



THE STATE OF FLORIDA
JUSTICE ADMINISTRATIVE COMMISSION

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MEMORANDUM #032-13HR

TO: Agency Administrators

FROM: Carolyn Horwich, J.D., Director of Human Resources

THROUGH: Rip Colvin, Executive Director

SUBJECT: Non-Cash Taxable Fringe Benefits

DATE: October 14, 2013

It is time to report Non-Cash Taxable Fringe Benefits for the special accounting period of November 1, 2012 through October 31, 2013. Please complete the attached worksheet for any non-cash fringe benefits your employees have received during this reporting period and return the worksheet to JAC Payroll Group via email at payrollgroup@justiceadmin.org by the close of business Friday, November 15, 2013.

The employee portion of FICA due will be deducted from the employee's November 2013 salary warrant. The employer FICA match will be deducted from the salary account. Please be sure the employee is aware of this deduction and that their November net will be lower than usual.

If you have an employee who has terminated but had the benefit and owes FICA money to the government, please be sure to send the check, payable to the State of Florida, to JAC at the mailing address above by the close of business Friday, November 29, 2013.

The procedures for calculating the benefit are the same as prior years. Information from the Bureau of State Payrolls Manual is attached as a reference.

If you have any questions please contact Mary Graves at Mary.Graves@justiceadmin.org or at 850.488.2415, ext. 294.

Attachments (2)

FRINGE BENEFITS

This section provides an explanation of several types of fringe benefits a state employee may be authorized to receive beyond cash wages and whether these benefits are classified as taxable wages under the Internal Revenue Code. The following types of compensation are discussed.

- A. ACCOUNTABLE PLAN
- B. SPECIAL ACCOUNTING PERIOD
- C. AWARDS, PRIZES, AND GIFTS
- D. EDUCATION ASSISTANCE/TUITION WAIVERS
- E. EMPLOYER PROVIDED CLOTHING
- F. EMPLOYER PURCHASED RETIREMENT SERVICE CREDITS
- G. MOVING EXPENSES
- H. PERSONAL USE OF STATE-PROVIDED VEHICLES
- I. PERSONAL USE OF STATE AIRCRAFT
- J. TRAVEL EXPENSE REIMBURSEMENTS

Unless specifically excluded by law, employee fringe benefits are taxable and must be reported on Form W-2. Taxable non-cash fringe benefits (including personal use of employer provided motor vehicles) may be treated as being paid on a pay period, quarter, semi-annual, annual, or other basis. However, the benefits must be treated as paid no less frequently than annually. The State of Florida uses a special accounting period for vehicle fringe benefits and certain benefits provided by university direct support organizations, which is discussed later in this section.

Agencies may treat the taxable value of a single non-cash fringe benefit as paid on one or more dates in the same calendar year, even if the employee receives the entire benefit at one time. For example, if an employee receives a non-cash fringe benefit valued at \$1,000 in one pay period during 2011; you may treat it as made in four pay periods of \$250 each in 2011.

The deadlines for submitting taxable fringe benefits the Bureau of State Payrolls depends upon the method of submission and the manner in which taxes are collected. For employees that receive taxable fringe benefits and terminate employment, careful coordination of the final salary payment is necessary. Every effort must be made to avoid a situation in which the terminated employee owes the State money for unpaid social security and Medicare taxes.

A. ACCOUNTABLE PLAN

The State of Florida provides some benefits under the IRS Accountable Plan rules. Generally, reimbursements and benefits paid under an "accountable plan" are excluded from income and are not subject to federal income tax withholding or social security, or Medicare taxes. Amounts paid under a "non-accountable plan" must be included on the employee's Form W-2 and are subject to employment taxes.

1. Requirements

To be considered an “accountable plan” a reimbursement or other employee expense allowance arrangement must comply with **the three following conditions**:

- **Business Connection** – Advances, allowances, or reimbursements have a business connection only if the employee’s expenses are incurred in connection with the performance of services as an employee. Such expenses include transportation, meals, lodging, phone calls, tips, laundry, and taxi fares incurred while away from home overnight on business. They do not include personal expenses. Payments made under the plan must be for work-related expenses that would be deductible by the employee.
- **Substantiation** - Employees must substantiate, within a reasonable period of time, the amount, time, use, and business purpose of the allowance or expense payment. In lieu of substantiation of actual expenses, employers can use one of the IRS-approved “deemed” substantiation methods, such as per diems. See **4. Per Diem and Car Allowances** below.
- Employee business expense reports must be substantiated so that the employer is able to identify the specific nature of the expense and conclude that it is attributable to the employer's business. For example, for hotel expenses, an employee cannot merely provide credit card records that show a total amount paid for the hotel stay, the expense report must also include a copy of the itemized hotel bill.
- **Returning Excess Amounts** – In general, amounts paid by the employer that exceeds amounts spent by the employee must be returned to the employer within a reasonable period of time. There are exceptions for situations where a per diem or mileage allowance exceeds actual expenses.

2. Safe-Harbor.

The IRS provides two safe-harbor methods for requiring substantiation and the return of excess amounts within a reasonable period of time.

- **Fixed date method** – IRS will treat as timely: (1) advance payments made no more than 30 days before an employee incurs business expenses, (2) expenses that are substantiated within 60 days after they are incurred or paid, and, (3) excess payments that are returned to the employer within 120 days after being incurred or paid.
- **Periodic statement method** – If an employer issues periodic statements to employees at least quarterly regarding unsubstantiated expenses or unreturned excess payments, the timeliness requirements will be satisfied if employees substantiate the expenses and refund any excess within 120 days of the statement.

3. Continuing or Permanent Travel Advances

Reimbursement plans that provide the employee a fixed advance and then reimbursement after each trip for whatever is spent, so that the continuing advances remains fixed, are generally non-accountable plans since they do not provide amounts reasonably calculated to match anticipated expenses or do not require the return of excess amounts.

Advances that exceed the time periods, or are not substantiated, or the excess not returned, become taxable income to the employee, subject to withholding, **social security**, and **Medicare taxes**. Accountable Plans that provide advances to the employee are discouraged.

4. Per Diem and Car Allowances

A per diem or car allowance is a payment under a reimbursement plan or other expense allowance arrangement that:

- Is paid or incurred by the employee for lodging, meal and/or incidental expenses for travel away from home;
- Is reasonably calculated not to exceed the amount of expenses or anticipated expenses; and
- Is paid at the applicable federal per diem rate, a flat rate or stated schedule, or other schedule or rate specified by the IRS.

If an employer's reimbursement plan fails to meet any single requirement above, it is a non-accountable plan and payments made under the plan are subject to employment taxes. However, if the employer has an Accountable Plan and one employee fails to substantiate his or her expenses, the plan does not become a non-accountable plan for all other employees.

BOSP will review Accountable Plan documents for compliance with IRS regulations. Payments made under approved plans may be processed through the Bureau of Auditing using the standard expense voucher. Receipts and supporting documents and Form **DFS-A3-1929** are to be attached to the voucher. Instructions are provided on the back of the form.

B. SPECIAL ACCOUNTING PERIOD

The State of Florida utilizes the special accounting period for **certain non-cash fringe benefits**, including vehicle fringe benefits. The special accounting period allows the state to compute the value of the benefits provided during the period beginning November 1 of the prior year and ending October 31 of the current calendar year. This gives the employer additional time to value non-cash fringe benefits. The value of benefits actually provided in the last two months of a previous calendar year is included with the value of the benefits provided in the first ten months of the current calendar year. **Social security** and **Medicare taxes** are calculated at the same percentage and as the current year's wages. The following restrictions apply.

- The rule applies only to non-cash fringes *provided* during November and December, not all benefits the employer treats as paid during those two months.
- While the employer does not have to formally elect to use the special accounting rule, it must notify employees of its decision during the period beginning with the employee's last paycheck of the calendar year and ending with the employee's receipt of Form W-2 for that year.
- The employer can choose to use the special accounting rule for some benefits and not others, but if the rule is used for one benefit, it must be used for all employees receiving that benefit.

- The employer can use different ending dates during November and December for each benefit.
- An employee can use the special accounting rule on his or her personal tax return only if the employer uses it, and must use the rule if the employer uses it.
- The special accounting rule may not be used if the non-cash fringe benefit is personal property normally held for investment or real property.
- The rule also cannot be used to value such benefits as reimbursed moving expenses or group-term life insurance.

If an employer is using the special accounting rule to value non-cash fringes, benefits considered provided in the following year are also considered provided in that year for purposes of any special valuation rules the employer is using to value benefits (e.g., annual lease method, vehicle cents-per-mile method).

The State Chief Financial Officer informs current state employees of the special accounting period on the employee Annual Earnings and Benefits Statements. These statements are provided to employees annually on the FLAIR Employee Information Center. Agencies are required to inform new employees within 30 days after the date that the employer first provides a vehicle to an employee.

C. AWARDS, PRIZES, AND GIFTS

Generally, awards and prizes provided to employees for outstanding achievement, money-savings suggestions, etc., are included in the employees' income and are subject to federal income tax withholding, and social security and Medicare taxes. There are exceptions for noncash length-of-service awards, retirement, and de minimis awards and prizes that comply with several restrictions.

1. Nontaxable Awards, Prizes, and Gifts

Length-of-service awards and de minimis fringe benefit awards that meet certain requirements may be excludable from income. Any other awards, such as recognition awards, are taxable.

a. Length-of-Service Awards

- **General Requirements** – To qualify for exclusion from income, a length-of-service award must be an award of “tangible personal property,” which does not include cash or cash equivalents, stocks, bonds, vacations, meals, lodging or tickets to theater or sporting events. Also, the award must be presented in a “meaningful presentation.” Finally, the award must not be disguised compensation.
- **Specific Requirements** – To qualify as nontaxable a length-of-service award must not be presented for less than five years on the job, and, must not have been awarded to the same employee within the last four years.

b. Retirement Awards

An award presented upon the occasion of an employee's retirement is a length-of-service award subject to the IRS employee achievement award rules. However, under appropriate circumstances, a traditional retirement award will be excludable from income as a de minimis fringe benefit.

Example: An employer provides a gold watch to each employee who completes 25 years of service with the employer. The value of the gold watch is excluded from gross income as a de minimis fringe benefit. However, if the employer provides a gold watch to an employee who has not completed lengthy service with the employer or on an occasion other than retirement, the value of the watch is not excludable from gross income under IRC 132(e); Reg. 1.132-1, 1.132-6.

c. De Minimis Awards and Prizes

Certain property or services of small value may be provided to employees without including the value in the employees' income if the following conditions are met:

- The value of the benefit is so small that accounting for it would be unreasonable or impractical.
- The employer must take into account the frequency with which it provides the benefit to all its employees in making this determination.

Examples of nontaxable de minimis benefits:

- Certificates, pins, and other tokens of recognition, having nominal value.
- Coffee and donuts provided to employees.
- Traditional holiday gifts (e.g., turkeys, candy) with a small value (no cash or cash equivalents)
- Flowers, fruit, books, or similar property provided to employees under special circumstances (e.g., on account of illness, or family crisis).
- Occasional tickets for entertainment or sporting events.
- Transitional awards that are given upon retirement, such as gold watches for 25 years of service, are excludible even though they are high value.

No specific dollar maximum – The IRS has never set a specific dollar maximum on the value of a de minimis fringe benefit before it becomes taxable. In an internal memorandum, the IRS did state that a non-cash award with a fair market value of \$100 would not qualify as a de minimis fringe benefit because an award of that size was not so small the employer would have difficulty accounting for it. This does not mean that all non-cash awards or fringes with a value less than \$100 automatically qualify as de minimis.

2. Taxable Awards, Prizes, and Gifts

As noted above, certain noncash length-of-service, retirement, and de minimis fringe benefits are excludable from the employee's income. Generally, noncash awards, prizes,

and gifts provided to employees are included in the employees' income. Cash and cash equivalent awards are always taxable.

a. Cash and Cash Equivalents

Cash equivalent awards, such as a gift certificate or charge or credit card, are generally taxable. Gift certificates and cards have a "readily ascertainable" value that can easily be accounted for. Gift certificates and gift cards generally do not qualify as de minimis fringes since they are considered cash equivalents.

IRS POSITION – The IRS reinforced its stance in this area in 2004 when it ruled that a holiday gift coupon with a face value of \$35 that was redeemable for merchandise at several local grocery stores was not a de minimis fringe benefit, even though the coupons could only be used once and the unused portion was forfeited. The employer distributed the coupons after it changed its prior holiday gift policy of distributing hams, turkeys, and gift baskets, but the IRS said that a cash equivalent, like a gift card, is not excludable from income even though the property or service bought with the card might be excludable as a de minimis fringe. The cards have a "readily ascertainable" value that can be easily accounted for.

b. Taxable Fringe Benefits:

- Any cash award, no matter how little.
- Cash equivalent, such as a gift certificate or charge card or credit card, even if the same property or service acquired (if provided in kind) is excludable.
- Savings bonds.
- Season tickets to sporting or theatrical events.
- An individual membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility.
- Awards having a fair market value of \$100 do not qualify as de minimis fringes.

3. Satisfactory Service Awards (§110.1245, F.S.)

Pursuant to §110.1245, F.S, each department head is authorized to incur expenditures to award suitable framed certificates, pins, and other tokens of recognition to retiring state employees, state employees who demonstrate satisfactory service to the agency or state, and appointed members of a state board or commission whose service to the state has been satisfactory. Such awards may not cost in excess of \$100 plus applicable taxes.

a. Nontaxable Satisfactory Service Awards

- Noncash awards such as framed certificates, pins and tokens-of-recognition.
- Noncash awards to retiring employees that meet the exclusion requirements for length-of-service awards or de minimis fringe benefits.

b. Taxable Service Awards

- Cash or cash equivalent awards such as a gift certificate, phone card, charge or credit card.
- Noncash awards provided to employees for outstanding achievement, money saving suggestions, etc. are generally included in the employee's income.

4. Reporting Taxable Awards

The taxable value of awards and prizes must be reported to **BOSP** using the On-Line Non-Cash Adjustment System. Refer to Payroll Preparation Manual, **Volume V, Section 7**. Taxable non-cash awards are subject to gross-up and the payment of all income tax withholding and **social security** and **Medicare taxes** by the **agency**.

D. EDUCATION ASSISTANCE/TUITION WAIVERS

Employer provided education assistance may be excludable from the employee's income if the education is provided for job related education under an accountable plan, or the education is non job-related and meets the IRS tests for a deductible business expense under **IRC** §127 Education Assistance Program (EAP).

1. Job-Related Education (IRC §132)

Employer provided education assistance is excludable from income when such payments qualify under **IRC** §132 as working condition fringe benefit. The education assistance, even amounts in excess of \$5,250, will be considered a working condition fringe benefit when the education is job-related and the amount paid would have been deductible by the employee had the employee paid for it.

As provided by **IRC** §132(d) and IRS Reg. §1.162-5, the following conditions must be met:

- The courses must not be necessary to meet the minimum education requirements of the current job.
- The courses are not taken to qualify the employee for a promotion or transfer to a different type of work.
- The education must be related to the employee's current job and must help maintain or improve the knowledge and skills required for that job (e.g., refresher or update courses). If the requirements change while the employee is working, employer-paid education designed to meet them is a working condition fringe benefit.

If these requirements are not met, tuition reimbursements must be included in employees' gross income and are subject to **social security** and **Medicare taxes**.

2. Non-Job-Related Education (IRC §127)

Employer education assistance provided through a program meeting the requirements of IRC §127 IRC is excludable from income up to \$5,250 per year for tuition, fees, books, supplies, and equipment. The exclusion does not apply to supplies, tools, or equipment that may be retained by the employee after completion of the course of instruction, or meals, lodging or transportation. The term "education assistance" also does not include any course or other education involving sports, games, or hobbies unless the education has a reasonable relationship to your business, or is required as part of a degree program.

An education assistance program is a separate written plan that provides education assistance only to your employees. The program qualifies only if all of the following tests are met:

- The program benefits employees who qualify under rules that do not favor highly compensated employees.
- The program does not allow employees to choose to receive cash or other benefits that must be included in gross income instead of education assistance.
- You give reasonable notice of the program to eligible employees.

3. Taxable Education Assistance

Each agency providing education assistance to its employees must determine whether the assistance is excludable from gross income. Education not qualifying for income exclusion must be reported to the Bureau of State Payrolls for federal reporting and taxation purposes. Taxable values will be included with the employee's earnings through the employee record adjustment process. This process collects the social security and Medicare taxes on the next regular payroll after the employee record update is entered, or from the agency FLAIR account, but does not collect income taxes.

Employees should be notified of tax liabilities during the eligibility for enrollment approval process and, where applicable, provide employees an opportunity to request a tax exemption for job-related education. Agencies should notify employees having taxable education assistance of this additional tax liability so that they may adjust their Form W-4, Employee's Withholding Allowance Certificate, as needed. Documentation supporting courses determined to be tax exempt shall be retained by the agency. The final arbiter as to the tax exclusion is the IRS.

4. Reporting Taxable Education Assistance

Employing agencies must report taxable education assistance to BOSP using the On-Line Non-Cash Adjustments System (Earning Code 9103). Instructions and submission deadlines for the on-line system are provided in Volume V, Section 7 of the Payroll Preparation Manual.

When entering taxable tuition values using the On-Line Non-Cash Adjustment System, agencies should use the following dates for the "Benefit End Date" field. Only taxable education assistance values are to be reported to BOSP.

TERM	BENEFIT END DATE
Spring	03/31/YEAR
Summer	06/30/YEAR
Fall	09/30/YEAR

Taxable values must be reported in the current calendar year and cannot be carried over into the next calendar year. Employing agencies are encouraged to report these taxable values as soon as possible. If the employee is currently employed, the agency may report the value of the taxable tuition assistance over more than one pay period to distribute the collection of social security and Medicare taxes. Agencies collecting taxes through the payroll process in December should exercise care to ensure that the values are entered and approved prior to processing the last payroll of the year.

Prior to entering taxable education assistance value into the On-line Cancellation and Adjustment System, agencies should verify that the employee is still employed by the agency. To collect the taxes on payrolls, the agency must fill in the "Empee Pay Cycle" field on the on-line non-cash adjustment.

Agencies having taxable education assistance for employees no longer on the payroll must report those taxable values and pay the employer and employee FICA taxes. Employee taxes paid by the employer are considered additional income to the employee unless collected from the employee during the calendar year. To record this additional income the agency should enter a "Y" in the "Gross Up (Y/N)" field on the on-line non-cash adjustment.

Non-taxable values are not reportable to BOSP. Documentation supporting non-taxable education assistance should be retained by the agency.

5. State of Florida Tuition Waiver Program

Agencies may use the following State of Florida education assistance plan document and procedures for legislative approved tuition fee waivers. In order to provide a tax-exempt benefit, state agencies must abide by the written plan document. The document includes eligibility requirements, benefit provisions, and limitations that conform with current statutes, appropriations proviso language, and general state employment policies relevant to this program. If an agency elects not to administer the program pursuant to the written plan document, or fails to communicate the provisions of the qualified program to all eligible employees, waivers of tuition and fees could be subject to federal income, social security, and Medicare taxes.

TUITION & FEE WAIVERS FOR STATE EMPLOYEES

The 2002 Legislature created Section 1009.265, F.S., which provides that, subject to approval by the employer, state universities and community colleges shall grant state employees tuition and fee waivers of up to six credit hours per term, for courses taken on a space-available basis. For purposes of this Section, employees of the state include employees of the executive, legislative, and judicial branches of state government, except for persons employed by a state university.

Comptroller's Memorandum No. 6 (2002-2003), Tuition & Fee Waivers for State Employees, provides a written plan document that allows the State of Florida to offer state employees tuition and fee waivers on a tax-exempt basis, pursuant to **IRC** Section 127. This memorandum and plan document may be found on the Chief Financial Officer's website at <http://www.myfloridacfo.com/aadir/cm0/cm020306.htm>. The plan document is displayed below:

State of Florida Employee Educational Assistance Program

WHEREAS, Section 1009.265(1), Florida Statutes (2002) provides:

As a benefit to the employer and employees of the state, subject to approval by an employee's **agency** head or the equivalent, each state university and community college shall waive tuition and fees for state employees to enroll for up to 6 credit hours of courses per term on a space-available basis;

WHEREAS the State of Florida, as employer, in recognition of the dedicated public service of its employees, desires to assure its employees the maximum opportunity to receive the fringe benefit of this statutory tuition and fee waiver program without incurring additional income tax liability; and

WHEREAS pursuant to 26 U.S.C., 127 (Internal Revenue Code, Section 127), the State of Florida may provide tax free educational assistance to its employees under a qualified educational assistance plan;

THEREFORE the State of Florida has adopted this State of Florida Employee Educational Assistance Program (the Program) for the exclusive benefit of employees of the executive, legislative and judicial branches of State government in accordance with the terms and conditions set forth below.

Section 1. Educational Assistance Benefits

- 1.1 Eligible participants shall receive waivers that cover the cost of tuition and applicable fees.
- 1.2 Waivers may cover undergraduate or graduate courses.
- 1.3 Courses need not be work related.
- 1.4 Courses may be taken at a state university or community college.
- 1.5 Pursuant to Section 1009.26(4), F.S., persons paying full fees and state employees taking courses on a space-available basis shall have priority over those persons whose fees are waived in all cases where classroom spaces are limited.

Section 2. Program Eligibility

In order to be eligible for participation in the Program, an individual must be currently employed by the State of Florida in a budgeted authorized position of the executive, legislative, or judicial branch. An individual compensated exclusively through Other Personal Services funds is not entitled to receive State fringe benefits and is not eligible to participate in the Program.

Pursuant to proviso language in the General Appropriations Act, individuals must be employed full time (I.E., 1.0 full-time equivalent).

Individuals who are on an approved educational leave, with or without pay, may participate in the Program.

No individual who is a currently employed full-time employee of the State of Florida occupying a budgeted authorized position in state government shall be deemed ineligible for participation in the Program because his or her position is included within any existing collective bargaining unit.

A participant who resigns, terminates, or otherwise loses eligibility during an academic term will remain eligible for the remainder of such academic term.

Section 3. Approval for Participation

Pursuant to Section 1009.265(1), F.S., the head of each executive branch agency and the equivalent executive level administrative functionary within the legislative and judicial branches, must approve participation of eligible individuals within their respective employment.

The Chief Financial Officer will maintain an Employment Verification Database for use in verifying the employment status individuals applying to enroll in courses.

Approval for participation in the Program does not constitute a guarantee of enrollment in any particular course offering. Whether an approved Program Participant achieves enrollment in any desired course offering is subject to the determination of the enrolling institution that space is available in that course offering and that the Program Participant has fulfilled all necessary curricular prerequisites for the offering in question.

Section 4. Educational Assistance Limitations

The maximum educational assistance available to any eligible employee under the Program is expressly limited to 6 credit hours per term (18 credit hours per Plan Year). For purposes of this section, the Plan Year is calculated on a calendar year basis, i.e., January 1 – December 31.

No assistance is available under the Program for the cost of application, books, supplies, equipment, or any other type of educational materials or local institutional fee associated with credit hours taken under the Program.

Courses involving sports, games or hobbies are not available for tax-free treatment under this Program, unless such a course is required as part of a degree program.

Each state university and community college is responsible for establishing the criteria by which courses are deemed eligible for "space-available" status.

Section 5. Valuation of Tuition and Fee Waivers

- 5.1 For purposes of the Program, each credit hour taken by an eligible employee under the statutory tuition waiver will be valued at the hourly rate charged by the enrolling institution for Florida residents or non-residents, as applicable, during the Plan Year.
- 5.2 Each state university and community college shall notify the program participants of applicable credit hour rates and fees, as needed to monitor the dollar value of waivers received during the Plan Year.

Section 6. Other Exclusions and Limitations

- 6.1 Pursuant to 26 U.S.C. 127, no more than \$5,250 in educational assistance provided per Plan Year under the Program qualifies for tax-free treatment. Any educational assistance provided to a participant under the Program which is valued in excess of \$5,250 will be reported to the Internal Revenue Service as income received by the participant.
- 6.2 No eligible employee may receive monetary or other compensation in lieu of participation in the Plan.

Section 7. Miscellaneous

- 7.1 It is the sole responsibility of each approved Program participant to register and enroll, on a space-available basis, at the enrolling institution where the participant desires to take one or more courses for credit, subject to the limitations of the program. No assistance with matriculation or enrollment will be provided to a participant by his or her employer.
- 7.2 The educational assistance provided under this Program is in addition to any other non-work related educational assistance that individual agencies may be providing in the form of tuition reimbursement, vouchers, fellowships, etc., none of which constitute a part of this Program.
- 7.3 Participation in this Program shall not be deemed to give any participant the right to be retained in the service of the state or to interfere with the

right of the employing agency to terminate employment at any time, regardless of the effect such termination has on continued participation.

Section 8. Record-Keeping and Audit Control

- 8.1 As with all other non-cash fringe benefits, each employing agency is responsible for keeping accurate records of all educational assistance provided to employees, including waivers granted under this program.
- 8.2 The employing agency is responsible for determining when employees have received any taxable educational assistance during a Plan Year and notifying them of their respective tax liabilities. Agency responsibilities in connection with taxable educational assistance benefits will be as specified in **Volume VI, Section 3, Part D. Fringe Benefits**, of the State Payroll Preparation Manual.

Section 9. Notice to Employees

- 9.1 The employing agency is responsible for informing its employees concerning the provisions of the State of Florida Employee Educational Assistance Program. Each agency is encouraged to provide each of its employees with a copy of the Program and to post a copy of the Program in areas where agency notices to employees are customarily posted.
- 9.2 A copy of the State of Florida Employee Educational Assistance Program shall be posted on the Chief Financial Officer's website and on any other Relevant website maintained by the State of Florida to provide employment related information to State Employees.

Created: November 8, 2002

For additional information see: § 1009.265, F.S.; http://www.myfloridacfo.com/aadir/cm0/cm020306_attachment.htm; IRS Reg. §1.127-2, Qualified Educational Assistance Program; and, IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits (www.irs.gov).

E. EMPLOYER PROVIDED CLOTHING

The State of Florida's policy is to furnish uniforms, clothing, laundry service and safety footwear as perquisites to state officers and employees only in those specific instances where it is determined that the furnishing of such items is in the best interest of the State due to the exceptional or unique requirements of the position. DMS has established procedures for **agencies** to follow in developing a plan to be approved by DMS for the furnishing of perquisites to state officers or employees. See Rule 60L-32.004, F.A.C., website <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=60L-32>.

1. Items Issued to Employee

If a uniform is required by the employer for safety, security, or health purposes and is not suitable for everyday wear, the issuance to the employee of the uniform, or the purchase of the uniform by the agency, is a non-reportable and nontaxable event for federal employment tax purposes. Examples of these type items are safety equipment, special footwear, protective clothing, etc. These items may be processed directly through the Bureau of Auditing. Reference Guide for State Expenditures, Perquisites at http://www.myfloridacfo.com/aadir/reference_guide/

2. Payments Under Accountable Plan Rules

Providing allowances, advances or reimbursements for the purchase, maintenance or replacement of uniforms and tools are reportable and taxable events for federal employment tax purposes unless the employer maintains an Accountable Plan. Refer to the beginning of this section for an explanation of an "Accountable Plan."

Expense accounting by the employee is required to have sufficient detail to identify the specific nature of each expense and therefore conclude that the expense is attributable to the agency's business activities. Expenses are not to be aggregated into broad categories such as clothing. Written statements substantiating expenses in vague non-descriptive terms such as cleaning or shoes will not be accepted.

The following information must be provided and substantiated in order to make a reimbursement under an Accountable Plan:

- a. Date expense incurred;
- b. Amount of each separate expense item;
- c. Specific description of each separate expense item;
- d. Business reason or business benefit gained.

The following examples meet the substantiation requirements:

- a. Receipt dated June 15, 2011, in the amount of \$87.00 describing one pair lace up high top safety boot. A narrative is to be written on the receipt to meet the requirement of business purpose, such as, "field boot-firefighter."
- b. Receipt dated July 3, 2011, in the amount of \$15.00 describing, "three uniform shirts and 3 uniform pants, cleaning-State Trooper."
- c. Receipt dated April 30, 2011, in the amount of \$27.00 describing "3/4-inch steel ratchet, tool-airplane mechanic."

Form **DFS-A3-1929**, Accountable Plan Check-Off, should be completed and submitted with the voucher and supporting documents for Accountable Plan payments to employees for reimbursements, advances, and allowances for footwear, clothing, and tools.

3. Payments Under Non-Accountable Plan

Allowances, advances, or reimbursements for the purchase, maintenance, or replacement of uniforms and tools are reportable and taxable events for federal employment tax purposes **unless** paid under the Accountable Plan Rules. These taxable payments should be submitted to **BOSP** using the People First System or via the On Demand System. The procedures for the On Demand System are found in **Volume IV, Section 11** of the Payroll Preparation Manual.

F. EMPLOYER-PURCHASED RETIREMENT SERVICE CREDIT

The Florida Retirement System (FRS) is a defined benefit plan qualified under 26 U.S.C. Section 401(a). Since 1975 the FRS has been a noncontributory plan. The FRS provides that eligible members may purchase extra retirement credits for in state and out-of-state public employment and other types of eligible employment (F.S. Sections 121.1115 and 121.1122).

1. Employee Purchased Retirement Service Credit

The purchase of retirement service credits by an employee is not a taxable event and is not reportable to **BOSP** or the Internal Revenue Service.

2. Employer Purchased Retirement Service Credit

The employing **agency** may purchase an eligible employee's retirement service credit subject to **agency** head approval and budget authority. The payment to the FRS for the purchase of retirement service credit by an employing **agency** is considered gross income to the employee in the year of purchase and is subject to federal withholding and **FICA** taxes.

3. Reporting Employer Purchased Retirement Service Credit

Agencies providing this non-cash benefit must report the taxable value for tax reporting and remitting to the Internal Revenue Service. The taxable value includes the amount paid by the **agency** to the FRS for the service credit plus gross-up for the employee withholding and **FICA** taxes paid by the **agency**. Earnings Code 9142 has been assigned for this non-cash fringe benefit.

Taxable values should be reported to the **BOSP** utilizing the On-Line on-Cash Adjustment System, Earning Code 9142. This system is accessed through the Payroll Main Menu (PYRL); refer to **Volume V, Section 7** of the Payroll Preparation Manual. This section of the manual provides instructions on how to add and approve selected non-cash adjustments. The **agency's FLAIR account code** is required for the gross-up and payment of employment taxes.

G. MOVING EXPENSES

Prior to incurring or allowing an employee to incur moving expenses **agencies** should review the requirements for payment under the Florida Statutes and the respective personnel rules. Payments of moving expenses must also comply with the Bureau of Auditing, Reference

Guide for State Expenditures at http://www.myfloridacfo.com/aadir/reference_guide/. Attorney General Opinion prescribes the conditions that allow an **agency** head to approve the payment of travel expenses related to a move. See AGO **81-34**, (<http://myfloridalegal.com/ago.nsf/Opinions/BE76EA719560C47185256587006922D5>).

Section 216.262(1)(f), F.S., requires the approval of DMS, unless delegated to the **agency** head for perquisites furnished by an executive branch state **agency**. DMS has delegated to the **agency** heads, or their designee, the approval of the payment of moving expenses.

Moving expenses for entities of the Judicial Branch as defined in §216.011(1)(r), F.S., are governed by Section 10, of the Florida State Courts System Personnel Regulations Manual. The Chief Justice must approve perquisites furnished by the judicial branch.

1. General

The Omnibus Budget Reconciliation Act of 1993 made qualified moving expenses treated as fringe benefits. Since 1994, employer payments for qualified moving expenses have been excluded from income as tax code §132 fringe benefits. However, the types of expenses that may be paid without being counted as income are limited to the costs of moving household goods and travel to the new location. Payments related to moving an employee that do not satisfy the definition of “qualified moving expenses” are not §132 benefits and must be included as taxable income to the employee.

2. Accountable Plan

The accountable plan rules apply to qualified moving expenses. This means that the move must be business-related, the expenses must be substantiated, and any excess payments advanced by the employer must be returned to the employer within a reasonable period of time.

If the employer pays a lump sum intended to cover moving costs, does not require substantiation of expenses, and does not require the return of unspent sums, the moving expenses plan is not an accountable one. In that case the entire lump sum would be included in income, reportable on Form W-2, and subject to employment taxes.

3. Qualified Moving Expenses

Qualified moving expenses include only the reasonable costs of:

- The transporting of household goods and personal effects from the employee’s former residence to the new residence.
- The reasonable costs of travel and lodging from the old location to the new one (without dollar limits); and
- The transporting of goods and personal items, travel, and lodging for other members of the household who lived with the employee at the old residence and will continue living with the employee at the new location.

After 1993, employer payments for other types of expenses are no longer tax-free. House-hunting trips prior to the actual move, temporary living expenses at the new location, costs associated with the selling the old residence (or ending a lease) and purchasing a new residence (or acquiring a new lease), if paid for by the employer, must be included in the employee's income. Moreover, no meal expenses, including those incurred during the move to the new location, are excludable as qualified moving expenses.

4. Deductible Expenses

In order for moving expenses to be deductible, the change of residence must be closely related in **both time and place** to the "commencement" or start of work at the new job location.

Commencement of work is defined as any of the following occurrences:

- Beginning to work for the first time or after a substantial period of unemployment or part-time employment;
- Beginning to work for a different employer; or
- Beginning to work for the same employer at a new location.

In general, moving expenses incurred within one year of an employee beginning work at a new location are considered closely related in time. The deduction is permitted even if the individual relocated within a year before securing or beginning new employment.

If circumstances prevent employees from relocating their households within one year of starting work at a new location, moving expenses still might qualify for deduction. For example, if the employee's family remains at the old location so that a child may complete high school in the same school, a subsequent move by the family more than a year after the employee started at the new work site may be deductible.

For the move to be considered closely related in place to the start of work, the distance between the new residence and the new work location ordinarily must be less than the distance between the old residence and the new work location. A move does not meet this requirement may still qualify if:

- The new home is required as a condition of employment – such as to meet a residency requirement, or
- The move results in reduced commuting time or expenses to the new job location.

5. Time Test

In addition to the above requirements, specific time and distance tests must be met.

The newly relocated worker must be employed full time at the new location for a minimum of 39 weeks during the 12 months immediately following the move. (These weeks do not have to be consecutive or for the same employer.) Temporary involuntary absences – such as those due to illness, strikes, or natural disasters – are considered periods of employment for meeting this time test, as are voluntary absences for leave or vacation that are

provided for in the normal work contract or agreement. In the case of seasonal employment, such as a teacher, the off-season may be counted as employment if it is covered by the employment contract and lasts less than six months.

The time test is waived if employment at the new location lasts fewer than 39 weeks because of death, disability, involuntary separation (other than willful misconduct), or if the employee is transferred for the employer's benefit.

6. Distance Test

The commuting distance between the employee's former home and new work location must increase by at least 50 miles, as measured by the shortest of the most commonly traveled routes between them. The distance test is considered satisfied even if the old and new homes are less than 50 miles apart, as long as the distance between the former home and the new work location has increased by at least 50 miles.

EXAMPLE: If an employee who lives three miles from the job is transferred to a new location, the new work site must be at least 53 miles from the employee's former home before the cost of moving to the new home may be deducted.

If the employee is starting a first full-time job or resuming full-time work after a substantial period of unemployment or part-time work, the place of employment must be 50 miles or more from the old residence to meet the distance test.

7. Reasonable Moving Expenses

Reimbursements for the following expenses associated with an employment-related move may be excluded from income as §132 fringe benefits because they would be deductible if employees had paid the expenses themselves. There are no dollar limits on these expenses, although they must be reasonable and substantiated.

- **Transporting household goods and personal effects** – The cost of packing, crating, and shipping furniture and other household items and personal effects of the employee and other members of the household is deductible. The cost of shipping automobiles and pets also may be deducted. A deduction is allowed for the expense of storing and insuring items within the 30-day period after moving out of the former home and before delivery to the new residence. Household members include those people who live with the employee at both the old and new locations.
- **Travel expenses** – A deduction may be taken for the cost of transportation and lodging for the employee and household members while traveling from the former residence to the new location. The cost of only one trip per person may be deducted; however, all family members are not required to make the trip at the same time.

If travel is by car to take yourself, members of your household, or your personal effects to your new home, you can figure your expenses by deducting either:

1. Your actual expenses for gas and oil for your car (but not repairs, maintenance, depreciation, or insurance), if you keep an accurate record of each expense, or

2. **Beginning January 1, 2012 the federal standard mileage rate for moving purposes is 23 cents per mile (23.5 cents per mile through June 2012).** *(Note: the rate allowed by the IRS is less than the rate allowed under §112.061, F.S., <http://www.leg.state.fl.us/statutes/>.)* Mileage rate reimbursements greater than the federal rate are taxable to the employee and must be reported to the Bureau of State Payrolls.

The route taken must be the most direct one; side trips for sightseeing or other visits are not deductible. Meals while traveling to the new location are nondeductible, so any employer reimbursement for meal expenses is taxable income to the employee.

8. Nonqualified Moving Expense

Regardless of whether the employer or employee pays for them, certain types of expenses resulting from relocation may not be claimed for income tax deduction. Employer reimbursement for these nondeductible expenses is subject to income tax withholding, social security, and Medicare taxes.

Nonqualified payments and reimbursements include the following:

- House hunting trips
- Temporary living quarters
- Meals
- Home sales, purchases, or leases
- Personal expenses – such as entertainment, laundry, or transportation – incurred during occupancy in temporary living quarters.
- Loss on sale of old residence
- Physical improvements to enhance marketability of a sublet property
- Security deposit required at the new residence if it is a rental; payment or prepayment of rent
- Security deposit forfeited at the old residence because it needed cleaning or repair
- Losses due to disposal of club memberships or unused tuition payments
- Refitting carpets and draperies
- Storage charges (other than those while in transit to the new location)
- Purchase price of new residence
- Pro-rated real estate taxes; prepayment of interest
- Drivers license and auto registration expenses in a new state
- Shipping new furniture bought en route to the new location
- Mileage in excess of the federal limit.
- Any expense claimed as a business expense

9. Foreign Moving Expenses

As with domestic moves, deductible expenses for foreign moves for U.S. citizens and resident aliens will include only the expenses of moving household goods and personal effects and of traveling – including lodging, but not meals – for expenses incurred after 1993. Foreign moves relate to moving to a foreign country in connection with employment at a new principal place of work located outside the United States and its possessions.

10. Form W-2, Employee Wage and Tax Statement

Payments for expenses associated with a work-related relocation (such as meals or house-hunting trips) that do not satisfy the definition of a qualified moving expense must be reported on Form W-2 as wages. Federal income, social security, and Medicare taxes must be withheld.

- Qualified moving expenses paid to a third party on behalf of the employee (e.g., to a moving company) and services that an employer furnishes in kind to an employee will not be reported on Form W-2.
- Qualified moving expense reimbursements paid directly to an employee will be reported in Box 12 in 2012 and identified with Code P. These amounts are not taxable income and will not appear in box 1, 3, or 5.
- Other nonqualified moving expense reimbursements, whether paid to employees or to a third party, will continue to be included in wages (Form W-2, Box 1) and are subject to income, social security, and Medicare taxes.

11. Vouchering and Audit Requirements

Vouchers requesting payment for moving expenses **must** contain sufficient information for a determination of the proper taxation and reporting. This should include the following:

- The locations of the former and new principal places of work and residence, and the commuting distance between the employee's former home and new work location.
- If the employing agency does not reasonably believe that during the 12-month period following the employee's move that the employee will be a full-time employee, in such general location, during at least 39 weeks, the voucher request should include a statement regarding this determination.

Moving expenses should be classified utilizing the following object codes:

- **Object Code 2810 – Qualified Moving Expenses** - Vendor eligible costs determined to be qualified moving expenses as described above, for packing and shipping household goods or privately owned mobile homes, and travel expenses for state employees for authorized relocation expenses paid to a third party.
- **Object Code 2820 Qualified Moving Expenses** - Employee eligible costs determined to be qualified moving expenses as described above, for packing and shipping household goods or privately owned mobile homes, and travel expenses for state employees for authorized relocation expenses paid directly to an employee.
- **Object Code 2830 Nonqualified Moving Expenses** - Vendor eligible costs determined to be nonqualified moving expenses as described above, for packing and shipping household goods or privately owned mobile homes, and travel expenses for state employees for authorized relocation expenses paid to a third party.
- **Object Code 2840 Nonqualified Moving Expenses** - Employee eligible costs determined to be nonqualified moving expenses as described above, for packing and shipping household goods or privately owned mobile homes, and travel expenses for state employees for authorized relocation expenses paid directly to an employee.

Moving expense payments to vendors (object codes 2810 and 2830) must include the employee as the sub-vendor. This is essential for the reporting of moving expense information to the IRS and employee and for the taxation of non-qualified moving expense payments.

Payment or reimbursement of "Nonqualified Moving Expenses" (object codes 2830 and 2840) will be reported as wages on Form W-2 and will be subject to employment taxes. Taxable values obtained from the vendor payment system will be included with the employees' earnings through the employee records adjustment process. These taxable values will not be included with the employees' regular salary payment and therefore, income tax will not be withheld. The process will collect the **social security** and **Medicare taxes** on the next regular payroll after the employee record adjustment has been approved. **Agencies** should notify employees having nonqualified moving expenses of this additional tax liability so that they may adjust their Form W-4, Employee's Withholding Allowance Certificate, as needed.

Object Code	Earning Code	Equivalent
2810	9194	Qualified Moving Expenses - Vendor
2820	9195	Qualified Moving Expenses - Employee
2830	9196	Nonqualified Moving Expenses - Vendor
2840	9197	Nonqualified Moving Expenses - Employee

The above listed object codes have been established to work in conjunction with the following payroll earnings codes to facilitate the reporting and taxation of employee moving expenses.

For additional information refer to IRS Publication 521, Moving Expenses, and IRC §132. IRS publications are available at website <http://www.irs.gov>.

H. PERSONAL USE OF STATE-PROVIDED VEHICLES

Motor vehicles owned, leased, or operated by any state **agency** shall be available for official state business only as authorized by the **agency** head, as defined in F.S. § 287.012, and 287.17. The term "official state business" may not be construed to permit the use of a motor vehicle for commuting purposes, unless special assignment of a motor vehicle is (1) authorized as a perquisite by the Department of Management Services, (2) required by an employee after normal duty hours to perform duties of the position to which assigned, or (3) authorized for an employee whose home is the official base of operation. As used in § 216.262(1)(f), F.S. the term "perquisites" means those things, or the use thereof, or services of a kind that confer on the officers or employees receiving them some benefit that is in the nature of additional compensation, or that reduce to some extent the normal personal expenses of the officer or employee receiving them. *IRC §287.17, F.S., F.S.; 60B-1, F.A.C.*

Taxability of Employer-Provided Vehicles

If an employer provides a vehicle that is used exclusively for business purposes (except for de minimis use, described below) there are no tax consequences or reporting. The use is treated as a working condition fringe benefit. Business use does not include commuting (as discussed

later). Employees should maintain records to substantiate that all vehicle use was for business. Substantiation generally requires keeping daily records. *IRS Reg. § 1.132-6(e)(2)*

If an employer-provided vehicle is used for both business and personal purposes, substantiated business use is not taxable to the employee (see Substantiation Requirements, below). Personal use is taxable to the employee as wages. The employer can opt to include all use as wages; however, the employee can pay the employer for personal use rather than it treated as wages. *IRS Reg. § 1.61-21(c)*

The use of a qualified non-personal use vehicle, including commuting, is excludable to the employee; and recordkeeping and substantiation by the employee are not required by the IRS. See Exclusions from Income, below.

The following information is provided to assist agencies with determining the substantiation requirements for employer-provided vehicles and the reporting requirements for personal use.

1. Exclusion From Income
 - a. Working Condition Fringe Benefit
 - b. De Minimis Fringe Benefit
 - c. Qualified Non-Personal Use Vehicle

2. Taxable Personal Use
 - a. Daily Transportation Expenses
 - b. Business Use of Your Home
 - c. Convenience of the Employer
 - d. Telecommuting

3. Accounting for Vehicle Use
 - a. Substantiation Requirements
 - b. Exception – Qualified Non-Personal Use Vehicles
 - c. Safe Harbor Substantiation Rules

4. Determining Personal Use Value
 - a. General Valuation Method
 - b. Cents-Per-Mile Valuation Method
 - c. Commuting Rule
 - d. Lease Value Rules

5. Withholding Requirements

6. Reporting Taxable Values

1. Exclusion From Income

The value of the vehicle's use is not taxable if it qualifies for treatment as:

- A working condition fringe benefit under **IRC** § 132(d),
- A de minimis fringe benefit under **IRC** § 132(e), or
- A qualified non-personal use vehicle under IRS Reg. § 1.132-5(h), 1.274-5T(k).

a. Working Condition Fringe Benefit

Use of an employer-provided vehicle can be excluded from employee income under the working condition fringe benefit exclusion where the employee would be entitled to claim a business deduction if they paid their own car expenses. Employees who would have been entitled to deduct the value of the car on their tax return as a business expense under IRC § 162 or as depreciation under IRC § 167, are not required to include the value of the business use of the employer's car in their income. However, if the employee uses the employer-provided vehicle for both business and personal use, the value of the working condition benefit is the part determined to be for business use of the vehicle. The employee must meet the substantiation requirements that apply to the deduction.

With respect to any listed property (including vehicles) business use substantiation includes adequate records or sufficient evidence corroborating the taxpayer's own statement (i) the amount or such expense or other item, (ii) the time and place of the travel, (iii) the business purpose of the expense or other item, and (iv) the business relationship of the persons. See Substantiation Requirements, below.

b. De Minimis Fringe Benefit

If the employee uses an employer-provided vehicle mainly for the employer's business, infrequent and brief side trips for personal reasons are considered de minimis benefits whose value is excluded from income. In determining whether the value of personal use of an employer-provided vehicle is de minimis, the employer must take into account the frequency with which a vehicle is available to the employee for personal use. For example, an employee who drives an employer-provided vehicle on business and occasionally stops for lunch can exclude the value of personal use as a de minimis fringe benefit. If, however, the employee regularly has use of the car to go to lunch, the value could become significant, and prevent the availability of the car from being considered a de minimis fringe benefit.

Examples of De Minimis Nontaxable Personal Use

- Small personal detour while on business, such as driving to lunch while out of the office.
- Infrequent (not more than one day per month) commuting in employer vehicle. This does not mean that an employee can receive excludable reimbursements for commuting 12 days per year. The rule is available to cover infrequent, occasional situations. *IRS Reg. § 1.132-6(d)(3)*
- An employee uses a motor pool vehicle for a business meeting. The employer requires that motor pool vehicles be returned at the end of the business day but the employee is delayed and the motor pool is closed when the employee arrives back at the office. The employee takes the vehicle home and returns it the next morning.

Assuming that this is an infrequent occurrence for that employee, that is, generally happens no more than once a month; the commuting value of the trip would be considered a nontaxable de minimis fringe benefit. If not an infrequent occurrence, the commute would be taxable to the employee.

c. Qualified Non-Personal Use Vehicles

In general, employees using employer-provided vehicles are subject to tax on the value of the personal use. If the business use of these vehicles is substantiated, it is excludable as a working condition fringe benefit under IRC § 132(f). Because most vehicles are by their nature more likely to be used for personal use, they are considered "listed property" under IRC § 280F(d)(4). For these vehicles, any amount not substantiated as business use must be included in wages. Substantiation generally requires keeping daily records of vehicle use.

These substantiation requirements do not apply to "qualified non-personal use vehicles." A qualified non-personal use vehicle is one that, by its design, is not likely to be used more than minimally for personal purposes. Use of these vehicles is considered a working condition fringe benefit and does not require substantiation for the use to be excluded from the wages of the employee.

Qualified non-personal use vehicles generally include the following vehicles.

- Clearly marked, through painted insignia or words, police, fire, and public safety officer vehicles (see definition below).
- Ambulances and 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 seating for the driver only, or the driver plus one 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 (as defined below).
- Qualified specialized utility repair trucks (as defined below).
- Refrigerated trucks.
- School buses (as defined in IRC § 4221(d)(7)(C))
- Tractors and other special purpose farm vehicles.
- Unmarked vehicles used by law enforcement officers if the use is officially authorized (see definition below).

Pickup trucks. A pickup truck with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal-use vehicle if it has been specially modified so it is not likely to be used more than minimally for personal purposes. For example, a pickup truck qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade or business, or function **and meets either of the following requirements.**

- It is equipped with at least one of the following items.
 - A hydraulic lift gate.
 - Permanent tanks or drums.
 - Permanent sideboards or panels that materially raise the level of the sides of

- the truck bed.
- Other heavy equipment (such as an electric generator, welder, boom, or crane used to tow automobiles and other vehicles).
- It is used primarily to transport a particular type of load (other than over the public highways) in a construction, manufacturing, processing, farming, mining, drilling, timbering, or other similar operation for which it was specially designed or significantly modified.

Vans. A van with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal-use vehicle if it has been specially modified so it is not likely to be used more than minimally for personal purposes. For example, a van qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade or business, or function and has a seat for the driver only (or the driver and one other person) and either of the following items.

- Permanent shelving that fills most of the cargo area.
- An open cargo area and the van always carries merchandise, material, or equipment used in your trade, business, or function.

Qualified Moving Van. The term “qualified moving van” means any truck or van used by a professional moving company in the trade or business of moving household or business goods if –

- No personal use of the van is allowed other than for travel to and from a move site (or for de minimis personal use, such as a stop for lunch on the way between two move sites),
- Personal use travel to and from a move site is an irregular practice (i.e., not more than five times a month on average), and
- Personal use is limited to situations in which it is more convenient to the employer, because of the location of the employee’s residence in relation to the location of the move site, for the van to be returned to the employer’s business location.

Qualified Specialized Utility Repair Truck. The term “qualified specialized utility repair truck” means any truck (not including a van or pickup truck) specifically designed and used to carry heavy tools, testing equipment, or parts if –

- The shelves, racks, or other permanent interior construction which has been installed to carry and store such heavy items is such that it is unlikely that the truck will be used more than a de minimis amount for personal purposes, 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 maintaining electricity, gas, telephone, water, sewer, or steam utility services.

Clearly Marked Police, Fire, or Public Safety Officer Vehicles. A police, fire, or public safety officer vehicle is 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 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 fighter, 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 of this paragraph.

Unmarked Law Enforcement Vehicles. In general, the substantiation requirements of IRC § 274(d) and IRS Reg. § 1.274-5T do not apply to officially authorized uses of an unmarked vehicle by a “law enforcement officer” (defined below). To qualify for this exception, any personal use must be authorized by the Federal, State, county, or local government 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.

Law Enforcement Officer. The term “law enforcement officer” means an individual who is employed on a full-time basis by a governmental unit 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 (or 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.

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, with power of arrest, authority to carry firearms, and execute search warrants,
- Firefighter,
- Chaplain, or
- Member of a rescue squad or ambulance crew.

Example 1.

Detective C, who is a “law enforcement officer” employed by a state police department, headquartered in City M, is provided with an unmarked vehicle (equipped with radio communication) for use during off-duty hours because C must be able to communicate with headquarters and be available for duty at any time (for example, to report to a surveillance or crime site). The police department generally has officially authorized personal use of the vehicle by C but has prohibited use of the vehicle for recreational purposes or for personal purposes outside the state. Thus, C’s use of the vehicle for commuting between headquarters or a surveillance site and home and for personal errands is authorized personal use as described in “Unmarked Law Enforcement Vehicles” above. With respect to these authorized uses, the vehicle is not subject to the substantiation requirements of IRC § 274(d) and the value of these uses is not included in C’s gross income.

Example 2.

Detective T is a "law enforcement officer" employed by City M. T is authorized to make arrests only within M's city limits. T, along with all other officers on the force, is ordinarily on duty for eight hours each work day and on call during the other sixteen hours. T is provided with the use of a clearly marked police vehicle in which T is required to commute to his home in city M. The police department's official policy regarding marked police vehicles prohibits personal use (other than commuting) of the vehicles outside the city limits. When not using the vehicle on the job, T uses the vehicle only for commuting, personal errands on the way between work and home, and personal errands within City M. All use of the vehicle by T conforms to the requirements of the "Clearly Marked Police, Fire, and Public Safety Officer" described above. Therefore, the value of that use is excluded from T's gross income as a working condition fringe and the vehicle is not subject to the substantiation requirements of IRC § 274(d).

Example 3.

Director C is employed by City M as the director of the City's rescue squad and is provided with a vehicle for use in responding to emergencies. The city's rescue squad is not a part of City M's police or fire departments. The director's vehicle is a sedan which is painted with an insignia and words identifying the vehicle as being owned by the City's rescue squad. C, when not on a regular shift, is on call at all times. The City's official policy regarding clearly marked public safety officer vehicles prohibits personal use (other than for commuting) of the vehicle outside of the limits of the public safety officer's obligation to respond to an emergency. When not using the vehicle to respond to emergencies, City M authorizes C to use the vehicle only for commuting, personal errands on the way between work and home, and personal errands within the limits of C's obligation to respond to emergencies. With respect to these authorized uses, the vehicle is not subject to the substantiation requirements of IRC § 274(d) and the value of these uses is not includible in C's gross income.

IRC § 274(d); IRC 274(i); IRS Reg. §1.132-5(h); §1.274-5T; § 1.274-6T; IRS Chief Counsel Advice 200051041; IRB 2008-25, REG-106897-08

2. Taxable Personal Use

When an employer provides a vehicle to an employee for business purposes, the value of the vehicle may be excluded from the employee's income. However, if the employee uses the vehicle for personal as well as business reasons, only the portion of the vehicle's value that can be attributed to business may be excluded. Personal use of an employer-provided vehicle is treated as compensation and subject to employment taxes unless it qualifies for an exception.

a. Daily Transportation Expenses

The employee's costs of commuting between his or her residence and place of business or employment generally are nondeductible personal expenses under IRS Reg. §§ 1.162-2(e) and 1.162-1(b)(5). However, the costs of going between one business location and another business location generally are deductible under **IRC** § 162(a).

IRS Rev. Rul. 99-7 provides the rules for determining whether daily transportation

expenses incurred in going between the employee's residence and a work location are deductible business expenses under § 162(a) of the Code.

Transportation Between Residence and Work Location – In general, daily transportation expenses incurred in going between a taxpayer's residence and a work location are nondeductible commuting expenses. However, such expenses are deductible under circumstances described below.

(1) A taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a *temporary* work location *outside* the metropolitan area where the taxpayer lives and normally works. However, unless paragraph (2) or (3) below applies, daily transportation expenses incurred in going between the taxpayer's residence and a *temporary* work location *within* that metropolitan area are nondeductible commuting expenses.

(2) If a taxpayer has one or more regular work locations away from the taxpayer's residence, the taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a *temporary* work location in the same trade or business, regardless of the distance.

(3) If a taxpayer's residence is the taxpayer's principal place of business within the meaning of § 280A(c)(1)(A), the taxpayer may deduct daily transportation expenses incurred in going between the residence and another work location in the same trade or business, regardless of whether the other work location is *regular* or *temporary* and regardless of the distance. **(Note: In the case of an employee, however, such expenses are deductible only if the principal place of business and exclusive and regular use requirements of the residence is for the convenience of the employer.)**

Temporary Location Defined – For purposes of paragraphs (1), (2), and (3) above, the following rules apply in determining whether a work location is *temporary*.

- If employment at a work location is realistically expected to last (and does in fact) last for 1 year or less, the employment is *temporary* in the absence of facts and circumstances indicating otherwise.
- If employment at a work location is realistically expected to last for more than 1 year or there is no realistic expectation that the employment will last for 1 year or less, the employment is *not temporary*, regardless of whether it actually exceeds 1 year.
- If employment at a work location initially is realistically expected to last 1 year or less, but at some later date the employment is realistically expected to exceed 1 year, that employment will be treated as *temporary* (in the absence of facts and circumstances indicating otherwise) until the date that the taxpayer's realistic expectation changes, and will be treated as *not temporary* after that date.

Guidance by IRS Chief Counsel's Office – CCA 200025052

- Clarified that Rev. Rul. 99-7 focuses on "daily" transportation expenses – those incurred by an employee going from the residence to a work location and back to the residence within a day – and therefore does not deal with business-to-business

trips. Noted the general rule that costs associated with going between one business location and another business location are deductible business expenses, and also explained that this general rule does not apply where one of the business locations is the employee's residence.

- Noted, where one of the business locations is the employee's residence, Rev. Rul. 99-7, Holding 3 applies, requiring that an in-home office meet the "principal place of business" criteria set forth in § 280A(c)(1)(A) and that the trip be to a work location in the same trade or business as that of the in-home office. If an in-home office does not meet these requirements, trips between the residence and other work locations continue to be nondeductible commuting expenses unless the temporary location rules in Rev. Rul. 99-7 apply.
- Rev. Rul. 99-7 addresses only "daily" transportation expenses. Tax treatment of overnight travel expenses is governed by Rev. Rul. 93-86, and involves an analysis of the employee's tax home.

Whether an office-in-the-home meets the requirements of § 280A(c)(1)(A) depends on the particular facts. We note, however, that an employee's office-in-the-home expenses are not deductible under § 280A(c)(1)(A) unless the office is the employee's principal place of business, is used regularly and exclusively, and is for the convenience of the employer. This is inherently a factual determination.

b. Business Use of Your Home

The following requirements for claiming expenses for the business use of your home are described in IRS Publication 587.

Qualifying for a Deduction – To qualify to claim expenses for business use of your home, you must use part of your home:

- Exclusively and regularly as your principal place of business,
- Exclusively and regularly as a place where you meet or deal with patients, clients, or customers in the normal course of your trade or business,
- In the case of a separate structure which is not attached to your home, in connection with your trade or business.

Additional Test for Employee Use – If you are an employee and you use a part of your home for business, you may qualify for a deduction for its business use. You must meet the above tests plus:

- Your business use must be for the convenience of your employer, and
- You must not rent any part of your home to your employer and use the rented portion to perform services as an employee for that employer.

If the use of the home office is merely appropriate and helpful, you cannot deduct expenses for the business use of your home.

Exclusive Use – To qualify under the exclusive use test, you must use a specific area of your home only for your trade or business. The area used for business can be a room or other separately identifiable space. The spaces do not need to be marked off by a

permanent partition. You do not meet the requirement of exclusive use test if you use the area in question for both business and for personal purposes.

Regular Use – To qualify under the regular use test, you must use a specific area of your home for business on a regular basis. Incidental or occasional business use is not regular use. You must consider all facts and circumstances in determining whether your use is on a regular basis.

Trade or Business Use – To qualify under the trade-or-business-use-test, you must use part of your home in connection with a trade or business.

Principal Place of Business – You can have more than one business location, including your home, for a single trade or business. To qualify to deduct the expenses for the business use of your home under the principal place of business test, your home must be your principal place of business for that trade or business. To determine whether your home is your principal place of business, you must consider:

- The relative importance of the activities performed at each place where you conduct business, and
- The amount of time spent at each place where you conduct business.

Your home office will qualify as *your principal place of business* if you meet the following requirements.

- You use it exclusively and regularly for administrative or management activities of your trade or business.
- You have no other fixed location where you conduct substantial administrative or management activities of your trade or business.

If, after considering your business locations, your home cannot be identified as your principal place of business, you cannot deduct home office expenses.

c. Convenience of the Employer

In order for an employee to claim business use of his or her home, in addition to the requirement that qualifying business uses of a taxpayer's residence must be regular and exclusive, for deductions of an employee, **IRC** § 280F and IRS Reg. § 1.280F-6, provides that no deduction is allowed to the employee unless that use is for the convenience of the employer and required as a condition of employment.

The terms "convenience of the employer" and "condition of employment" generally have the same meaning. In order to satisfy the "condition of employment" requirement, the use of the property must be required in order for the employee to perform the duties of his or her employment properly. Whether the use of the property is so required depends on all the facts and circumstances. *IRS Reg. § 1.280F-6*

Although the phrase "convenience of the employer" is not defined by the Code the requirement has been held to have been met in instances where working at home was a condition or requirement of employment. Furthermore, the Supreme Court stated in

dictum that the availability of alternative office space is a factor that may be relevant in deciding whether an employee taxpayer's use of a home office is for the "convenience of the employer." The requirement will not be met, however, if the maintenance of a home office is purely a matter of personal convenience, comfort, or economy.

In order to satisfy the convenience of the employer test, there must be a real need on the part of the employer for the employee to use his or her home as a home office. If the employer provides an office for the employee, there is no need for the employee to work at home. An employer permitting or allowing an employee to work at home does not meet the convenience of the employer test. The convenience of the employee to work at home does not qualify for the convenience of the employer test.

d. Telecommuting

Employees that work at home or telecommute must satisfy the above "business use of your home" and "convenience of the employer" requirements in order to claim office-in-the-home expenses.

3. Accounting for Vehicle Use

a. Substantiation Requirements

The major disadvantage of employer-provided vehicles to both the employee and employer is the recordkeeping requirements if the employee is permitted to use the vehicle for personal matters. If an employee uses an employer-provided vehicle for both business and personal travel, the employee must account to the employer for the business use. This is done by substantiating the usage (e.g., mileage), the time and place of the travel and the business purpose of the travel. Written records made at the time of each business use are the best evidence. Any use of an employer-provided vehicle by an employee that is not substantiated as business use is defined by the Internal Revenue Code to be personal use and is included in the employee's income.

b. Exception - Qualified Non-Personal Use Vehicle

Use of a qualified non-personal use vehicle, including commuting, is excludable to the employee; and record-keeping and substantiation by the employee are not required by the IRS. See paragraph 1.c. above.

c. Safe Harbor Substantiation Rules – IRS Reg. § 1.132-5(e) and § 1.274-6T

Employees using employer vehicles are **not** required to keep detailed records of vehicle use if **all** of the following tests are met:

i. For vehicles not used for personal purposes:

- The vehicle is owned or leased by the employer and is provided to the employee in the employer's business.
- When not in use, the vehicle is kept on employer's premises (i.e., motor pool cars).

- No employee using the vehicle lives at the employer's business premises.
- The employer has a written policy prohibiting personal use, except de minimis use (such as driving to lunch while away from the office).
- The employer reasonably believes the vehicle is not used for any personal use (other than de minimis).

ii. For vehicles not used for personal purposes other than commuting (\$1.50 each way), the following conditions must apply:

- The vehicle is owned or leased by the employer and is used in the employer's business.
- For bona fide noncompensatory reasons, the employer requires the employee to commute to and/or from work in the vehicle.
- The employer has established a written policy prohibiting personal use other than commuting and de minimis use.
- The employer reasonably believes that, except for commuting and de minimis use, no individual uses the vehicle for personal purposes.
- The employee is not a control employee (see Commuting Rule, below)
- The employer accounts for the commuting use by including the commuting value in the employee's wages. IRS Reg. § 1.274-6T(a)(3).

iii. Written Policy Statements

The employer must maintain a written policy statement that implements a policy restricting personal use of employer-provided vehicles. A written policy statement adopted by a governmental unit as to employee use of its vehicles is eligible for these exceptions to IRC § 274(d) substantiation rules. A resolution of a city council or a provision of state law, or the state constitution qualifies as a written policy statement for the safe harbor provisions.

iv. Employer Monitoring Required

Although detailed recordkeeping is not required, the employer must have some way to prove that the vehicles are being used in accordance with the rules. For example, the employer may use internal controls such as requiring employees using motor pools to sign vehicles out, and signed statements by the employees agreeing to no personal use, or (if applicable) no personal use other than commuting.

4. Determining Personal Use Value

Employee personal use of employer-provided vehicles that is not de minimis, and does not qualify for some other exclusion must be included in the employee's income as a taxable fringe benefit. To determine the amount to include in the employee's income, the Internal Revenue Service provides employers with four methods for valuing employees' personal use of employer-provided vehicles.

Employers may value the availability of personal use of an employer-provided vehicle under the general valuation method or one of three optional special valuation methods (the cents-per-

You can use the cents-per-mile rule if **either** of the following requirements is met.

- You reasonably expect the vehicle to be **regularly used** for business purposes throughout the calendar year.
- The vehicle meets the **mileage test**.

The cents-per-mile valuation method cannot be used when an employee is treating 100% of vehicle use as personal.

Maximum Automobile Value. You cannot use the cents-per-mile rule for an automobile (any 4-wheeled vehicle, such as a car, pickup truck, or van) if its value when you first make it available to any employee for personal use is more than an amount determined by the IRS as the maximum value for the year. For example, you cannot use the cents-per-mile rule for an automobile that you first made available to an employee in **2012 if its value at that time exceeded \$15,900** for a passenger automobile or **\$16,700 for a truck or van**. See IRS Rev. Proc. 2012-13.

Vehicle – For the cents-per-mile rule, a vehicle is any motorized wheeled vehicle, including an automobile, manufactured primarily for use on public streets, roads, and highways.

Regular Use in Your Business – A vehicle is regularly used in your trade or business if at least one of the following conditions is met.

- At least 50% of the vehicle's total annual mileage is for business purposes.
- You sponsor a commuting pool that generally uses the vehicle each workday to drive at least three employees to and from work.
- The vehicle is regularly used in your trade or business on the basis of all of the facts and circumstances. Infrequent business use of the vehicle, such as occasional trips to the airport or between multiple business premises, is not regular use of the vehicle in your trade or business.

Mileage Test – The vehicle meets the mileage test for a calendar year if **both** of the following requirements are met:

- The vehicle is actually driven at least 10,000 miles during the year. If you own or lease the vehicle only part of the year, reduce the 10,000-mile requirement proportionately.
- The vehicle is used during the year primarily by employees. Consider the vehicle primarily by employees if they use it consistently for commuting. Do not treat the use of the vehicle by another individual whose use would be taxed to the employee as use by the employee.

For example, if only one employee uses a vehicle during the calendar and that employee drives the vehicle at least 10,000 miles in that year, the vehicle meets the mileage tests even if all miles are driven by the employee as personal.

Consistency Requirements – If you use the cents-per-mile method, the following requirements apply.

- You must begin using the cents-per-mile rule on the first day you make the vehicle available to any employee for personal use. However, if you use the commuting rule below when you first make the vehicle available to any employee for personal use, you can change to the cents-per-mile rule on the first day for which you do not use the commuting rule.
- You must use the cents-per-mile rule for all later years in which you make the vehicle available to any employee and the vehicle qualifies, except that you can use the commuting rule for any year during which use qualifies. However, if the vehicle does not qualify for the cents-per-mile rule during a later year, you can use for that year and thereafter any other rule for which the vehicle then qualifies.
- You must continue to use the cents-per-mile rule if you provide a replacement vehicle to your employee and your primary reason for the replacement is to reduce federal taxes.

Items Included in the Cents-Per-Mile Rate – The cents-per-mile rate includes the value of maintenance and insurance. Do not reduce the rate by the value of any service included in the rate that you did not provide. You can take into account the services actually provided for the vehicle by using the general valuation method. The cents-per-mile rate includes the value of fuel you provide. If you do not provide fuel you can reduce the rate by no more than 5.5 cents.

c. Commuting Rule

Under this rule, you determine the value of a vehicle you provide to an employee for commuting use by multiplying each one-way commute (that is, from home to work or from work to home) by \$1.50. If more than one employee commutes in this vehicle, this value applies to each employee. The value of each commute must be included in the employee's income or reimbursed by the employee.

You can use the commuting rule if **all** the following requirements are met:

- You provide the vehicle to an employee for use in your trade or business and, for bona fide non-compensatory business reasons, you require the employee to commute in the vehicle. You will be treated as if you had met this requirement if the vehicle is generally used each workday to carry at least three employees to and from work in an employer sponsored commuting pool.
- You establish a written policy under which you do not allow the employee to use the vehicle for personal purposes other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home), and the policy is enforced. Personal use of a vehicle is all use that is not for your trade or business.
- The employee does not use the vehicle for personal purposes other than commuting and de minimis personal use.
- The vehicle is an automobile (any four-wheeled vehicle, such as a car, pickup truck, or van); the employee who uses it for commuting is not a control employee.

Commuting Rule Not Available for Control Employee – Personal use of a vehicle by a “control employee” cannot be valued using the commuting valuation rule (\$1.50 rule). A control employee for a government employer for 2012 is either of the following:

- An elected official, or an
- Employee whose compensation is at least as great as a Federal government employee at Executive Level V (\$145,700 – years 2012, 2011, and 2010). Rate are frozen at 2010 level.

Instead of the above definition of control employee, the employer may treat all employees who are “highly compensated” Generally, for 2012 an employee who received more than \$115,000 in pay for the preceding year.

d. Lease Value Rules

Under this rule, you determine the value of an automobile you provide to an employee by using its annual lease value. For an automobile provided only part of the year, use either its prorated annual lease value or its daily value.

If the employee uses the automobile in your business, you generally reduce the lease value by the amount that is excluded from the employee’s wages as a working condition benefit. However, you can choose to include the entire lease value in the employee’s wages.

Consistency Requirements – If you use the lease value rule, the following requirements apply.

- You must begin using this rule on the first day you make the automobile available to any employee for personal use. However, the following exceptions apply.
 - If you use the commuting rule (discussed above) when you first make the automobile available to any employee for personal use, you can change to the lease value rule on the first day for which you do not use the commuting rule
 - If you use the cents-per-mile rule (discussed above) when you first make the automobile available to any employee for personal use, you can use the commuting rule for any year during which the automobile no longer qualifies for the cents-per-mile rule.
- You must use this rule for all later years in which you make the automobile available to any employee, except that you can use the commuting rule for any year during which use of the automobile qualifies.
- You must continue to use this rule if you provide a replacement automobile to the employee and your primary reason for replacement is to reduce federal taxes.

i. Annual Lease Value Method

Under the Annual Lease Valuation Method, the fair market value of an employee’s personal use of an agency-provided vehicle is determined by multiplying the annual lease value of the vehicle by the percentage of personal miles driven.

- **Fair Market Value (FMV).** The FMV of the vehicle is the amount a person would pay to buy it from a third party in an arm’s length transaction in the area

where the vehicle is bought or leased. The amount includes all purchase expenses, such as tax and title fees. If you have 20 or more vehicles, see IRS Reg. 1.61-21(d)(5)(v). You do not have to include the value of a telephone or any specialized equipment added to, or carried in, the vehicle if the equipment is necessary for your business.

- **Safe-Harbor Value.** You may be able to use a safe harbor value as the FMV. For a vehicle you bought at arm's length, the safe-harbor value is your cost, including tax, title, and other purchase expenses. For an automobile you lease, you can use any of the following as the safe-harbor value.
 - The manufacturer's invoice price (including options) plus 4%.
 - The manufacturer's suggested retail price minus 8% (including sales tax, title, and other expenses of purchase).
 - The retail value of the vehicle reported by a nationally recognized pricing source if that retail value is reasonable for the vehicle.

Items Included in Annual Lease Value Table – Each annual lease value in the table includes the value of maintenance and insurance (not fuel) for the vehicle. Do not reduce the annual lease value by the value of any of these services that you did not provide. For example, do not reduce the annual lease value of a maintenance service contract or insurance you did not provide. (You can take into account the services actually provided for the vehicle by using the general valuation rule discussed earlier.)

Items Not Included in Annual Lease Value Table – You must include the value of fuel separately in the employee's wages. You can value the fuel you provide at FMV or at 5.5 cents per mile for all miles driven by the employee. Include the value of fuel you provide to an employee for personal use, regardless of whether you provide it, reimburse its cost, or have it charged to you.

If you reimburse an employee for the cost of fuel, or have it charged to you, you generally value the fuel at the amount you reimburse, or the amount charged to you if it was bought at arm's length. If you have 20 or more vehicles, see Regulations section 1.61-21(d)(3)(ii)(D).

If you provide any service other than maintenance and insurance for a vehicle, you must add the FMV of that service to the annual lease value of the vehicle to figure the value of the benefit.

4-Year Lease Term – The annual lease values in the table are based on a 4-year lease term. These values will generally stay the same for the period that begins with the first date you use this rule for the vehicle and ends on December 31 of the fourth full calendar year following that date. Figure the annual lease value for each later 4-year period by determining the FMV of the vehicle on January 1 of the first year of the later 4-year period and select the appropriate amount that corresponds to the appropriate dollar range.

Using the Special Accounting Rule – The State uses the special accounting rule for fringe benefits (November 1 through October 31). You can figure the annual lease value for each

later 4-year period at the beginning of the special accounting period that starts immediately before the January 1 date described in the previous paragraph.

Transferring a Vehicle From One Employee to Another – Unless the primary purpose of the transfer is to reduce federal taxes, you can refigure the annual lease value based on the FMV of the vehicle on January 1 of the calendar year of transfer, or if using the special accounting period, at the beginning of the special accounting period in which the transfer occurs.

Fleet-Average Valuation – Employers that provide 20 or more vehicles for business use by employees may determine the annual lease value of separate vehicles within the fleet by using the average valuation of the fleet. **This approach is available only for vehicles values under the annual lease value method that have a FMV in 2011 of \$20,300 for a passenger automobile or \$21,200 for a truck or van.**

The annual lease value calculated for the fleet remains in effect from Jan. 1 of the year the method is applied to the fleet until Dec. 31 of the next calendar year; thus, the valuation is in effect for two years. Vehicles added to the fleet during such period are valued using the annual lease value of the other vehicles in the fleet.

Employer-provided fuel for fleet vehicles may be valued on a fleet-average basis or 5.5 cents per mile, whether or not fuel is provided in kind. If the fleet average method is used, the employer must recalculate the valuations every two years.

ii. Prorated Annual Lease Value

If you provide a vehicle to an employee for a continuous period of 30 days or more but less than an entire calendar year, you can prorate the annual lease value. Figure the prorated annual lease value by multiplying the annual lease value by a fraction, using the number of days of availability as the numerator and 365 as the denominator.

If you provide a vehicle continuously for at least 30 days, but the period covers two calendar years (two special accounting periods if using the special accounting rule), you can use the prorated annual lease or the daily lease value. If you have 20 or more vehicles, see IRS Reg. §1.61-21(d)(6).

iii. Daily Lease Value

If you provide an automobile for a continuous period of less than 30 days, use the daily lease value to figure its value. Figure the daily lease value by multiplying the annual lease value by a fraction, using four times the number of days of availability as the numerator and 365 as the denominator.

However, you can apply a prorated annual lease value for a period of continuous availability of less than 30 days by treating the vehicle as if it had been available for 30 days. Use the prorated annual lease value if it would result in a lower valuation than applying the daily lease value to the shorter period of availability.

iv. Annual Lease Value Calculation

Under the Annual Lease Valuation Method, the fair market value of an employee's personal use of an employer-provided vehicle is determined by multiplying the annual lease value of the car by the percentage of personal miles driven. Using the table below, the employer must determine the fair market value of the vehicle as of the first day it was made available to any employee for personal use. This table is also available in IRS Publication 15-B (www.irs.gov). To find the annual lease value, read down until you come to the dollar range within which the FMV of the automobile falls, then read across to find the annual lease value.

IRS ANNUAL LEASE VALUE TABLE								
Automobile Lease Fair Market Value		Annual Lease Value	Automobile Lease Fair Market Value		Annual Lease Value	Automobile Lease Fair Market Value		Annual Lease Value
From	To		From	To		From	To	
\$0	999	\$600	15,000	15,999	4,350	34,000	35,999	9,250
1,000	1,999	850	16,000	16,999	4,600	36,000	37,999	9,750
2,000	2,999	1,100	17,000	17,999	4,850	38,000	39,999	10,250
3,000	3,999	1,350	18,000	18,999	5,100	40,000	41,999	10,750
4,000	4,999	1,600	19,000	19,999	5,350	42,000	43,999	11,250
5,000	5,999	1,850	20,000	20,999	5,600	44,000	45,999	11,750
6,000	6,999	2,100	21,000	21,999	5,850	46,000	47,999	12,250
7,000	7,999	2,350	22,000	22,999	6,100	48,000	49,999	12,750
8,000	8,999	2,600	23,000	23,999	6,350	50,000	51,999	13,250
9,000	9,999	2,850	24,000	24,999	6,600	52,000	53,999	13,750
10,000	10,999	3,100	25,000	25,999	6,850	54,000	55,999	14,250
11,000	11,999	3,350	26,000	27,999	7,250	56,000	57,999	14,750
12,000	12,999	3,600	28,000	29,999	7,750	58,000	59,999	15,250
13,000	13,999	3,850	30,000	31,999	8,250	59,999+	(0.25 x FMV of Automobile) + \$500	
14,000	14,999	4,100	32,000	33,999	8,750			

Example: John, a state employee, drives a state-provided vehicle that he used for both business and personal driving. John drove 17,000 miles during the year – 12,300 state business miles and 4,700 personal miles. The vehicle's fair market value is \$16,200. The amount of the vehicle's fair market value that must be included in John's income for the year is calculated as follows:

$$\begin{aligned} \text{Annual Lease Value of \$16,200 vehicle (from table)} &= \$4,600 \\ \% \text{ Of personal miles} &= 4,700 \div 17,000 = .2765 \\ \text{FMV of personal use} &= \$4,600 \times .2765 = \$1,271.90 \end{aligned}$$

If the employee has the vehicle for less than a year but it is available for use for at least 30 consecutive days, the annual lease value (ALV) must be prorated for that period by using the following formula:

$$\text{Prorated ALV} = \text{ALV} \times (\text{number of days available} \div 365)$$

If the vehicle is available to the employee for periods of less than 30 consecutive days during the year, the employer may treat the vehicle as being available for 30 days to avoid the harsher valuation rules (unless the availability is 7 or fewer days per year). See Daily Lease Value above.

FUEL NOT INCLUDED – The annual lease value does not include the value of employer-provided fuel. The employer must include the value of fuel separately in the employee's wages. You can value the fuel provided at FMV or at an IRS-approved rate of 5.5 cents per mile.

5. Withholding Requirements

The general rule for taxing fringe benefits is that all benefits are taxable to the recipient based on the fair market value (FMV), and the provider of the benefit is responsible for withholding federal income taxes, social security and Medicare taxes. The taxes may be withheld from the recipient's cash compensation. The fair market value of the fringe benefit may be reduced, however, by the following amounts:

- Any amount that the law excludes from compensation; and
- Any amount that the recipient pays for the benefit.

Employers may elect either to withhold or not to withhold federal income taxes on the taxable value of the employee's personal use of a state vehicle. Employers can make different withholding elections for different employees. However, the employer must withhold **social security** and **Medicare taxes** from the employee even if income taxes are not withheld. The employer must also pay its matching **social security** and **Medicare tax** on the taxable value. Affected employees must be notified in writing of the election not to withhold by the employer by January 31 of the year for which the election is made or within 30 days after the employee first gets the vehicle (whichever is later). The employer can change its decision not to withhold by notifying the employee in writing. The State Chief Financial Officer informs affected employees on the Employee Annual Payroll Information Statement. The statements are distributed with the employee copy of Form W-2 each January. **Agencies** are required to inform new employees within 30 days after the date the employer first provides a vehicle to an

employee that the State has elected to not withhold income tax on the taxable value of the employee's personal use of a state vehicle.

6. Reporting Taxable Values

The employer must report the value of an employee's personal use of the employer-provided vehicle as taxable income and include this amount on the employee's Form W-2.

- Identify all employees receiving vehicle fringe benefits such as:
 - Employees commuting to and from work in a State vehicle;
 - Employees with use of a State vehicle for personal purposes;
 - Vehicles leased by the State for employee use, which are used for commuting and/or personal purposes;
 - Vehicles provided to State employees from a foundation that acts as an administrative extension of a unit of government;
 - Third party provided vehicles (e.g., county government).
- Determine if the vehicle driven qualifies as one of the exceptions for personal use.
- Determine the value of the employee's personal use of the vehicle by using the lease valuation, commuting valuation, or cents-per-mile rule discussed above.
- Use the On-Line Non-Cash Adjustment System to report the employee's earnings for value of the personal use of the vehicle. **Agency** instructions and submission deadlines for the on-line system are provided in **Volume V, Section 7**.
- Agencies having large numbers of transactions may use the Non-Cash Batch (tape, FTP, diskette) functionality in the system. If batch submission is elected, the social security and Medicare taxes will be collected on the employee's next salary payment. Contact **BOSP** for further details. **Volume VII, Section 5** of this manual contains the file layout for non-cash fringe benefits.

I. PERSONAL USE OF STATE AIRCRAFT

Aircraft owned, leased, or operated by any state **agency** shall be available for official state business only as authorized by **agency** heads. Internal procedures are required to be developed to ensure state aircraft are used only for official state business or for purposes consistent with official state business as defined in §287, F.S.

Persons not on official state business may be transported on a space available basis when approved by and when accompanying the Governor, the Lt. Governor, a member of the Cabinet, the Speaker of the House of Representatives, and the President of the Senate or the Chief Justice of the Supreme Court. However, such transportation is not considered official state business, Chapter 60B-4.003, F.A.C.

1. Determining Taxable Personal Use

The value of employees business travel in a state plane or helicopter is excluded from the employee's income as a working condition fringe benefit. Transportation that is not for official state business may result in taxable income. If the travel is primarily personal, the value is included in the employee's income. Travel that combines business and personal purposes must be allocated to each. Spouses, dependents, or other persons that accompany

employees on state business may also incur taxable income to the employee unless on bona fide state business (see IRC §274(m)(3)). Social security, Medicare, and income tax apply to any taxable income exceeding the amount, if any, paid by the employee for the flight.

2. Determining Taxable Value

Agencies may choose to value personal flights on state aircraft under either the general or special valuation rules. The special valuation rule may be used to determine the value of benefits if they prove to be more advantageous than the general fair market value.

Agencies must use the same valuation method to value all personal flights by employees in any one calendar year.

3. General Valuation Rule

Under the general valuation method, the value of the flight is equal to the cost of chartering a comparable aircraft for a comparable flight. The charter cost must be allocated among all employees aboard, including those traveling on business. The general valuation rule for a personal flight on a state-provided piloted aircraft sets the fair market value at the cost of chartering a comparable aircraft and pilot for a comparable flight in an arm's-length transaction.

4. Special Valuation: Noncommercial Flights

Under the special valuation rule for noncommercial flights, the value depends on the weight of the aircraft, the number of miles flown, and whether or not the employee is a "control" employee. A control employee is an elected official or an employee whose compensation equals or exceeds \$145,700 in 2012, 2011, and 2010. Instead of using the Control Employee definition, you can choose to define a control employee as any highly compensated employee. For 2012 an employee that received more than \$115,000 in pay for the preceding year.

The value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the periods during which the flight was taken by the appropriate aircraft multiple provided in section IRS Reg. §1.61-21(g)(7) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the federal Department of Transportation and are reviewed semi-annually. If an employer uses the non-commercial flight valuation rule to value any flight provided to an employee, it must use the rule to value all eligible flights provided to employees during the calendar year.

Each leg of a flight (each time the employee deplanes) must be valued as a separate flight, unless an intermediate stop is made solely due to weather conditions or to refuel or service the aircraft. Therefore, a round trip includes at least two flights.

Under the non-commercial flight valuation rule, the value of a flight on an employer-provided aircraft for an individual who is less than two years old is deemed to be zero.

Flights for guests of control employees are valued as control employees. For example, assume that a control employee, his spouse, and his two children fly on a state-provided aircraft for personal purposes. The maximum certified takeoff weight of the aircraft is 12,000 lbs. The amount includible in the employee's income is 4 x [(300 percent x the applicable SIFL cents-per-mile rates multiplied by the number of miles in the flight) plus the applicable terminal charge].

The following chart sets forth the terminal charges and SIFL mileage rates:

STANDARD INDUSTRY FARE LEVEL (Federal Dept. Transportation)			
Six Month Period	Mileage Range	Amount Per Mile	Terminal Charge
January 1, 2012 – June 30, 2012	0 – 500	\$0.2455	\$44.88
	501 – 1500	\$0.1872	
	Over 1500	\$0.1800	
July 1, 2011 – December 31, 2011	0 – 500	\$0.2395	\$43.79
	501 – 1500	\$0.1826	
	Over 1500	\$0.1756	
AIRCRAFT MULTIPLES (Reg. §1.61-21(g))			
Max. Certified Takeoff Weight	Control Employee	Non-Control Employee	
6,000 lbs. Or less	.625	.156	
6,001 lbs. – 10,000 lbs.	1.25	.234	
10,001 lbs. – 25,000 lbs.	3.00	.313	
25,001 lbs. Or more	4.00	.313	

- An Exception to the Special Valuation Rule** applies when individuals flying on state business occupy half of the aircraft's regular seating capacity. In that case, a personal flight by an employee is valued at zero, and no additional income is incurred. For purposes of this rule, spouses, and dependent children and parents of employees, retired and disabled employees will be treated as employees (**IRC** §132(h)(1)-(3)).

Example: Assume that 60 percent of the regular passenger seating capacity of an employer's aircraft is occupied by individuals whose flights are primarily for state business and are excludable from income. If a control employee, his spouse, and his dependent child fly on the employer's aircraft for primarily personal reasons, the value of the three flights is deemed to be zero.

- To Value a Personal Use Noncommercial Flight, the following steps are taken:**
 - Miles traveled are multiplied by the SIFL rates per mile to arrive at mileage charges;
 - The total mileage charge is multiplied by the weight-based employee aircraft multiple; and
 - The product from step 2 is added to the SIFL terminal charge.

7. Combination Business and Personal Flights

If an employee flies on a state aircraft for combined business and personal reasons, the amount of income attributed to the employee must be adjusted. If the flight is made

primarily for business purposes, determine the value of the flight as made and subtract the value of the flight that would have been made had there been no personal trip.

Example: An employee flies in a state aircraft from Tallahassee to Miami on business, then flies to Orlando for vacation, and returns to Tallahassee. Three flights are involved, and are valued according to the special valuation rule. The value of a round trip flight between Tallahassee and Miami also is determined. The difference between the two values is the amount of income incurred by the employee.

8. Reporting Procedures

- Identify all employees and guests with personal flights on state aircraft.
- Determine the value of the flight using either general or special valuation rules **less any reimbursement made by the employee.**
- Subtract the non-personal value of the trip.
- Contact **BOSP** for special processing instructions.

J. TRAVEL EXPENSE REIMBURSEMENTS

1. Auto Expense Reimbursement

IRS regulations permit reimbursement of business expenses for local travel or transportation expenses while away from home through a mileage allowance. The amount of the allowance up to the federal business standard mileage rate is deemed substantiated and not taxable to the employee, so long as the employee substantiates the time, place, and business purpose of the travel. The federal business standard mileage rate beginning July 1, 2011 is 55.5 cents per mile.

a. State Mileage Allowance (Cents Per Mile)

Agency heads may authorize the use of privately owned vehicles for official travel in lieu of publicly owned vehicles or common carriers. The approved traveler is entitled to a mileage allowance reimbursement at a fixed rate of 44.5 cents per business mile effective July 1, 2006. Refer to §112.061, F.S.

b. State Monthly Mileage Allowance

Agency heads may grant monthly mileage allowances in fixed amounts for use of privately owned vehicles on official business in lieu of the cents per mile allowance paid under the accountable plan rules. Monthly mileage allowances are taxable income to the employee and should be submitted to the Bureau of State Payrolls for payment using the People First System or via the On Demand System (See **Volume IV, Section 11**). Also, see Reference Guide for State Expenditures at http://www.myfloridacfo.com/aadir/reference_guide/; and, §112.061(7)(f), F.S.

2. Lodging and Meal Reimbursements

Payments to employees for reasonable and necessary expenses incurred while traveling overnight away from home on the employer's business are not taxable to employees, provided these payments are made under an "accountable plan." Likewise, employer payments for food and lodging expenses for employees who temporarily assigned to a distant job location, which precludes their daily, return to their regular workplace are excluded from income. If an assignment to a single location away from home is expected to, or actually lasts for one year or more, it may be considered indefinite, rather than temporary. Employer payments for travel expenses (transportation, food, and lodging) for indefinite employment away from home are taxable to the employee.

Florida Statutes §112.061 establishes standard travel reimbursement rates, procedures, and limitations, applicable to all public officers, employees, and authorized persons whose travel is authorized and paid by a public agency. All travel must be authorized and approved by the head of the agency, or his or her designated representative, from whose funds the traveler is paid.

Computation of Travel Time for Reimbursement – For purposes of reimbursement rates and methods of calculating fractional days of travel, the following principles are prescribed:

- The Class A travel shall be a calendar day (midnight to midnight). The Class B travel day shall begin at the same time as the travel period.
- For Class A and Class B travel, the traveler shall be reimbursed one-fourth of the authorized rate of per diem for each quarter, or fraction thereof, of the travel day included within the travel period.

Rates of Per Diem and Subsistence Allowance – For purposes of reimbursement rates and methods of calculation, per diem and subsistence allowances authorized travelers shall be allowed for subsistence, either of the following for each day of travel **at the option of the traveler**:

- Eighty dollars per diem; or
- If actual expenses exceed \$80, the amounts permitted for Class C subsistence, plus actual expenses for lodging at a single-occupancy rate to be substantiated by bills paid therefore. (Class C subsistence rates: \$6 Breakfast; Lunch \$11; Dinner \$19)

3. Companion Travel Expense

Florida Statutes §112.061 provides rates, procedures, and limitations, applicable to all public officers, employees, and authorized persons whose travel is authorized and paid by a public agency.

IRS regulations provide that travel expenses of a spouse, dependent, or other individual (not including business associates) accompanying an employee on a business trip are taxable to the employee unless:

- The spouse, dependent, or other person is also an employee of the employer providing the reimbursement;
- The travel of the spouse, dependent, or other person is for a bona fide business purpose; and
- The expenses would otherwise be deductible as a business expense by the spouse, dependent, or other person.

