

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-106897-08]

RIN 1545-BH65

Qualified Nonpersonal Use Vehicles

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed ~~regulations~~ relating to qualified nonpersonal use vehicles as defined in section 274(i). Qualified nonpersonal use vehicles are excepted from the substantiation requirements of section 274(d)(4) that apply to listed property as defined in section 280F(d)(4). These proposed regulations would add clearly marked public safety officer vehicles as a new type of qualified nonpersonal use vehicles. These proposed regulations would affect employers that provide their employees with qualified nonpersonal use vehicles and the employees who use such vehicles.

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DATES: Written or electronic comments and requests for a public hearing must be received by September 8, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-106897-08), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8:00 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-106897-08), Couriers

Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Additionally, taxpayers may submit electronic comments directly via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-106897-08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Don Parkinson or Selvan Boominathan at (202) 622-6040; concerning the submission of comments or requests for a hearing, Kelly Banks at (202) 622-3628 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations under section 274(i) added by section 2(b) of Public Law 99-44 (May 24, 1985), which provides a definition of qualified nonpersonal use vehicle. Temporary Regulation §1.274-5T(k), identifying categories of qualified nonpersonal use vehicles, was issued in TD 8061 (1982-2 CB 93 (1985)). A notice of proposed rulemaking was issued by cross-reference to Temporary Regulation §1.274-5T(k) (50 FR 46088, 1985-2 CB 809 (1985)). These proposed regulations incorporate the text of §1.274-5T(k) and add clearly marked public safety officer vehicles as a new type of qualified nonpersonal use vehicle, listed along with clearly marked police and fire vehicles at §1.274-5(k)(2)(ii)(A). Clearly marked public safety officer vehicles are added to the definition of clearly marked police and fire vehicles at §1.274-5(k)(3), and an example is added at §1.274-5(k)(8). (See §601.601(d)(2)(ii)(b).)

Explanation of Provisions

Section 274(d) provides that a taxpayer is not allowed a deduction or credit for certain expenses unless the expense is substantiated. These substantiation requirements apply to expenses incurred in the use of any listed property (defined in section 280F(d)(4)), which includes any passenger automobile and any other property used as a means of transportation. Section 274(d) does not apply to any qualified nonpersonal use vehicle as defined in section 274(i).

Section 274(i) provides that a qualified nonpersonal use vehicle is any vehicle which by reason of its nature is not likely to be used more than a de minimis amount for personal uses. The legislative history to section 274(i) provided a list of qualified nonpersonal use vehicles and identified a number of examples of qualified nonpersonal use vehicles such as school buses, qualified specialized utility repair trucks, and qualified moving vans. The legislative history indicated that Congress wanted the Commissioner to expand the list to include other vehicles appropriate for listing because by their nature it is highly unlikely that they will be used more than a very minimal amount for personal purposes. H.R. Rep. No. 99-34, at 11 (1985).

Passenger automobiles such as sedans and sport utility vehicles are generally not exempt from taxation as qualified nonpersonal use vehicles because by design they can easily be used for personal purposes. However, unmarked law enforcement vehicles and clearly marked police and fire vehicles are included in the list of qualified nonpersonal use vehicles set forth in the

legislative history to section 274(i) and incorporated into the proposed and temporary regulations.

The IRS and the Treasury Department have become aware of a need for an additional category of vehicles to be included in the list of qualified nonpersonal use vehicles. Clearly marked vehicles provided to Federal, state and local government workers who respond to emergency situations do not satisfy the current regulations governing qualified nonpersonal use vehicles if the individual workers are not employed by either the fire department or police department. Accordingly, the proposed regulations add clearly marked public safety officer vehicles to the list of qualified nonpersonal use vehicles so that emergency responders receive the same treatment whether they work for the police department, fire department or another department of state or local government.

A clearly marked 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 public safety officer as defined in section 402(l)(4)(C) who, when not on a regular shift, is on call at all times, provided that any personal use (other than commuting) of the vehicle outside the limit of the public safety officer's obligation to respond to an emergency is prohibited by such governmental unit. A public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a public safety officer vehicle.

Section 402(l)(4)(c) provides that the term “public safety officer” shall have the same meaning given such term by the Omnibus Crime Control and Safe Streets Act of 1968, as codified at 42 U.S.C. section 3796b(9)(A). 42 U.S.C. Section 3796b(9)(A) defines public safety officer as “an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or ambulance crew.”

Proposed §1.274-5(k) and (l) provide a list of qualified nonpersonal use vehicles and related definitions. Section 1.274-5(k) and (l) were originally proposed in 1985 (LR-145-84, 50 FR 46088, November 6, 1985) and simultaneously issued as a temporary regulation (TD 8061, 50 FR 46006, November 6, 1985). Paragraph (k) of LR-145-84 is being re-proposed, with amendments, as part of these proposed regulations. Paragraph (l) provides definitions of the terms "automobile," "vehicle," "employer," "employee," and "personal use." Paragraph (l) is being re-proposed, with no changes, as part of these proposed regulations. The corresponding provisions of the proposed regulations in LR-145-84 are withdrawn upon publication of this notice. The corresponding provisions of the temporary regulations in TD 8061 will be withdrawn once these proposed regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory

assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not require a collection of information and do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Council for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearings

Before these proposed amendments are adopted, consideration will be given to any written comments that are submitted to CC:PA:LPD:PR (REG-106897-08). All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed regulation. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Don E. Parkinson and Selvan V. Boominathan, Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

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

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

Par. 2. Section 1.132-5 paragraph (h) is amended to read as follows:

§1.132-5 Working condition fringes.

* * * * *

(h) Qualified nonpersonal use vehicles--(1) In general. Except as provided in paragraph (h)(2) of this section, 100 percent of the value of the use of a qualified nonpersonal use vehicle (as described in §1.274-5(k)) is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in §1.274-5(k)(3) through (8), the use of the vehicle conforms to the requirements of that paragraph.

(2) Shared usage of qualified nonpersonal use vehicles. In general, a working condition fringe under this paragraph (h) is available to the driver and all passengers of a qualified nonpersonal use vehicle. However, a working condition fringe under this paragraph (h) is available only with respect to the driver and not with respect to any passengers of a qualified nonpersonal use vehicle described in §1.274-5(k)(2)(ii)(L) or (P).

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Par. 3. Section 1.274-5 paragraphs (k) and (l) and the last sentence of paragraph (m) are revised to read as follows:

§1.274-5 Substantiation Requirements.

* * * * *

(k) Exceptions for qualified nonpersonal use vehicles--(1) In general. The substantiation requirements of section 274(d) and this section do not apply to any qualified nonpersonal use vehicle (as defined in paragraph (k)(2) of this section).

(2) Qualified nonpersonal use vehicle--(i) In general. For purposes of section 274(d) and this section, the term qualified nonpersonal use vehicle means any vehicle which, by reason of its nature (that is, design), is not likely to be used more than a de minimis amount for personal purposes.

(ii) List of vehicles. Vehicles which are qualified nonpersonal use vehicles include the following:

(A) Clearly marked police, fire, and public safety officer vehicles (as defined and to the extent provided in paragraph (k)(3) of this section).

(B) Ambulances used as such or hearses used as such.

(C) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.

(D) Bucket trucks (cherry pickers).

(E) Cement mixers.

(F) Combines.

(G) Cranes and derricks.

(H) Delivery trucks with seating only for the driver, or only for the driver plus a folding jump seat.

(I) Dump trucks (including garbage trucks).

(J) Flatbed trucks.

(K) Forklifts.

(L) Passenger buses used as such with a capacity of at least 20 passengers.

(M) Qualified moving vans (as defined in paragraph (k)(4) of this section).

(N) Qualified specialized utility repair trucks (as defined in paragraph (k)(5) of this section).

(O) Refrigerated trucks.

(P) School buses (as defined in section 4221(d)(7)(c)).

(Q) Tractors and other special purpose farm vehicles.

(R) Unmarked vehicles used by law enforcement officers (as defined in paragraph (k)(6) of this section) if the use is officially authorized.

(S) Such other vehicles as the Commissioner may designate.

(3) 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 (as defined in §402(l)(4)(C)) of this chapter who, when not on a regular shift, is on call at all times, provided that any personal use (other than commuting) of the vehicle outside the limit of the police officer's arrest powers or the fire fighter's or public safety officer's obligation to respond to an emergency is prohibited by such governmental unit. A police, fire, or public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a

police, fire, or public safety officer vehicle. A marking on a license plate is not a clear marking for purposes of this paragraph (k).

(4) 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--

(i) 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);

(ii) Personal use for travel to and from a move site is an irregular practice (that is, not more than five times a month on average); and

(iii) 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 not to be returned to the employer's business location.

(5) 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--

(i) 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

(ii) 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.

(6) Unmarked law enforcement vehicles--(i) In general. The substantiation requirements of section 274(d) and this section do not apply to officially authorized uses of an unmarked vehicle by a "law enforcement officer". To qualify for this exception, any personal use must be authorized by the Federal, State, county, or local governmental agency or department that owns or leases the vehicle and employs the officer, and must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips cannot qualify as an authorized use.

(ii) Law enforcement officer. The term law enforcement officer means an individual who is employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension or detention of persons for such crimes), who is authorized by law to carry firearms, execute search warrants, and to make arrests (other than merely a citizen's arrest), and who regularly carries firearms (except when it is not possible to do so because of the requirements of undercover work). The term "law enforcement officer" may include an arson investigator if the investigator otherwise meets the requirements of this paragraph (k)(6)(ii), but does not include Internal Revenue Service special agents.

(7) Trucks and vans. The substantiation requirements of section 274(d) and this section apply generally to any pickup truck or van, unless the truck or van has been specially modified with the result that it is not likely to be used more than a de minimis amount for personal purposes. For example, a van that has only a front bench for seating, in which permanent shelving that fills most of the cargo area has been installed, that constantly carries merchandise or equipment, and that has been specially painted with advertising or the company's name, is a vehicle not likely to be used more than a de minimis amount for personal purposes.

(8) Examples. The following examples illustrate the provisions of paragraph (k)(3) and (6) of this section:

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 paragraph (k)(6)(i) of this section. With respect to these authorized uses the vehicle is not subject to the substantiation requirements of section 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 of 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 its 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

paragraph (k)(3) of this section. 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 section 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 insignia and words identifying the vehicle as a 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 section 274(d) and the value of these uses is not includable in C's gross income.

(l) Definitions. For purposes of section 274(d) and this section, the terms automobile and vehicle have the same meanings as prescribed in §§1.61-21(d)(1)(ii) and 1.61-21(e)(2), respectively. Also, for purposes of section 274(d) and this section, the terms employer, employee and personal use have the same meanings as prescribed in §1.274-6T(e).

(m) * * * However, paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002, and paragraph (k) applies to clearly marked public safety officer vehicles, as defined in §1.274-5(k)(3), only with respect to uses occurring after January 1, 2009.

Par. 4. Section 1.274-5T is revised by amending paragraph (k) and (l) as follows:

§1.274-5T Substantiation requirements (temporary).

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(k) and (l) [Reserved]. For further guidance, see §§1.274-5(k) and (l).

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Par. 5. Section 1.280F-6 is amended by revising paragraph (b)(2)(ii) to read:

§1.280F-6 Special rules and definitions.

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(b) * * *

(2) * * *

(ii) Exception. The term “listed property” does not include any vehicle that is a qualified nonpersonal use vehicle as defined in section 274(i) and §1.274-5(k).

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Steven Miller,
(Acting) Deputy Commissioner for Services and Enforcement.