to different local government offices around their regions. Their regions cover large sections of the state and they conduct their administrative work either at home or in their vehicles.
- **Result:** An expense will qualify for business use if it is ordinary and necessary for your trade or business. Ordinary means that the expense is common and accepted within your line of work. Necessary means that the expense is helpful in conducting your business; it doesn't have to be essential to the operation.

An expense is not considered business related if it was incurred with a personal, living, or family purpose. An example of personal vehicle use would be commuting mileage or costs to get to and from work. However, there are three (3) exceptions to this commuting rule:

- If an individual works at two or more different places in one day, the mileage or cost incurred in getting from one workplace to the other are deductible as a business expense.
- If an individual has at least one regular workplace away from his or her home but is traveling to a temporary location to do work within the same trade or business, the mileage or cost is deductible. Temporary means that there is no realistic expectation of working at that location for a year or more.
- If an individual's primary place of business is a home office, mileage or costs to get to another work location for the same trade or business are deductible.

Based upon the information provided, the workers do not have a taxable benefit for commuting to their temporary work locations, unless it occurs on the weekend.

- **Example 3: Certain Employees at the Department of Corrections**

- **Situation:** At the Department of Corrections, the State of Colorado has Wardens, Prison Operations Director, and Prison Operations Deputy Directors who are authorized by law to carry firearms, execute search warrants, and to make arrests but do not regularly carry firearms. This is due to working in the correctional facilities and safety concerns. These employees drive unmarked vehicles provided by State Fleet to and from their homes and correctional facilities.
- **Result:**
 - Definitions:
 - A public safety officer is an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as described above, or a firefighter, chaplain, or member of a rescue squad or ambulance crew.
 - Unmarked law enforcement vehicles are qualified non-personal use vehicles only if the following apply: a) the employer must officially authorize personal use, b) personal use must be incident to use for law-enforcement purposes; i.e., no vacation or recreational use, c) the employer must be a governmental unit responsible for prevention or investigation of crime, and d) the vehicle must be used by a full-time law enforcement officer authorized to carry firearms, execute warrants, and make arrests. The officer must regularly carry firearms, except when it is not possible to do so because of the requirements of undercover work. Reg. § 1.274-5(k)(6).
 - Based upon the information provided, the workers qualify as public safety officers and their use of unmarked law enforcement vehicles, if all requirements are met, are not taxable and reportable.

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- **Example 4: Employees who assist in situations involving Public Safety Officers**
 - **Situation:** Employees at CDOT direct traffic and perform support functions for Public Safety Officers during accidents or other emergency situations. These employees drive State-owned vehicles and CDOT requires these employees to commute.
 - **Result:**
 - Definition - A public safety officer is an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as described above, or a firefighter, chaplain, or member of a rescue squad or ambulance crew. (IRS Fringe Benefit Guide, 26 CFR 1.174-5)
 - Based upon the information provided, the workers do not qualify as Public Safety Officers, as their support function is not included in the definition. The use of State-owned vehicles is taxable to the workers. Because their employer requires the workers to commute, these workers are eligible for the Commuting Rule.

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