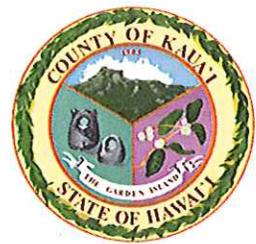


**AUDIT OF COUNTY
VEHICLES
(2011-2012)**



Submitted by

Office of the County Auditor
County of Kaua'i
State of Hawai'i

Report No. 13-01

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PREFACE

The Office of the County Auditor determined that an audit of the use of County vehicles was warranted based on the results of the audit of fuel costs, consumption and management.

The courtesies and cooperation extended by employees of the various County departments, divisions, and agencies who assisted us during the course of this audit are sincerely appreciated.

EXECUTIVE SUMMARY

PKF Pacific Hawai'i LLP has completed an audit of the County of Kaua'i's use of County vehicles under contract with the County of Kaua'i Office of the County Auditor. The compliance audit examined the use and oversight of County of Kaua'i Vehicles for the calendar years 2011 and 2012. The audit scope consisted of:

- Determining whether the County's internal and administrative controls surrounding the use of County vehicles were adequate under the circumstances;
- Determining whether the use of County vehicles by County employees was properly authorized, complied with County policies, and complied with state and federal laws and regulations, including, but not limited to Hawai'i Revised Statutes ("HRS") Chapter 105 and state and federal tax laws and regulations; and
- Determining whether any fraud or abuse has occurred.

The audit findings and recommendations are summarized as follows:

Finding 1: The County's policy over the use of County vehicles is inadequate, leading to possible noncompliance, abuse, waste, and inefficiency.

Sub-finding 1.1: The 2002 Policy summarized and referenced Chapter 105 of the HRS. Therefore, any instances of noncompliance with the policy were also noncompliance with State law.

Recommendation (Sub-finding 1.1): We recommend that the Department of Finance consider revising the draft Comprehensive Vehicle Policy to ensure drivers understand their responsibility to comply with the County vehicle policy as well as State law.

Sub-finding 1.2: The 2002 Policy did not provide adequate guidance to departments on use of non-take-home vehicles or clear restrictions on use. This resulted in an overall lack of controls and difficulties in determining if abuse was taking place.

Recommendation (Sub-finding 1.2): The draft Comprehensive Vehicle Policy aims to implement County-wide procedures that will make monitoring vehicle usage more consistent across the different departments. The Department of Finance should consider revising the Comprehensive Vehicle Policy to add examples of acceptable and non-

acceptable behavior in instances where guidance was inadequate in the past.

Sub-finding 1.3: Lax monitoring and poor data sources create difficulties in determining if abuse is taking place. At the County level, there did not appear to be consistent monitoring of vehicle usage through any reporting requirements or procedures. In our interviews, department heads were consistent in responding that they were not aware of any abuse of the use of County vehicles, but there are no means for confirming those assumptions other than through public complaints.

Recommendation (Sub-finding 1.3): The draft Comprehensive Vehicle Policy aims to implement County-wide procedures that will make monitoring vehicle usage more consistent across the different departments. We recommend that the Department of Finance require consistency in how overall usage is monitored. This would allow the County to perform uniform procedures to ensure that vehicle usage is not abusive or non-compliant with law. The Comprehensive Vehicle Policy should be revised to ensure that all scenarios of vehicle usage (i.e. assigned, shared, pooled, etc.) be included.

Finding 2: Tax implications related to the benefit value of the use of County vehicles have not been addressed. Prior to July 2013, the County did not account for the benefit value of the use of take-home County vehicles to employees. As a result, the County may be liable for additional payroll withholding taxes and state retirement contributions.

Finding 2: Using a County vehicle for commuting purposes is considered an employment benefit according to the Internal Revenue Service (“IRS”) Publication 15-B *Employer's Tax Guide to Fringe Benefits* (See Appendix 4). The IRS requires that the fair market value of such benefits be included in an employee’s wages unless specifically excluded by federal tax rules. Prior to July 2013, the County did not account for the benefit value of the use of take-home County vehicles to employees. As a result, the County may be liable for additional payroll withholding taxes and state retirement contributions.

Recommendation (Finding 2): The Department of Finance needs to comply with tax rules and regulations on reporting the fringe benefit

value of using County vehicles by employees. This includes determining whether the fringe benefit value recognized in prior years needs to be reported and adjusted. A tax expert should be retained to provide guidance in this area. In accordance with GAGAS Government Auditing Standards paragraph 7.24a, the Department of Finance is required to address these potential tax implications "as soon as practicable."

CHAPTER 1

Introduction

This audit was conducted pursuant to the authority of the Office of the County Auditor, as provided in the Kaua'i County Charter. PKF Pacific Hawaii LLP ("PKF," "we," or "us") was engaged by the Office of the County Auditor to examine the use and oversight of County of Kaua'i ("County") vehicles.

In July 2011, the County Auditor's Office received an anonymous letter that accused certain County employees of using County vehicles for their personal use.¹ The letter was received during the *Audit of Fuel Costs, Consumption and Management* that was being conducted by the County Auditor's Office.

In response to the anonymous letter and the interim results of the County Auditor's *Audit of Fuel Costs, Consumption and Management*, this audit was conducted to evaluate the policies and procedures surrounding the use of County vehicles.

Audit Scope

The audit scope consisted of:

- Determining whether the County's internal and administrative controls surrounding the use of County vehicles were adequate under the circumstances;
- Determining whether the use of County vehicles by County employees was properly authorized, complied with County policies, and complied with state and federal laws and regulations, including, but not limited to Hawai'i Revised Statutes ("HRS") Chapter 105 and state and federal tax laws and regulations; and
- Determining whether any fraud or abuse has occurred.

Our scope was originally limited to County vehicles designated as "take-home." However, based on our initial audit procedures, it was determined that the segmented oversight over all County vehicles (both take home and non-take home) posed greater risks of potential misuse. As such, our scope was extended to include all County vehicles (excluding the Kaua'i Police and Fire department vehicles).

Our procedures and analyses focused on the years 2011 and 2012. Changes implemented in 2013 are discussed further in the subsequent events section.

¹ As the letter names specific individuals, it is not included as an appendix to this report.

Audit Objectives and Methodology

In order to achieve the audit objective of understanding and assessing the County's internal and administrative controls surrounding the use of County vehicles, we:

- Interviewed, either in person or over the phone, personnel from 11 departments and agencies to discuss the policies and procedures that govern the use of County vehicles. This included gathering examples of any internal policies, as well as any forms or documentation used to monitor the use of vehicles (i.e. vehicle logs, maintenance logs); and
- Met with the Public Works Automotive Superintendent to understand the procurement, maintenance, and fueling processes.

In order to achieve the audit objective of determining compliance with County policies and laws and regulations, we:

- Obtained the existing County vehicle policies, forms, and take-home vehicle listings;
- Gained an understanding of the laws and regulations that apply to the usage of governmental vehicles;
- Read the Take Home Vehicle Policy, 2013 Edition; and
- Obtained a draft of the new County vehicle policy ("Comprehensive Vehicle Policy") currently under development.

In order to achieve the audit objective of identifying potential instances of fraud or abuse related to the use of County vehicles, we:

- Performed data analyses using fuel transaction and maintenance records to identify any anomalies in the data that could suggest fraudulent or abusive behavior; and
- Inquired with department and agency directors and supervisors whether any instances of fraud or abuse were occurring.

The initial interviews with various departments and agencies for the audit were conducted from October 2012 through November 2012. Fieldwork, data analyses, and follow-up inquiries occurred from December 2012 to September 2013.

We conducted this performance audit in accordance with generally accepted government auditing standards ("GAGAS"). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

General Information

County Vehicles

The County has over 600 vehicles that are used to assist the County in its mission to provide services to the residents of Kaua'i. The vehicles are assigned to various departments and agencies. Each of the departments and agencies are responsible for the oversight and procurement of its own vehicles.

The County developed a vehicle use policy on November 29, 2002 ("2002 Policy") (See Appendix 1), which summarized and referenced Chapter 105 of the Hawai'i Revised Statutes, Government Motor Vehicles. The policy communicated that County vehicles should not be used for personal pleasure or personal use, including travel by any employee to or from his place of service or work or to his place of residence.

According to the 2002 Policy, certain employees were permitted to use County vehicles on a take-home basis if they received a recommendation from the Director of Finance and were issued a written permit by the Mayor to use the vehicle for official purposes. As of June 10, 2009, there were four take home vehicles (excluding Fire, Police, and Water) that were on the recommended list issued by the Director of Finance (See Appendix 2).

The Department of Water operates as a semi-autonomous enterprise department of the County, under the direction of the Board of Water Supply. The Board of Water supply consists of seven members, four of whom are appointed by the Mayor with the approval of the County Council. The Department of Water has 17 positions that require County vehicles to be used on a take-home basis. Payroll and benefits are coordinated through the County Finance Department.

Gasboy

In 2005, the County invested more than \$185,000 to purchase and implement the Gasboy Series 1000 FleetKey System ("Gasboy"), which is a microprocessor-based fuel control and data acquisition system. The Gasboy system controlled fuel use primarily through the use of durable plastic keys embedded with a microchip that was encoded with vehicle, equipment, or fuel can information. Each Gasboy key had a unique number, and access to the system was restricted through the use of these keys.

The Gasboy system was used by the County to record and store fueling transaction details. The County required users to enter a reasonable odometer reading into the system before each fueling transaction. If an odometer reading was not reasonable (as defined by the administrator's defined parameters), the system was supposed to prevent fuel from being dispensed.

Additionally, the keys were programmed so that the drivers were notified at the pump every three months to have maintenance performed. Fuel was not dispensed if the vehicle exceeded the three month period without a maintenance visit.

The Gasboy system was maintained and monitored by the Department of Public Works Automotive Division for all departments except for the Department of Water. The Department of Water maintained a separate Gasboy database that was maintained and monitored by the Plant Superintendent.

However, the Gasboy system became obsolete, and maintenance on the system was no longer provided by the developer. Numerous issues with the system prevented automated controls from operating effectively and useful data from being captured. Electrical problems at remote sites also caused the system to be offline and fuel to be tracked using manual logs.

Procedures Performed

General Interviews

We met either in person or over the phone with 11 departments/divisions to identify the policies and procedures over the use of County vehicles. Out of the roughly 30 total departments/divisions in the County, these 11 were selected based on the number of non-commercial County vehicles they were assigned.

We gathered examples of any internal policies, as well as any forms or documentation used to monitor the use of vehicles (e.g. vehicle logs).

Of the 11 divisions/departments that we interviewed:

- Three had their own vehicle policy, aside from the 2002 Policy;
- Seven kept vehicle logs (either for each vehicle, or for the entire vehicle pool); and
- Three tracked odometer readings on their vehicle logs.

County vehicles are either assigned to a specific position (i.e. employee), or shared within the department.

When a vehicle is assigned to an individual position, that person will drive his or her personal vehicle to the location where the County vehicle is parked, and then use the County vehicle for business purposes as needed.

For shared vehicles, employees use a County vehicle as the need arises, and a sign out log is maintained. The keys are stored in a common area and returned after use.

The Department of Liquor does not use County vehicles. Instead, employees use their personal vehicles and receive a monthly flat rate reimbursement. Fuel is provided through the use of gas cards² and no fault insurance is reimbursed. We interviewed this department to gain their perspective on the reimbursement process as compared to the use of County vehicles.

The table on the following page summarizes how the different departments/divisions manage its vehicles and what type of monitoring or reporting was in place as of 2012.

² Gas cards are used to obtain fuel from fueling stations that are not on the Gasboy system.

Department/Division	County Vehicles	Passenger Vehicles	Take Home Vehicles	Assigned (A), Shared (S), or Both (B)	Has own vehicle policy	Regular maintenance	Maintain vehicle logs	Odometer tracked
Public Works - Engineering	6	6	0	A	No	Yes	No	No
Public Works - Buildings	35	32	1	A	No	Yes	No	No
Public Works - Wastewater	21	13	0	A	No	Yes	No	No
Parks and Recreation	72	40	0	B	No	Yes	No	No
Finance - Real Property	7	7	0	S	No	Yes	Yes	No
Water	56	31	17	B	No	Yes	Yes	No
Planning	5	5	0	S	No	Yes	Yes*	No
Liquor	N/A	N/A	N/A	N/A	Yes	N/A	Yes	N/A
Housing	7	7	0	S	No	Yes	Yes	Yes
Elderly Affairs	5	5	0	A	Yes	Yes	Yes	Yes
Prosecuting Attorney	4	4	0	S	Yes	Yes	Yes	Yes

*While the Planning Department did maintain a log of vehicle use, drivers were not required to sign-out of log their use of the vehicles.

Data Sources

We utilized the following data sources to create a database to perform various data analyses:

Gasboy Data Export

We obtained a data export of Gasboy transactions from July 2011 through November 2012. We used this data to track the frequency and volume of fill-ups and estimate the usage of the vehicle assigned to that particular Gasboy key. However, we determined that the odometer readings entered by employees during fill ups were not reliable due to ineffective controls. For example, we found instances where the odometer readings decreased over time or had an extra digit, yet fuel was being dispensed.

DPW Automotive Division Maintenance Odometer Readings

We obtained the handwritten maintenance odometer readings for the period from January 2011 through December 2012 taken by the Department of Public Works (“DPW”) Automotive Division when vehicles come in for maintenance. We noted occasional instances of decreases in mileage over time and back dated entries. Additionally, data was only recorded by one particular maintenance employee. Therefore, if the vehicle was serviced by a different employee, the vehicle’s mileage was not recorded. Nonetheless, this data appeared to be more consistent and accurate than the odometer data entered into the Gasboy system, and was the primary source for our mileage analyses described later in this report.

DPW Automotive Division Vehicle Registry

The Vehicle Registry is a manually maintained spreadsheet that lists the vehicle type, license plate, equipment identification number (“EQ ID”), department, and position assigned. This spreadsheet also tracks the gas keys that are assigned to each EQ ID. However, we noted that the EQ ID numbers are recycled as vehicles are replaced. For example, if a 2001 pick-up truck with an EQID of 111 is replaced with a 2013 SUV, the 2013 SUV could have the same EQID of 111. Although this prevents ID numbers from growing too large, it also makes it difficult to perform queries from available data repositories such as Gasboy since vehicles do not have a unique ID.

Data Analyses

The following analyses were performed using the database. These analytical procedures helped to identify any vehicles that showed unusual usage (as compared to other County vehicles), which could indicate improper usage of the vehicles. We performed these analyses on all County vehicles; however, any commercial vehicles such as flatbed trucks or garbage trucks were excluded from this analysis as personal usage of these vehicles was deemed unlikely.

Month-to-Month Mileage Analysis

This analysis attempted to identify any large decreases in month-to-month mileage. We focused around the month of April 2012, which is around the date that employees may have been informed of the fuel audit that was being performed by the County Auditor's Office, and adjusted their usage. Our analysis identified 14 vehicles with notable decreases in mileage near the April 2012 time period. This analysis was performed using the 2011 and 2012 DPW Automotive Division Maintenance Odometer readings. Because it was necessary to compare mileage over at least two periods of time, only vehicles that appeared on the maintenance logs at least three times were included in this analysis.

Overall Average Mileage Analysis

This analysis identified 31 vehicles with high average monthly mileage. High average monthly mileage for the purposes of this analysis was determined to be 1,000 miles per month, which is approximately 50 miles per work day. Only those vehicles that appeared on the DPW maintenance logs at least twice were included in this analysis.

MPG Analysis

This analysis calculated monthly miles per gallon ("MPG") and attempted to identify any vehicles with especially high MPGs. A high MPG could indicate that fuel was being obtained outside of County fueling stations in an effort to hide personal usage of County vehicles. To calculate the MPG, the monthly average mileage obtained from the Overall Average Mileage Analysis results was used, along with the Gasboy fuel transaction data. As the fuel data was over a 16-month period, the total fuel obtained was divided by 16 to arrive at a monthly average.

Our analysis identified 19 vehicles with a monthly MPG greater than 30 MPG for non-hybrid vehicles, and above 40 MPG for hybrid vehicles. Only those vehicles that appeared on the DPW maintenance logs at least twice were included in this analysis. Additionally, if a vehicle was not in service for the full 16-month period that the Gasboy data export encompassed, the average monthly fuel amount was adjusted. Such factors were identified and noted in our Inquiries into Anomalies, which is discussed in the following section.

Inquiries into Anomalies

In total, our analyses identified 64 vehicles that met the above criteria. Excluding duplicate vehicles, there were 57 unique vehicles that were identified for further investigation based on the three analyses performed. We followed-up with department heads or managers on the results of the data analyses.

	Monthly mileage analysis	Average Miles	MPG Analysis
Department of Public Works	9	20	10
Department of Parks & Recreation	2	11	4
Office of the Prosecuting Attorney	2	0	2
Department of Planning	0	0	1
Civil Defense Agency	1	0	0
Agency on Elderly Affairs	0	0	1
Housing Agency	0	0	1

We first attempted to inquire with departments regarding the results of our data analyses via email. We asked the departments to provide an overview of the use of the vehicle and any explanations as to why vehicle mileage was high, mpg was abnormal, or usage changed during the scope of our audit.

In some cases, the explanations provided in the emails did not fully address the anomalies that needed to be cleared. We held follow-up meetings as necessary to gain a better understanding of the usage and history of these vehicles. Nearly all data anomalies were cleared through the emails and additional meetings, and reasonable explanations were provided.

Common explanations included the following:

- The change in monthly usage was due to the vehicle being transferred to a different division.
- Fluctuation in usage was caused by changes in locations of projects from month to month.
- The vehicle was in the shop causing fluctuation of usage and average gallons should not be calculated using the full 16 months.
- The vehicle was purchased within our audit period, therefore averages should not be calculated using the full 16 months.

- Fuel data was missing from sites that experienced Gasboy outages and utilized manual logs, distorting our calculations.
- Hybrid vehicles were used primarily for short errands within Lihue for which little fuel was consumed.
- The job description of the assigned driver required heavy driving, with average mileage normally exceeding 1,000 miles per month.
- Typos in the maintenance or Gasboy records distorted our calculations.

The results of our interviews and inquiries related to our data analyses addressed the specific concerns that were brought up in the June 2011 anonymous letter. We confirmed that the inappropriate usage that was reported in the letter was no longer occurring. Further, we noted that additional policies and procedures in that department were put into place to prevent such usage from occurring again.

Compliance Testing

We performed testing of the County's compliance with Hawaii Revised Statutes Chapter 105 - Government Motor Vehicles. We noted instances of non-compliance with the following sections.

- *§105-1: Government motor vehicles; certain uses prohibited. Except as provided in section 105-2, it shall be unlawful for any person to use, operate, or drive any motor vehicle owned or controlled by the State, or by any county thereof, for personal pleasure or personal use (as distinguished from official or governmental service or use) including, without limitation to the generality of the foregoing, travel by or conveyance of any officer or employee of the State, or of any county thereof, directly or indirectly, from his place of service or from his work to or near his place of abode, or, directly or indirectly, from such place of abode to his place of service or to his work.*
- *§105-2 Exceptions. Section 105-1 shall not apply to: [...] (5) Any officer or employee of any county who, upon written recommendation of the budget director, is given written permission by the mayor, to use, operate or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the county.*
- *§105-2 Exceptions. Section 105-1 shall not apply to: [...] (6) Any officer or employee of the State, or of any county, who, in case of emergency, because of the person's illness, or the person's incapacity caused by accident while at work, or because of the illness of a member of the person's immediate family including a reciprocal beneficiary while the person is at work, is conveyed in a motor vehicle to the person's place of abode, or to a hospital or other place, but every such use of such a motor vehicle shall be certified to by the officer or by the head of the department, commission, board, bureau, agency, or instrumentality controlling or possessing the motor vehicle immediately thereafter, and the certificate shall be forthwith filed with the comptroller, in the case of the State, or with the budget director, in the case of a county;*

The related instances of non-compliance are incorporated into the issues listed in the Audit Findings and Recommendations chapter.

Subsequent Changes

The new Fuel Master Pro system was rolled out in May of 2013. The new system utilizes swipe cards programmed with a driver's employee number. Automotive Information Module ("AIM") units were installed on select departments' vehicles, and will eventually be installed in all County vehicles. The AIM units automatically transmit odometer readings when pulling up to the pump. These features will eliminate user error and will provide more accurate data. The new system provides more detailed and useful reports and alerts that are forwarded to the department heads via email. The system can provide more information that will be used to assess vehicle utilization.

The Take Home Vehicle Policy was distributed and made effective July 1, 2013 (See Appendix 3). Included in the Take Home Vehicle Policy is a Request for Use of Take Home Vehicle Form ("Attachment A"), which must be submitted for employees to be authorized to take County vehicles home. In accordance with Internal Revenue Service Code 274, the policy states that employees provided with non-qualified nonpersonal-use vehicles are subject to the value of the personal use of the vehicle as a taxable fringe benefit. The Take Home Usage Log ("Attachment B") of the Take Home Vehicle Policy is submitted monthly by each employee who utilizes a County vehicle for commuting purposes.

For employees who were taxed on the benefit of using County vehicles on a take home basis in the August 6, 2013 payroll run, we tested to ensure that all Attachment A's were submitted and approved by the Director of Finance and the Mayor. This was the first payroll run since the issuance of the Take Home Vehicle Policy and the required Attachment A (approval from mayor) and Attachment B (monthly usage log).

The final draft of the Comprehensive Motor Vehicle Policy was approved in August 2013. Although not yet issued, the policy will create accountability for drivers and communicates what is expected of each person as they use County vehicles, or their personal vehicles for County purposes.

The Department of Finance is working on a pilot program for a motor vehicle pool. During this process, they are evaluating and assessing the utilization of vehicles, a process that may help detect abusive behavior.

Difficulties During the Audit

There were several instances that the responses provided remained inconclusive and required additional follow-up. This caused some delays in our audit as we awaited responses. It should also be noted that individuals had a difficult time remembering any factors or explanations for vehicle usage that may have occurred over two years ago. Nonetheless, additional inquiries and discussions were held to ensure that adequate efforts were made to clear any exceptions.

Another difficulty we faced in our audit was the data that we worked with. We had to assume that the data was reliable as we performed our analytics. However, as we made our inquiries, it was brought to our attention that some of the anomalies were caused by inaccurate data. We also had to work with minimal odometer readings. Since vehicles were only logged when they visited the maintenance shop, there were few data points that we could use to calculate variances. The Hanalei and Hanapepe manual fuel logs, which listed odometer readings and gallons dispensed, were also unavailable for the 2011 and 2012 period.

CHAPTER 2

AUDIT FINDINGS AND RECOMMENDATIONS

The findings in this section relate to the policies and procedures in place as of 2012 (the 2002 Policy). Since then, there have been new policies and procedures put into place that may address some or all of the concerns regarding a particular finding. Such changes have been incorporated into the respective sections below.

Finding 1. The County's policy over the use of County vehicles is inadequate, leading to possible noncompliance, abuse, waste, and inefficiency.

Sub-finding 1.1 The 2002 Policy summarized and referenced Chapter 105 of the HRS. Therefore, any instances of noncompliance with the policy were also noncompliance with State law.

According to HRS §105-1, driving to or near an employee's place of abode is prohibited. We confirmed through our interviews that an employee parked the assigned County vehicle at a base yard in the town where the employee resided. This base yard was over 20 miles away from the base yard which the employee was officially stationed. We also confirmed that such behavior has stopped since the issuance of the July 2013 Take Home Vehicle Policy.

According to HRS §105-2(5), County vehicles used for personal use require written recommendation from the Department of Finance. In June 2009, the Director of Finance distributed a list of positions that were allowed to take vehicles home. The list was limited in an effort to reduce County costs, while still maintaining sufficient levels of first responders within the respective departments. Through our interviews, we noted that certain vehicles were being used on a take-home basis that were not on this recommended list. Based on discussions with employees, this has since stopped with the issuance of the 2013 Take Home Vehicle Policy.

Additionally related to HRS §105-2(5), we noted that certain County vehicles that are not considered take-home vehicles are occasionally taken home upon approval from the department head in cases of emergency on-call duties. Examples of such instances include tsunami, hurricane, and severe weather warnings. Not all approvals are documented, as some approvals are made by phone. We discussed this with the Department of Finance, and they will be clarifying the Take Home Vehicle Policy with department heads and recommending that these vehicles be registered as take-home vehicles.

HRS §105-2(5) also states that vehicles allowed to be used on a take home basis require written permits from the Mayor. Such permits were not generated or maintained as of 2012.

According to HRS §105-2(6), medical or family emergency usage of County vehicles is permitted as so long as such usage is documented and communicated to the Director of Finance. The 2002 policy does not define the process of documenting and communicating any medical or family emergency usage of vehicles to the Director of Finance. As a result, this section may be subject to non-compliance with the HRS in the future, although there were no specific medical emergency instances that we were made aware of during our audit.

Recommendation (Sub-finding 1.1):

The July 2013 Take Home Vehicle Policy provides additional clarity in defining the approval process for take home vehicles. It centralizes the documentation of approved take home vehicles.

We tested Attachment A in the July 2013 Take Home Policy to ensure that they were approved by the Director of Finance and the Mayor. There were two exceptions noted where individuals received subsequent approval from the Mayor's office.

The Department of Finance will be sending a memo to the department heads to clarify the definition of incidental and occasional use of non-exempt take home vehicles (See Appendix 5). Examples of such usage are provided to add further clarity, and it will be communicated that vehicles used in such a capacity should be registered as take home vehicles.

The Comprehensive Motor Vehicle Policy includes Attachment B: Authorized Vehicle Operator Agreement and Attachment C: Authorized Take Home Vehicle Operator Agreement. The appropriate agreement is to be signed by all County vehicle operators, which includes the statement, "I will strictly comply with applicable state and local laws and regulations while operating the County vehicle." However, as it currently reads, the statement implies adherence to traffic laws, and not necessarily compliance with the HRS. We recommend that this statement be modified, or an additional statement be added, to clarify that drivers understand their responsibility to be in compliance with the HRS.

We also recommend that the Department of Finance consider adding policies and procedures for reporting medical or family emergency usage of County vehicles, as permitted by HRS §105-2(6).

Sub-finding 1.2 The 2002 Policy did not provide adequate guidance to departments on use of non-take-home vehicles or clear restrictions on use. This resulted in an overall lack of controls and difficulties in determining if abuse was taking place.

Guidelines for vehicle accountability were unclear

Each department was responsible for monitoring its own vehicles. However, most departments did not have formal procedures over usage and monitoring of their vehicles (see table on page 6). One department initially was unsure how many vehicles it had in its possession.

Guidelines for restricted use were inadequate

The 2002 Policy did not elaborate on specific examples of what was acceptable and unacceptable behavior. In our interviews, we noted the following practices that did not appear to be in compliance with the 2002 policy and the HRS.

Employees park non-take-home County vehicles at County lots close to home, and only use personal vehicles from the lot to home. According to HRS Chapter 105-1, driving to or near a person's place of abode is prohibited.

Employees take non-take-home County vehicles home to wash them, as approved by department heads.

We also noted a lack of security over the Department of Water keys that were returned after hours. The existing policy is that if the vehicle is returned after hours and the key box is locked, the keys are left in an unsecured cubby hole until the next workday. While we acknowledge that this practice ensures that vehicles are not taken home, it poses a greater risk that vehicles are not secured.

Recommendation (Sub-finding 1.2):

The draft Comprehensive Vehicle Policy aims to implement County-wide procedures that will make monitoring vehicle usage more consistent across the different departments. The Comprehensive Vehicle Policy requires that all drivers sign Attachment B: Authorized Vehicle Operator Agreement or Attachment C: Authorized Take Home Vehicle Operator Agreement, acknowledging that they understand the policy and the consequences of not following the policy.

The Department of Finance will be sending a memo to the department heads to clarify the definition of incidental and occasional use of non-exempt take home vehicles (See Appendix 5). Examples of such usage are provided to add further clarity, and it will be communicated that vehicles used in such a capacity should be registered as take home vehicles.

The Department of Finance should consider revising the Comprehensive Vehicle Policy to include the clarification of incidental and occasional use of non-exempt take home vehicles. Additionally, procedures for monitoring vehicles that are shared within multiple drivers in a department/division could also be added to this policy for consistency across departments/divisions.

Sub-finding 1.3 Lax monitoring and poor data sources create difficulties in determining if abuse is taking place. At the County level, there did not appear to be consistent monitoring of vehicle usage through any reporting requirements or procedures. In our interviews, department heads were consistent in responding that they were not aware of any abuse of the use of County vehicles, but there are no means for confirming those assumptions other than through public complaints.

The DPW Automotive Division performs a review of the Gasboy reports to identify any fuel abuse. However it does not appear that this review would identify abnormal mileage or personal usage.

Some departments that have vehicle logs can perform a review of the logs to identify any abnormal usage. However, these logs are not submitted to any other overseeing department where usage is assessed.

In addition, odometer readings manually entered at the Gasboy fueling station were not reliable (e.g. readings entered as “99999”), requiring a second source of information to perform data analysis on mileage. Employee numbers entered at the Gasboy fueling station also were not reliable (e.g. 606 instances of employees entering “0” as their identification number), creating ambiguity of the actual employee.

Recommendation (Sub-finding 1.3):

The new Fuel Master Pro system employee swipe cards and AIM units will eliminate user error and will provide more accurate data. The new system provides more detailed and useful reports and alerts that are forwarded to the department heads via email. The system can provide more information that will be used to assess vehicle utilization.

We recommend that the Department of Finance require consistency in the manner that overall usage is monitored. This would allow the County to perform uniform procedures to ensure that vehicle usage is not abusive or non-compliant with the law.

For example, monthly odometer readings from each vehicle could be obtained and maintained in a central repository. Anomalies in data should be investigated timely. In addition to monitoring potential abuse or non-compliance, this data

could be used to help the County determine whether the current allocation and usage of vehicles is the most efficient use of County resources.

The draft Comprehensive Vehicle Policy incorporates County wide procedures and forms that all departments will utilize. The forms included in this policy could be used to report information to an overseeing department or entity, such as the Department of Finance. The Comprehensive Vehicle Policy should be revised to ensure that all scenarios of vehicle usage (i.e. assigned, shared, pooled, etc.) be included.

Finding 2. Tax implications related to the benefit value of the use of County vehicles have not been addressed. Prior to July 2013, the County did not account for the benefit value of the use of take-home County vehicles to employees. As a result, the County may be liable for additional payroll withholding taxes and state retirement contributions.

Using a County vehicle for commuting purposes is considered an employment benefit according to the Internal Revenue Service (“IRS”) Code § 1.61-21, which is simplified in Publication 15-B *Employer's Tax Guide to Fringe Benefits* (See Appendix 4). The IRS requires that the fair market value of such benefits be included in an employee’s wages unless specifically excluded by federal tax rules. Prior to July 2013, the County did not account for the benefit value of the use of take-home County vehicles to employees. As a result, the County may be liable for additional payroll withholding taxes and state retirement contributions.

The Department of Water was waiting on guidance to determine the additional compensation and corresponding tax issues related to those employees who take vehicles home on a regular basis. They were aware of their noncompliance with tax implications, but had chosen to hold off on taking action.

Recommendations (Finding 2):

The Department of Finance is overseeing a new process as of July 2013 to ensure that the fringe benefit value of the personal use of County vehicles is recognized. The 2013 Take Home Vehicle Policy and draft Comprehensive Vehicle Policy implements a \$3 per day charge based on the Commuting Rule for employees who are not elected officials or whose compensation is less than or equal of the Federal Government Executive Level V. For elected officials or employees with compensation greater than the Federal Government Executive Level V, the Annual Lease value Method is used to determine the fringe benefit value.

For fiscal year 2013 and prior years, the Department of Finance will also need to comply with tax rules and regulations on reporting employees’ fringe benefit value of using County vehicles on a take-home basis. The Department of Finance

should retain a tax expert to provide guidance on any potential tax liabilities, including the applicability of relevant statutes of limitations, resulting from employees' usage of take-home vehicles.

In accordance with GAGAS Government Auditing Standards paragraph 7.24a, the Department of Finance is required to address these potential tax implications "as soon as practicable." The Office of the County Auditor should ensure that the requirements of paragraph 7.24a are adequately fulfilled as they relate to this finding.

* * * *

AUDITEE RESPONSE

Finding 1: The County's policy over the use of County vehicles is inadequate, leading to possible noncompliance, abuse, waste, and inefficiency.

Sub-finding 1.1: The 2002 Policy summarized and referenced Chapter 105 of the HRS. Therefore, any instances of noncompliance with the policy were also noncompliance with State law.

Recommendation (Sub-finding 1.1): We recommend that the Department of Finance consider revising the draft Comprehensive Vehicle Policy to ensure drivers understand their responsibility to comply with the County vehicle policy as well as State law.

Auditee Response (Sub-finding 1.1): The Comprehensive Vehicle Policy is close to being released; however revisions will be made prior to finalizing this policy so that those employees driving County vehicles will understand what their responsibilities are in complying with both County policy and State law.

Sub-finding 1.2: The 2002 Policy did not provide adequate guidance to departments on use of non-take-home vehicles or clear restrictions on use. This resulted in an overall lack of controls and difficulties in determining if abuse was taking place.

Recommendation (Sub-finding 1.2): The draft Comprehensive Vehicle Policy aims to implement County-wide procedures that will make monitoring vehicle usage more consistent across the different departments. The Department of Finance should consider revising the Comprehensive Vehicle Policy to add examples of acceptable and non-acceptable behavior in instances where guidance was inadequate in the past.

Auditee Response (Sub-finding 1.2): Department of Finance will consider revisions to the Comprehensive Vehicle Policy to further illustrate what is considered acceptable and non-acceptable behavior. While individual departments will be tasked with monitoring vehicle usage for their own employees, a general understanding of appropriate behavior must be established to have an effective monitoring program. Department of Finance will conduct training to assure that those charged with monitoring usage have a clear understanding of acceptable and non-acceptable behavior.

Sub-finding 1.3: Lax monitoring and poor data sources create difficulties in determining if abuse is taking place. At the County level, there did not appear to be consistent monitoring of vehicle usage through any reporting requirements or procedures. In our interviews, department heads were consistent in responding that they were not aware of any abuse of the use of County vehicles, but there are no means for confirming those assumptions other than through public complaints.

Recommendation (Sub-finding 1.3): The draft Comprehensive Vehicle Policy aims to implement County-wide procedures that will make monitoring vehicle usage more consistent across the different departments. We recommend that the Department of Finance require consistency in how overall usage is monitored. This would allow the County to perform uniform procedures to ensure that vehicle usage is not abusive or non-compliant with law. The Comprehensive Vehicle Policy should be revised to ensure that all scenarios of vehicle usage (i.e. assigned, shared, pooled, etc.) be included.

Auditee Response (Sub-finding 1.3): We will address the need to develop appropriate monitoring systems as intended in the recently promulgated Take Home Vehicle Policy and soon to be released Comprehensive Vehicle Policy by working with department heads and personnel delegated to monitor these activities. We intend to start with meetings with department heads and those who manage vehicles to seek their ideas as to the issue of monitoring and enforcement protocol.

Finding 2: Tax implications related to the benefit value of the use of County vehicles have not been addressed. Prior to July 2013, the County did not account for the benefit value of the use of take-home County vehicles to employees. As a result, the County may be liable for additional payroll withholding taxes and state retirement contributions.

Finding 2: Using a County vehicle for commuting purposes is considered an employment benefit according to the Internal Revenue Service ("IRS") Publication 15-B *Employer's Tax Guide to Fringe Benefits* (See Appendix 4). The IRS requires that the fair market value of such benefits be included in an employee's wages unless specifically excluded by federal tax rules. Prior to July 2013, the County did not account for the benefit value of the use of take-home County vehicles to employees. As a result, the County may be liable for additional

payroll withholding taxes and state retirement contributions.

Recommendation (Finding 2): The Department of Finance needs to comply with tax rules and regulations on reporting the fringe benefit value of using County vehicles by employees. This includes determining whether the fringe benefit value recognized in prior years needs to be reported and adjusted. A tax expert should be retained to provide guidance in this area. In accordance with GAGAS Government Auditing Standards paragraph 7.24a, the Department of Finance is required to address these potential tax implications “as soon as practicable.”

Auditee Response (Finding 2): Inasmuch as hiring an outside consultant could likely cost more than the actual tax liabilities associated with the fringe benefits received by various County employees, the Administration is considering working directly with the IRS to deal with this issue. Since take home vehicles are considered a fringe benefit, not wages, there should not be any outstanding liabilities with the State ERS.

RECEIVED

Bernard P. Carvalho, Jr.
Mayor



'13 DEC 20 P12:25

Steven A. Hunt
Director of Finance

Nadine K. Nakamura
Managing Director

OFFICE OF
THE COUNTY AUDITOR
COUNTY OF KAUAI

Sally A. Motta
Deputy Director of Finance

DEPARTMENT OF FINANCE

County of Kaua'i, State of Hawai'i

4444 Rice Street, Suite 280, Lihu'e, Hawai'i 96766
TEL (808) 241-4200 FAX (808) 241-6529

MEMORANDUM

TO: Ernesto G. Pasion, County Auditor

FROM: Steven A. Hunt, Director of Finance 

DATE: December 20, 2013

SUBJECT: Response to November 27, 2013 submittal of the Draft Audit Report

Aloha!

Attached is the formal response to the internal audit findings and recommendations as related to County of Kaua'i vehicles.

Mahalo.

AUDITEE RESPONSE

Sub-finding 1.1: The 2002 Policy summarized and referenced Chapter 105 of the HRS. Therefore, any instances of noncompliance with the policy were also noncompliance with State law.

Recommendation (Sub-finding 1.1): We recommend that the Department of Finance consider revising the draft Comprehensive Vehicle Policy to ensure drivers understand their responsibility to comply with the County vehicle policy as well as State law.

Auditee Response (Sub-finding 1.1):

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Sub-finding 1.2: The 2002 Policy did not provide adequate guidance to departments on use of non-take-home vehicles or clear restrictions on use. This resulted in an overall lack of controls and difficulties in determining if abuse was taking place.

Recommendation (Sub-finding 1.2): The draft Comprehensive Vehicle Policy aims to implement County-wide procedures that will make monitoring vehicle usage more consistent across the different departments. The Department of Finance should consider revising the Comprehensive Vehicle Policy to add examples of acceptable and non-acceptable behavior in instances where guidance was inadequate in the past.

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Department of Finance will consider revisions to the Comprehensive Vehicle policy to further illustrate what is considered acceptable and non-acceptable behavior. While individual departments will be tasked with monitoring vehicle usage for their own employees, a general understanding of appropriate behavior must be established to have an effective monitoring program. Department of Finance will conduct training to assure that those charged with monitoring usage have a clear understanding of acceptable and non-acceptable behavior.

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Recommendation (Finding 2): The Department of Finance needs to comply with tax rules and regulations on reporting the fringe benefit value of using County vehicles by employees. This includes determining whether the fringe benefit value recognized in prior years needs to be reported and adjusted. A tax expert should be retained to provide guidance in this area. In accordance with GAGAS Government

Auditing Standards paragraph 7.24a, the Department of Finance is required to address these potential tax implications "as soon as practicable."

Auditee Response (Finding 2):

Inasmuch as hiring an outside tax consultant could likely cost more than the actual tax liabilities associated with the fringe benefits received by various County employees, the Administration is considering working directly with the IRS to deal with this issue. Since take home vehicles are considered a fringe benefit, not wages, there should not be any outstanding liabilities with the state ERS.

APPENDIX 1 - 5

Nov-29-2002 03:41:00

From: MAYOR'S OFFICE - KAUAI

8082418877

T-265 P.001/003 S-727

Maryanne W. Kusaka
Mayor



Wallace G. Rezendes, Sr.
Administrative Assistant

OFFICE OF THE MAYOR

MEMORANDUM

TO: Chief Freitas and all Departments/Division Heads
All members of the Police Commission

FROM: *MW* Mayor Maryanne W. Kusaka

DATE: November 29, 2002

RE: Policy on Use of County Vehicles

Attached is a copy of our Policy for use of County Vehicles. Please forward a copy to all employees who use vehicles to provide County services and related County duties. Mahalo

- | | | |
|-------|---------------------------------------|---|
| Dist: | Hartwell Blake/Attorney | Eric Honma/Liquor Control |
| | Cesar Portugal/Ian Costa/Public Works | Malcolm Fernandez/Personnel Services |
| | Mark Marshall/Civil Defense | Chief David Sproat/Fire |
| | Dee Crowell/Sheliah Miyake-Planning | Sharon Agnew/Youth Programs |
| | Mattie Yoshioka/OCA | Emie Lau/Ed Tschupp-Water |
| | Chief George Freitas/Police | Finance Director/Eugene Jimenez-Finance |
| | Gini Kapali/OED | |

POLICY ON USE OF COUNTY VEHICLES

This policy is intended to provide certain employees with a County vehicle¹ to assist the County in its mission to provide services to the residents of Kaua'i. This policy is not meant as a convenience to certain employees; rather, it is meant to enable employees to quickly respond to work-related situations. For liability reasons, any personal use of the vehicles, no matter how minor it may seem, is not allowed. For example, giving a ride to a family member or to a friend, even if it does not involve a detour from the employee's route, is not allowed. Stopping at a store on the way home in a County vehicle is likewise prohibited.

The overall policy is that:

No person shall use any County vehicle for personal pleasure or personal use, including, travel by any employee to or from his place of service or work or to his place of abode. PROVIDED, HOWEVER, this policy shall not apply to the following:

- 1) The mayor;
- 2) Any officer or employee (hereinafter, employee) of the County who, upon written recommendation of the Director of Finance, is issued a written permit² by the Mayor to use a County vehicle for official purposes;
- 3) Any employee of the County, who, in case of emergency because of the employee's illness or the employee's incapacity caused by accident while at work or because of the illness of a member of the employee's immediate family while the employee is at work, is conveyed in a County vehicle to the employee's place of abode, to a hospital, or to another place.

Every such instance of the personal use of a County vehicle shall be immediately certified by the employee or by the head of the department controlling or possessing the County vehicle, and the certificate³ shall be immediately filed with the Director of Finance.

Permits issued under 2) and 3) above, may be limited in time, routes, purposes or character of use; may extend to general classes of officers or employees; and may be canceled or revoked at any time without notice.

Pursuant to the provisions of Chapter 105, Hawaii Revised Statutes⁴, penalties for violation of this policy shall include a fine of not more than \$50 or imprisonment of not more than 10 days, or both. Any person who is found guilty more than twice by a court of competent jurisdiction of violating this policy may be dismissed or discharged from the person's office or employment, any other law to the contrary notwithstanding.

¹ vehicle - a vehicle owned or controlled by the County of Kauai.

² permit - a written certificate in form prescribed by the Department of Finance.

³ certificate - a report of a non-permitted personal use of a County vehicle, in form prescribed by the Department of Finance.

⁴ Chapter 105, Hawaii Revised Statutes - copy attached for reference.

§ 106-1 PUBLIC PROPERTY, PURCHASING AND CONTRACTING § 105-1

CHAPTER 105

GOVERNMENT MOTOR VEHICLES

- | | |
|--|--|
| <p>Sec.
105-1. Government motor vehicles; certain uses prohibited.
105-2. Exceptions.
105-3. Permits revocable.
105-4. Enforcement; duties of sheriffs and police officers.
105-5. Penalties; dismissal.</p> | <p>Sec.
105-6. Inscription on state motor vehicles.
105-7. Inscription on county motor vehicles.
105-8. Character of inscription.
105-9. Duty of performance.
105-10. Motor vehicles; abjector.
105-11. State motor pool revolving fund.</p> |
|--|--|

Cross references. -- As to registration of vehicles owned by foreign government, United States government, or State or political subdivision thereof, see § 288-86.

§ 105-1. Government motor vehicles; certain uses prohibited.

Except as provided in section 105-2, it shall be unlawful for any person to use, operate, or drive any motor vehicle owned or controlled by the State, or by any county thereof, for personal pleasure or personal use (as distinguished from official or governmental service or use) including, without limitation to the generality of the foregoing, travel by or conveyance of any officer or employee of the State, or of any county thereof, directly or indirectly, from his place of service or from his work to or near his place of abode, or, directly or indirectly, from such place of abode to his place of service or to his work. [L 1919, c 227, pt of § 1; RL 1943, pt of § 462; am L 1949, c 339, pt of § 1(a); RL 1955, § 7-10; HRS § 105-1]

Cross references. -- As to inapplicability of §§ 105-1 through 105-10 to civil defense or other emergency functions, see §§ 128-10 and 128-13. As to exception of government motor vehicles from most of the motor vehicle safety responsibility act, see § 287-15.

OPINIONS OF ATTORNEY GENERAL

Liability of state employee for damage to state vehicle. -- Where a state employee is negligent and thereby causes a state vehicle to be damaged, he has committed a breach of the duty of care owed to his principal, and the state is entitled to hold the employee financially responsible for such damage. Op. Att'y Gen. No. 63-31 (1963).

Taxation for personal use of state-assigned vehicle. -- The personal use value of state-assigned vehicles would not be included in Department of Public Safety's (PSD) Noncot-

ics Enforcement Division (NED) investigators' gross income for state and federal income tax purposes if the investigators first obtained written permission for personal use (not for pleasure) of state vehicles from the governor, upon the written recommendation of the state comptroller. Furthermore, such use must be: (1) by law enforcement officers; (2) incident to law enforcement functions; and (3) validly authorized by the PSD. Op. Att'y Gen. No. 91-03 (1991).

§ 105-2

GOVERNMENT MOTOR VEHICLES

§ 105-3

§ 105-2. Exceptions.

Section 105-1 shall not apply to:

- (1) The governor;
- (2) The mayor of any county;
- (3) Any member of a police department or a fire department or of the staff of a hospital, or any officer or employee of the board of water supply of the city and county of Honolulu, when using a motor vehicle for a personal purpose incidental to the person's service or work (but not for pleasure);
- (4) Any officer or employee of the State who, upon written recommendation of the comptroller, is given written permission by the governor to use, operate, or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the State;
- (5) Any officer or employee of any county who, upon written recommendation of the budget director, is given written permission by the mayor to use, operate or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the county;
- (6) Any officer or employee of the State, or of any county, who, in case of emergency, because of the person's illness, or the person's incapacity caused by accident while at work, or because of the illness of a member of the person's immediate family including a reciprocal beneficiary while the person is at work, is conveyed in a motor vehicle to the person's place of abode, or to a hospital or other place, but every such use of such a motor vehicle shall be certified to by the officer or by the head of the department, commission, board, bureau, agency, or instrumentality controlling or possessing the motor vehicle immediately thereafter, and the certificate shall be forthwith filed with the comptroller, in the case of the State, or with the budget director, in the case of a county; and
- (7) The assigned driver of a Van Go Hawaii vehicle or any other state ridesharing program vehicle. [L. 1919, c 227, pt of § 1; RL 1945, pt of § 462; am L 1949, c 389, pt of § 1(a); RL 1955, § 7-11; am L 1965, c 11, § 1; HRS § 105-2; am L 1981, c 49, § 1; gen ch 1993; am L 1997, c 383, § 34]

§ 105-3. Permits revocable.

Permits under section 105-2 may be limited to hours, routes, purposes or character of use, may extend to general classes of officers or employees, and may be canceled or revoked at any time without notice. The burden of proof shall be upon any officer or employee given a written permit under subdivisions (4) or (5) of section 105-2 to prove, in any proceedings, that the officer or employee had, at the time of so using, operating, or driving any such motor vehicle, an unrevoked written permit to so use, operate, or drive the same. Likewise, the burden of proof shall be upon any person conveyed in any such motor vehicle as provided in subdivision (6), section 105-2 to prove, in any proceedings, that the officer, or head of the department, commission, board, bureau, agency, or instrumentality, controlling or possessing such motor vehicle certified to such use and filed such certificate as required by subdivision

§ 105-4 PUBLIC PROPERTY, PURCHASING AND CONTRACTING § 105-7

(6). [L 1919, c 227, pt of § 1; RL 1945, pt of § 462; am L 1949, c 389, pt of § 1(a); RL 1955, § 7-12; HRS § 105-3; am imp L 1984, c 90, § 1]

§ 105-4. Enforcement; duties of sheriffs and police officers.

The sheriff and the sheriffs deputies, or any police officer, within their respective jurisdictions, shall investigate any violation, or suspected violation of, and shall enforce section 105-1. [L 1949, c 389, pt of § 1(d); RL 1955, § 7-13; am L 1963, c 85, § 3; HRS § 105-4; am imp L 1984, c 90, § 1; am L 1989, c 211, pt of § 10; am L 1990, c 281, pt of § 11]

§ 105-5. Penalties; dismissal.

Every person who violates section 105-1 shall be fined not more than \$50 or imprisoned not more than ten days, or both.

Any person, then being an appointed officer or an employee of the State or of any county, who is found guilty more than twice by a court of competent jurisdiction of violating section 105-1 may be dismissed or discharged from the person's office or employment, any provision of chapter 76, or of any other law, to the contrary notwithstanding. [L 1949, c 389, pt of § 1(d); RL 1955, § 7-14; HRS § 105-5; am imp L 1984, c 90, § 1]

Cross references. — As to classification of offense and punishment, see §§ 701-707, 708-640 and 709-653.

§ 105-6. Inscription on state motor vehicles.

Unless excepted, every motor vehicle owned or controlled by the State shall bear on both sides thereof a facsimile of the state seal and beneath the seal the words "For Official Use Only" and the name of the department, commission, board, bureau, office, agency, or instrumentality thereof controlling or possessing such motor vehicle. This section shall not apply to such motor vehicles as are furnished the governor, lieutenant governor, chief justice of the supreme court, and the president of the University of Hawaii or to such motor vehicles as are used in any ridesharing program of the State, for undercover investigative work, law enforcement, and other functions as approved by the comptroller. Motor vehicles owned or controlled by the University of Hawaii may bear the University of Hawaii logo or seal, or both, in lieu of the state seal. [L 1919, c 227, pt of § 2; RL 1945, pt of § 463; am L 1949, c 389, pt of § 1(b); RL 1955, § 7-15; HRS § 105-6; am L 1969, c 38, § 1; am L 1981, c 49, § 2; am L 1993, c 115, § 14]

§ 105-7. Inscription on county motor vehicles.

Unless excepted every motor vehicle owned or controlled by any county shall bear on both sides thereof the following inscription: "For Official Use Only." Underneath the inscription shall be the name or title of the county and the name of the department, commission, board, bureau, officer, agency, or

Bernard P. Carvalho, Jr.
Mayor

Gary K. Heu
Administrative Assistant



Wallace G. Rezendes, Jr.
Director of Finance

Belma A. Baris
Deputy Director of Finance

COUNTY OF KAUA'I
DEPARTMENT OF FINANCE
4444 Rice Street, Suite 208
Lihue, Hawaii 96766

June 10, 2009

TO: ~~Donald Fujimoto, County Engineer~~
Ed Renaud, Deputy County Engineer
Robert Westerman, Fire Chief
Daryl Perry, Chief of Police
Mark Marshall, Civil Defense Administrator

FROM: Wallace Rezendes, Jr., Director of Finance 

SUBJECT: Take Home Vehicle Fleet

Per our discussions during the FY 10 budget, attached is a spreadsheet detailing the positions that will be allowed to take home vehicles. As you are aware, these changes were the result of discussions that intended to reduce county costs while still maintaining sufficient levels of first responders within your respective departments.

I thank all of you for your input and support.

Please contact me should you have any questions.

C: Gary Heu, Administrative Assistant to the Mayor

POLICE
Presently Taking
Home Cars

D. Perry - Chief
 M. Begley - Deputy Chief
 H. Barriga - CIU Lt.
 M. Gordon - CIU Sgt.
 C. Callo - CIU Officer
 D. Miyamoto - Admin Lt.
 P. Kanoko - Admin Lt.
 M. Loyosa - Veh Maintenance
 E. Apelas - Evidence Spec.
 R. Asher - ISB Asst. Chief
 R. Ventura - ISB Capt.
 J. Takamura - ISB Lt.
 E. Shibuya - ISB Lt.
 R. Rosa - ISB Sgt.
 M. Rivera - ISB Detective
 S. Sheldon - ISB Detective
 J. Kurasaki - ISB Detective
 J. Adric - ISB Detective
 C. Oliver - ISB Detective
 P. Applegate - ISB Detective
 P. Balbarino - ISB Detective
 D.R. Chong Tim - ISB Detective
 K. Ledesma - ISB Detective

N. Garcia - ISB Officer
 S. Hamberg - ISB Officer
 Total (Various) = 25 Officers/Staff

Patrol Bureau = 70 Officers
 Grand Total Take Home = 95

FIRE
 Westerman - Chief
 Blalock - Deputy
 Mechanic

TOTAL : 3

CIVIL DEFENSE

M. Marshall - CD Administrator

PUBLIC WORKS

D. Fujimoto - County Engineer
 E. Renaud - Deputy County Engineer
 R. Nishikawa - Roads Div Chief
 K. Morikawa - Roads Superintendent
 P. Shlmamoto - DRO Kapaa
 M. Sugahara - DRO Hanalei
 C. Balmores - DRO Hanapepe (TA)
 B. Inouye - Buildings Officer
 W. Koga - Bldgs Field Superintendent
 Custodial Services Supervisor
 Janitor Working Supervisor (West)
 Janitor Supervisor (East)
 Plumber Working Supervisor
 Plumber
 Plumber
 Plumber
 Lead Electrician/Elect. Equip. Repairer
 Electrician/Elect. Equip. Working Sup.
 Electrician
 Electrician
 Electrician
 Wastewater Treatment Plant Sup.
 Solid Waste Superintendent
 D. Adachi - Automotova Superintendent
 Automotive Supervisor
 Total = 25

Total County = 124

County-wide Total Reduction = 30 Vehicles

Allow (effective 7/1/09)
Take Home Cars

H. Barriga - CIU Lt.
 M. Gordon - CIU Sgt.
 C. Callo - CIU Officer

E. Shibuya - ISB Lt.
 R. Rosa - ISB Sgt.
 M. Rivera - ISB Detective
 S. Sheldon - ISB Detective
 J. Kurasaki - ISB Detective
 J. Adric - ISB Detective
 C. Oliver - ISB Detective
 P. Applegate - ISB Detective
 P. Balbarino - ISB Detective
 D.R. Chong Tim - ISB Detective
 K. Ledesma - ISB Detective

Total (Various) = 14 Officers/Staff

Patrol Bureau = 70 Officers*

Grand Total Take Home = 84

Westerman - Chief
 Blalock - Deputy
 Mechanic
 TOTAL: 3

M. Marshall - CD Administrator**

K. Morikawa - Roads Superintendent

W. Koga - Bldgs Field Superintendent

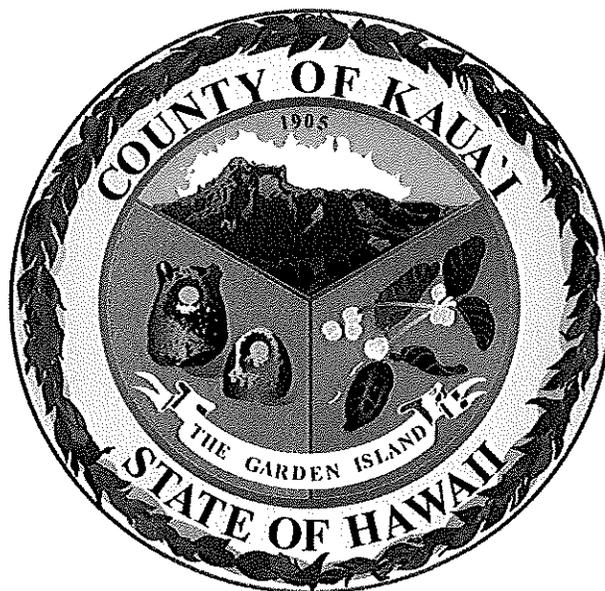
D. Adachi - Automotova Superintendent

Total = 3

Total County = 84

* Of the 70 Patrol Cars authorized for take home, 3 officers elect not to take home cars
 ** CD Administrator elects not to take home car

COUNTY OF KAUA'I



Take Home Vehicle Policy

2013 EDITION

Bernard P. Carvalho, Jr.
Mayor



Gary K. Heu
Managing Director

OFFICE OF THE MAYOR
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 235, Lihu'e, Hawai'i 96766
TEL (808) 241-4900 FAX (808) 241-6877

MESSAGE FROM THE MAYOR

July 2013

Aloha!

At the County of Kaua'i, we strive to provide our employees with the necessary tools and resources to optimize their work efforts. Under certain circumstances, employees shall be authorized to take home County owned vehicles as part of their employment requirement. Continuation of this privilege requires a commitment to following established policies that may change over time.

There have been various communications over the years regarding policies and procedures for County owned vehicles to be taken home. This is the first overall policy with regards to this issue. As an employee, it is important for you to know and understand this policy, including the possible tax implications of this fringe benefit.

Please familiarize yourself with this policy and ask your supervisor if you have any questions or concerns. This document supersedes all previous policies and earlier communications on this matter and serves as an interim policy pending the issuance of the County's comprehensive Motor Vehicle Policy.

Mahalo for your commitment to making the County of Kaua'i the best place to work on the beautiful Garden Island!

Mayor Bernard P. Carvalho, Jr.



County of Kaua'i Policy

Policy Title:	Take Home Vehicle Policy		
Policy ID:	COKP0012	Version:	1.0
		Effective Date:	07/01/2013

PURPOSE:

The County of Kaua'i is responsible for ensuring that all County owned vehicles are properly authorized and utilized for the sole purpose of conducting official County business and are operated safely and efficiently in accordance with established State and County laws, regulations and relevant policies and procedures.

In certain circumstances, it is in the best interest of the County to allow an employee to utilize a County owned vehicle for the purposes of travel to and from their residence to their assigned work location.

This document hereby establishes policies and procedures regarding the authorization and use of Take Home Vehicles.

SCOPE:

The Take Home Vehicle Policy is applicable to any employee of the County of Kaua'i authorized to drive and take home a County owned vehicle.

Employees of the County of Kaua'i Police Department shall also comply with the Kaua'i Police Department General Order No. 98-04, Take Home Vehicle-Operation Procedure.

FAILURE TO COMPLY:

Enforcement of this policy is the responsibility of each Department/Agency Head and periodic, random monitoring and audits of compliance may be conducted at the discretion of the Finance Director.

Failure to comply with the County's Take Home Vehicle Policy shall subject an employee to disciplinary action in accordance with respective collective bargaining agreements, as well as possible income tax ramifications.

BACKGROUND:

Not applicable.

DEFINITIONS:

ANNUAL LEASE VALUE METHOD: Used to determine the value of a vehicle that is provided to an employee for commuting use by using its annual lease value multiplied by the

percentage of personal miles out of the total miles driven by an employee. For a vehicle that is provided only part of the year, a prorated annual lease value or a daily lease value may be used.

The annual Lease Value Method shall be used for elected officials or for employees whose compensation is more than or equal to the Federal Government Executive Level V.

ASSIGNED WORK LOCATION: The County of Kaua'i work site that the employee is officially assigned on a daily basis to perform his or her duties, as determined by the employee's Department Head.

CALL OUT: Directed and/or voluntary requirement of an employee to report to a work site during off duty time to respond to emergencies which require immediate response to protect life and property.

COMMUTING MILES: Miles traveled with a Take Home Vehicle between the employee's primary place of residence and assigned work location. (In the situation when an employee is responding to an emergency call out during off duty hours, those miles are not considered commuting miles).

COMMUTING RULE: Used to determine the value of a vehicle that is provided to an employee for commuting use by multiplying each one-way commute (from home to work or from work to home) by \$1.50. If more than one employee commutes in the vehicle, this value applies to each employee. This amount must be included in the employee's wages or reimbursed by the employee.

The Commuting Rule can only be used if an employee is not an elected official or whose compensation is less than or equal to the Federal Government Executive Level V.

COUNTY OWNED VEHICLE: Any licensed motor vehicle owned or leased, and maintained and insured by the County of Kaua'i; and legally certified and approved to be operated upon a public highway or road.

EMPLOYEE: Any person who is on the County's current payroll as a fulltime, parttime, or seasonal hire.

OFF DUTY: Begins at the end of a scheduled or unscheduled (Call-Out) work shift and terminates at the start of the next scheduled or unscheduled work shift.

OFFICIAL COUNTY BUSINESS: Activities relating to public duty or responsibility conducted with the knowledge and proper authorization of the County, for the benefit of the County and directly related to County matters.

ON DUTY: Begins at the start of scheduled or unscheduled (Call-Out) work shift and terminates at the end of a scheduled or unscheduled work shift.

PERSONAL USE OF COUNTY OWNED VEHICLE: Includes commuting from one's residence to assigned work location and from assigned work location to one's residence and any other uses not considered Official County Business.

PUBLIC SAFETY OFFICER: An individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or a member of a rescue squad or crew.

QUALIFIED NONPERSONAL-USE VEHICLE: Any vehicle an employee is likely to use more than minimally for personal purposes because of its design. Personal use of a qualified nonpersonal-use vehicle is not a taxable fringe benefit for the driver (but applicable to any passengers in the vehicles) and include the following:

- 1) Clearly marked, through painted insignia or words, police, fire, and public safety officer vehicles;
- 2) Unmarked vehicles used by law enforcement officers if the use is officially authorized;
- 3) An ambulance or hearse used for its specific purpose;
- 4) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds;
- 5) Delivery trucks with seating for the driver only, or the driver plus a folding jump seat;
- 6) A passenger bus with a capacity of at least 20 passengers used for its specific purpose;
- 7) School buses;
- 8) Tractors and other special-purpose farm vehicles;
- 9) Bucket trucks, cement mixers, combines, cranes and derricks, dump trucks (including garbage trucks), flatbed trucks, forklifts, qualified moving vans, qualified specialized utility repair trucks, and refrigerated trucks;
- 10) Pickup trucks clearly marked with permanently affixed decals or special painting with the County seal or other County associated markings and meets either of the following requirements: 1) equipped with at least a hydraulic lift gate, permanent tanks or drums, permanent side boards or panels that materially raise the level of the sides of the truck bed, or other heavy equipment (electric generator, welder, boom, or crane used to tow automobiles or other vehicles); or 2) is used primarily to transport a particular type of load in a construction, manufacturing, processing, farming, mining, drilling, timbering, or other similar operation for which it was specially designed or significantly modified;
- 11) Vans clearly marked with permanently affixed decals or special painting with the County seal or other County associated markings and has only a seat for the driver and one other person and has either permanent shelving that fills most of the cargo area or an open cargo area and the van always carries merchandise, material or equipment used for County functions; and
- 12) Any other vehicle listed under Section 14 of the Internal Revenue Service (IRS) Taxable Fringe Benefit Guide as a qualified nonpersonal-use vehicle.

QUALIFIED MOVING VAN: Any truck or van used by a professional moving company in the trade or business of moving household or business goods if 1) 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 moving sites; 2) 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 3) personal use is limited to situations in which it is more convenient to the employer, because of the location of the move site, for the van not to be returned to the employer's business location.

QUALIFIED SPECIALIZED UTILITY TRUCK: Any truck (not including a van or pickup truck) specifically designed and used to carry heavy tools, testing equipment, or parts if 1) 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 2) 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.

TAKE HOME VEHICLE: A County owned vehicle designated to a specific employee for which overnight parking at a non-County site and commute from the employee's residence to the employee's assigned work location are duly authorized in writing.

LEGISLATION:

Hawai'i Revised Statutes (HRS) §105-1, Government Motor Vehicles, certain uses prohibited

Hawai'i Revised Statutes (HRS) §105-2, Government Motor Vehicles, exceptions

Hawai'i Revised Statutes (HRS) §105-7, Government Motor Vehicles, inscriptions on County motor vehicles

Sections 13 and 14 of the Internal Revenue Service (IRS) Taxable Fringe Benefit Guide

POLICY:

All County owned vehicles shall be used in the execution of official County business and shall be used in the most efficient, economical, and practical manner possible.

Only authorized County of Kaua'i employees shall operate County owned vehicles and only County of Kaua'i employees, contractors and other individuals with related official County business shall be allowed to be a passenger in a County owned vehicle.

All vehicles shall comply with vehicle labeling or inscription requirements as specified by HRS, §105-7 and each driver shall obey all State and local motor vehicle laws and ordinances.

As permitted by law (HRS §105-1 and HRS §105-2), the County shall authorize specific employees to take home vehicles and travel to and from work. Employees are encouraged to use the most direct route to and from their assigned work location and respective residence.

Take Home Vehicles may not be utilized for any other personal or non-County related travel or for pleasure.

With the exception of union collective bargaining agreements or in emergency medical situations, passengers are not allowed in an employee's Take Home Vehicle during off-duty hours including during an employee's commute to and from his or her residence or assigned work location.

In general, the personal use (including an employee's work commute) of a County-owned vehicle is generally a taxable fringe benefit unless the vehicle is defined as a qualified non-personal use vehicle. It is the County's responsibility to determine the actual value of the fringe benefit and include the taxable portion in the employee's income.

PROCEDURE(S) THAT APPLY:

A. Authorization for Use of Take Home Vehicle

Unless provided for in HRS §105-2, Departments/Agencies that believe that an employee should be authorized the use of Take Home Vehicle in accordance with the provisions of this policy shall complete and submit a Request for Use of Take Home Vehicle Form (Attachment A) to the Department of Finance.

Departments/Agencies shall use reasonable judgment and discretion to determine the operational and cost effective usage necessary to best meet the Department/Agency's objectives. Typically, employees whose job duties require their direct and immediate response to emergency situations during off duty hours would warrant the need for a Take Home Vehicle.

Authorization for the use of a County Take Home Vehicle shall be granted on an annual basis and shall expire at the end of each calendar year.

When the use of a County Take Home Vehicle is no longer required by an employee, the Department/Agency shall notify the Director of Finance so that the authorization can be cancelled. The reason for the cancellation (e.g., the employee's separation, retirement, transfer or promotion) shall be stated on the form.

B. Tax Requirements

In accordance with Internal Revenue Service (IRS) Code, 274, employees provided with a Take Home Vehicle that meets the definition of a qualified nonpersonal-use vehicle are exempt from income taxation.

Employees that are provided with a Take Home Vehicle that does not meet the qualified nonpersonal-use criteria are subject to the value of the personal use of the Take Home Vehicle as a taxable fringe benefit.

Based on an employee's status, the Commuting Rule or Annual Lease Value Method shall be used in computing the value of taxable benefits.

The value of this benefit must be included in an employee's wages. Federal and State income tax, social security, and Medicare payroll deductions will be made to an employee's paycheck on a monthly basis.

Employees shall be required to complete the Take Home Vehicle Usage Log (Attachment B) and submit to the Department of Finance on a monthly basis.

Incidental and occasional use of non-exempt Take Home Vehicles shall be considered a nontaxable fringe benefit. Examples are situations whereby an employee's assigned exempt vehicle is down for repairs, an employee is unable to return the vehicle to the designated baseyard before it closes, an employee will be conducting business away from the employee's normal assigned work location and outside an employee's normally scheduled work hours, or impending inclement weather necessitates other employees to be on-call.

REFERENCE:

Role/Responsibility	Employee/Committee Name(s)
Origination	Finance-Accounting Division
Modification	Finance-Accounting Division
Review	Mayor's Office, Attorneys, Personnel Services, Risk Management
Approval	Mayor's Office, County Attorney's Office

MODIFICATION HISTORY:

Date	Version	Modifications By	Comments
07-01-2013	1.0	Director of Finance	Original policy

ATTACHMENTS:

Attachments listed below are included in the policy document following this section.

Name	Purpose
Attachment A	Request for Use of Take Home County Vehicle
Attachment B	Take Home Vehicle Usage Log

County of Kaua'i
Request for Use of Take Home Vehicle

Unless provided for in HRS §105-2, all employees must complete this form on an annual basis for continued authorization to use and take home a County owned vehicle. The following employees need not complete this form:

- 1) the governor;
- 2) the mayor of any county;
- 3) any member of a police department or fire department or of the staff of a hospital, or any officer or employee of the board of water supply of the city and county of Honolulu, when using a motor vehicle for a personal purpose incidental to the person's service or work (but not for pleasure);
- 4) any officer or employee of the State who, upon written recommendation of the comptroller, is given written permission by the governor to use, operate, or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the State;
- 5) any officer or employee of any county who, upon written recommendation of the budget director, is given written permission by the mayor, to use, operate or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the county;
- 6) any officer or employee of the State, or of any county, who, in case of emergency, because of the person's illness, or the person's incapacity caused by accident while at work, or because of the illness of a member of the person's immediate family including a reciprocal beneficiary while the person is at work, is conveyed in a motor vehicle to the person's place of abode, or to a hospital or other place, but every such use of a motor vehicle shall be certified to by the officer or by the head of the department, commission, board, bureau, agency, or instrumentality controlling or possessing the motor vehicle immediately thereafter, and the certificate shall be forthwith filed with the comptroller, in the case of the State, or with the budget director, in the case of the county; and
- 7) the assigned driver of a Van Go Hawaii vehicle or any other state ridesharing program.

Employee: _____ Position: _____

Department: _____ For Calendar Year: _____

Vehicle No.: _____

Check one: _____ Qualified nonpersonal-use vehicle (tax exempt)
 _____ Non-qualified nonpersonal-use vehicle (subject to taxation)

Qualified nonpersonal-use vehicles include:

- Clearly marked, through painted insignia or words, police, fire, and public safety officer vehicles;
- Unmarked vehicles used by law enforcement officers if the use is officially authorized;
- An ambulance or hearse used for its specific purpose;
- Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds;
- Delivery trucks with seating for the driver only, or the driver plus a folding jump seat;
- A passenger bus with a capacity of at least 20 passengers used for its specific purpose;
- School buses;
- Tractors and other special-purpose farm vehicles;
- Bucket trucks, cement mixers, combines, cranes and derricks, dump trucks (including garbage trucks), flatbed trucks, forklifts, qualified moving vans, qualified specialized utility repair trucks, and refrigerated trucks;
- Pickup trucks clearly marked with permanently affixed decals or special painting with the County seal or other County associated markings and meets either of the following requirements: 1) equipped with at least a hydraulic lift gate, permanent tanks or drums, permanent side boards or panels that materially raise the level of the sides of the truck bed, or other heavy equipment (electric generator, welder, boom, or crane used to tow automobiles or other vehicles); or 2) is used primarily to transport a particular type of load in a construction, manufacturing, processing, farming, mining, drilling, timbering, or other similar operation for which it was specially designed or significantly modified;
- Vans clearly marked with permanently affixed decals or special painting with the County seal or other County associated markings and has only a seat for the driver and one other person and has either permanent shelving that fills most of the cargo area or an open cargo area and the van always carries merchandise, material or equipment used for County functions; and
- Any other vehicle listed under Section 14 of the Internal Revenue Service (IRS) Taxable Fringe Benefit Guide as a qualified nonpersonal-use vehicle.

Justification for Use of Take Home Vehicle:

_____ Authorized by collective bargaining agreement

_____ Other (explain) _____

I have read the County of Kaua'i's Take Home Vehicle Policy and understand that a County Take Home Vehicle that does not meet the definition of a Qualified Nonpersonal-Use Vehicle is a taxable fringe benefit and requires the completion of the "Take Home Vehicle Usage Log" on a monthly basis.

Employee's signature

Date

Requested by:

Department Head

Date

_____ Approved

_____ Denied

Reason(s): _____

Director of Finance

Date

_____ Approved

_____ Denied

Mayor

Date

For Office Use Only

_____ Exempt Vehicle

_____ Non-Exempt Vehicle (subject to taxation)

_____ Commuting Rule

_____ Annual Lease Value Method

COUNTY OF KAUAI TAKE HOME VEHICLE USAGE LOG

This form must be completed by employees that are assigned to a Take Home Vehicle that does not meet the definition of a Qualified Nonpersonal-Use Vehicle and therefore, considered a taxable fringe benefit.

Employee: _____ For Month & Year of : _____
 Department: _____ Vehicle No.: _____

FOR COMPLETION BY ALL EMPLOYEES EXCEPT ELECTED OFFICIALS-Use the codes below to indicate Take Home Vehicle usage for each day of the month. Taxes will be based on Commuting Rule of \$1.50 for each one way commute (\$3.00 per day).

0 Did not use Vehicle	2 Two-way commute
1 One-way commute	

DAY			DAY
1			17
2			18
3			19
4			20
5			21
6			22
7			23
8			24
9			25
10			26
11			27
12			28
13			29
14			30
15			31
16			

FOR COMPLETION BY ELECTED OFFICIALS-Taxes will be based on the annual lease value of the Take Home Vehicle multiplied by the percentage of personal miles driven for the month.

Personal Miles driven for the month	
Total Miles driven for the month	
Percentage of Personal Miles	

I certify that this statement is true and accurate in all respects and undertand that a County Take Home Vehicle that does not meet the definition of a Qualified Nonpersonal-Use Vehicle is a taxable fringe benefit.

 Employee Signature _____
Date

This form is due to the Department of Finance, Payroll Division no later than 5 working days after the end of each month.



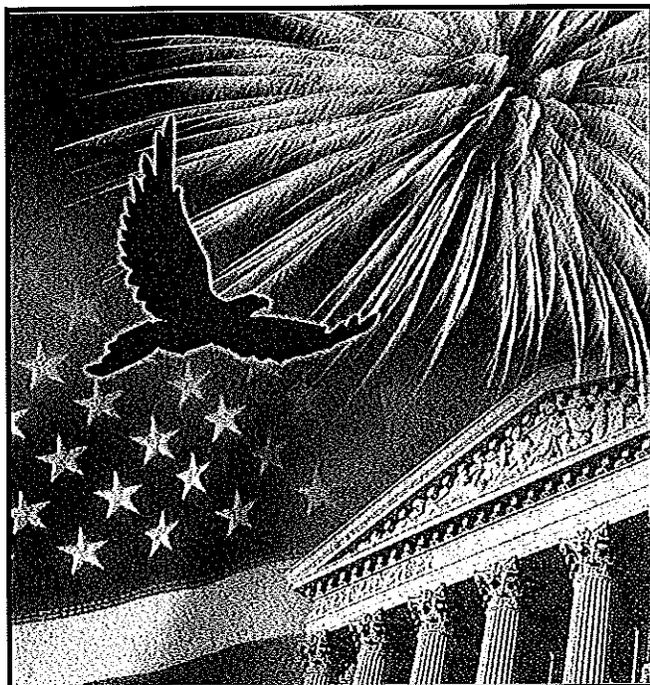
Department of the Treasury
Internal Revenue Service

Publication 15-B

Cat. No. 29744N

Employer's Tax Guide to Fringe Benefits

For use in **2013**



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Future Developments

For the latest information about developments related to Publication 15-B, such as legislation enacted after it was published, go to www.irs.gov/pub15b.

What's New

\$2,500 limit on a health flexible spending arrangement (FSA). For plan years beginning after December 31, 2012, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in

excess of \$2,500. For more information, see *Cafeteria Plans* in section 1.

Additional Medicare Tax withholding. In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay to an employee in excess of \$200,000 in a calendar year. You are required to begin withholding Additional Medicare Tax in the pay period in which you pay wages in excess of \$200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the \$200,000 withholding threshold. For more information on what wages are subject to Medicare tax, see Table 2-1, later, and the chart, *Special Rules for Various Types of Services and Payments*, in section 15 of Publication 15, (Circular E), Employer's Tax Guide.

Extension of the exclusion for educational assistance programs. The exclusion for educational assistance has been extended to years beginning after December 31, 2012. For more information about this exclusion, see *Educational Assistance* in section 2.

Extension of the exclusion for adoption assistance programs. The exclusion for adoption assistance has been extended to years beginning after December 31, 2012. For more information about this exclusion, see *Adoption Assistance* in section 2.

Leave-based donation programs to aid victims of Hurricane Sandy. Under these programs, employees may donate their vacation, sick, or personal leave in exchange for employer cash payments made before January 1, 2014, to qualified tax-exempt organizations providing relief for the victims of Hurricane Sandy. The donated leave will not be included in the income or wages of the employee. The employer may deduct the cash payments as business expenses or charitable contributions. For more information, see Notice 2012-69, 2012-51, I.R.B. 712, available at www.irs.gov/irb/2012-51_IRB/ar09.html.

Cents-per-mile rule. The business mileage rate for 2013 is 56.5 cents per mile. You may use this rate to reimburse an employee for business use of a personal vehicle, and under certain conditions, you may use the rate under the cents-per-mile rule to value the personal use of a vehicle you provide to an employee. See *Cents-Per-Mile Rule* in section 3.

Qualified parking exclusion and commuter transportation benefit. For 2013, the monthly exclusion for qualified parking is \$245 and the monthly exclusion for commuter highway vehicle transportation and transit passes is \$245. See *Qualified Transportation Benefits* in section 2.

Reminders

Employer-provided cell phones. The value of an employer-provided cell phone, provided primarily for non-compensatory business reasons, is excludable from an employee's income as a working condition fringe benefit.

Personal use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a *de minimis* fringe benefit. For details, see *Employer-Provided Cell Phones, De Minimis (Minimal) Benefits, and Working Condition Benefits* in section 2.

Expiration of benefits for volunteer firefighters and emergency medical responders. The gross income exclusion for benefits provided to volunteer firefighters and emergency medical responders expired on December 31, 2010.

Simple cafeteria plans. The Patient Protection and Affordable Care Act amended code section 125 to allow eligible employers' cafeteria plans to qualify as simple cafeteria plans. Simple cafeteria plans as described in section 1 will be treated as meeting certain nondiscrimination requirements.

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication supplements Publication 15 (Circular E), Employer's Tax Guide, and Publication 15-A, Employer's Supplemental Tax Guide. It contains information for employers on the employment tax treatment of fringe benefits.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

Internal Revenue Service
Business, Exempt Organizations, and International
Forms and Publications Branch
SE:W:CAR:MP:T:B
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at taxforms@irs.gov. Please put "Publication 15-B" on the subject line. You can also send us comments from www.irs.gov/formspubs. Click on *More Information* and then click on *Comment on Tax Forms and Publications*.

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

1. Fringe Benefit Overview

A fringe benefit is a form of pay for the performance of services. For example, you provide an employee with a fringe benefit when you allow the employee to use a business vehicle to commute to and from work.

Performance of services. A person who performs services for you does not have to be your employee. A person may perform services for you as an independent contractor, partner, or director. Also, for fringe benefit purposes, treat a person who agrees not to perform services (such as under a covenant not to compete) as performing services.

Provider of benefit. You are the provider of a fringe benefit if it is provided for services performed for you. You are the provider of a fringe benefit even if your client or customer provides the benefit to your employee for services the employee performs for you. For example, you are the provider of a fringe benefit for day care even if the day care is provided by a third party.

Recipient of benefit. The person who performs services for you is the recipient of a fringe benefit provided for those services. That person may be the recipient even if the benefit is provided to someone who did not perform services for you. For example, your employee may be the recipient of a fringe benefit you provide to a member of the employee's family.

Are Fringe Benefits Taxable?

Any fringe benefit you provide is taxable and must be included in the recipient's pay unless the law specifically excludes it. Section 2 discusses the exclusions that apply to certain fringe benefits. Any benefit not excluded under the rules discussed in section 2 is taxable.

Including taxable benefits in pay. You must include in a recipient's pay the amount by which the value of a fringe benefit is more than the sum of the following amounts.

- Any amount the law excludes from pay.
- Any amount the recipient paid for the benefit.

The rules used to determine the value of a fringe benefit are discussed in section 3.

If the recipient of a taxable fringe benefit is your employee, the benefit is subject to employment taxes and must be reported on Form W-2, Wage and Tax Statement. However, you can use special rules to withhold, deposit, and report the employment taxes. These rules are discussed in section 4.

If the recipient of a taxable fringe benefit is not your employee, the benefit is not subject to employment taxes. However, you may have to report the benefit on one of the following information returns.

If the recipient receives the benefit as:

Use:

An independent contractor	Form 1099-MISC, Miscellaneous Income
A partner	Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc.

For more information, see the instructions for the forms listed above.

Cafeteria Plans

A cafeteria plan, including a flexible spending arrangement, is a written plan that allows your employees to choose between receiving cash or taxable benefits instead of certain qualified benefits for which the law provides an exclusion from wages. If an employee chooses to receive a qualified benefit under the plan, the fact that the employee could have received cash or a taxable benefit instead will not make the qualified benefit taxable.

Generally, a cafeteria plan does not include any plan that offers a benefit that defers pay. However, a cafeteria plan can include a qualified 401(k) plan as a benefit. Also, certain life insurance plans maintained by educational institutions can be offered as a benefit even though they defer pay.

Qualified benefits. A cafeteria plan can include the following benefits discussed in section 2.

- Accident and health benefits (but not Archer medical savings accounts (Archer MSAs) or long-term care insurance).
- Adoption assistance.
- Dependent care assistance.
- Group-term life insurance coverage (including costs that cannot be excluded from wages).
- Health savings accounts (HSAs). Distributions from an HSA may be used to pay eligible long-term care insurance premiums or qualified long-term care services.

Benefits not allowed. A cafeteria plan **cannot** include the following benefits discussed in section 2.

- Archer MSAs. See *Accident and Health Benefits* in section 2.
- Athletic facilities.
- *De minimis* (minimal) benefits.
- Educational assistance.
- Employee discounts.
- Employer-provided cell phones.
- Lodging on your business premises.

- Meals.
- Moving expense reimbursements.
- No-additional-cost services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

It also cannot include scholarships or fellowships (discussed in Publication 970, Tax Benefits for Education).

\$2,500 limit on a health flexible spending arrangement (FSA). For plan years beginning after December 31, 2012, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of \$2,500.

A cafeteria plan offering a health FSA must be amended to specify the \$2,500 limit (or any lower limit set by the employer). While cafeteria plans generally must be amended on a prospective basis, an amendment that is adopted on or before December 31, 2014, may be made effective retroactively, provided that in operation the cafeteria plan meets the limit for plan years beginning after December 31, 2012. A cafeteria plan that does not limit health FSA contributions to \$2,500 is not a cafeteria plan and all benefits offered under the plan are includible in the employee's gross income.

For more information, see Notice 2012-40, 2012-26 I.R.B. 1046, available at www.irs.gov/irb/2012-26_IRB/ar09.html.

Employee. For these plans, treat the following individuals as employees.

- A current common-law employee. See section 2 in Publication 15 (Circular E) for more information.
- A full-time life insurance agent who is a current statutory employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder for this purpose is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Plans that favor highly compensated employees. If your plan favors highly compensated employees as to eligibility to participate, contributions, or benefits, you must include in their wages the value of taxable benefits they could have selected. A plan you maintain under a collec-

tive bargaining agreement does not favor highly compensated employees.

A highly compensated employee for this purpose is any of the following employees.

1. An officer.
2. A shareholder who owns more than 5% of the voting power or value of all classes of the employer's stock.
3. An employee who is highly compensated based on the facts and circumstances.
4. A spouse or dependent of a person described in (1), (2), or (3).

Plans that favor key employees. If your plan favors key employees, you must include in their wages the value of taxable benefits they could have selected. A plan favors key employees if more than 25% of the total of the nontaxable benefits you provide for all employees under the plan go to key employees. However, a plan you maintain under a collective bargaining agreement does not favor key employees.

A key employee during 2013 is generally an employee who is either of the following.

1. An officer having annual pay of more than \$165,000.
2. An employee who for 2013 is either of the following.
 - a. A 5% owner of your business.
 - b. A 1% owner of your business whose annual pay was more than \$150,000.

Simple Cafeteria Plans

Eligible employers meeting contribution requirements and eligibility and participation requirements can establish a simple cafeteria plan. Simple cafeteria plans are treated as meeting the nondiscrimination requirements of a cafeteria plan and certain benefits under a cafeteria plan.

Eligible employer. You are an eligible employer if you employ an average of 100 or fewer employees during either of the 2 preceding years. If your business was not in existence throughout the preceding year, you are eligible if you reasonably expect to employ an average of 100 or fewer employees in the current year. If you establish a simple cafeteria plan in a year that you employ an average of 100 or fewer employees, you are considered an eligible employer for any subsequent year as long as you do not employ an average of 200 or more employees in a subsequent year.

Eligibility and participation requirements. These requirements are met if all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate and each employee eligible to participate in the plan may elect any benefit available under the plan. You may elect to exclude from the plan employees who:

1. Are under age 21 before the close of the plan year,

2. Have less than 1 year of service with you as of any day during the plan year,
3. Are covered under a collective bargaining agreement, or
4. Are nonresident aliens working outside the United States whose income did not come from a U.S. source.

Contribution requirements. You must make a contribution to provide qualified benefits on behalf of each qualified employee in an amount equal to:

1. A uniform percentage (not less than 2%) of the employee's compensation for the plan year, or
2. An amount which is at least 6% of the employee's compensation for the plan year or twice the amount of the salary reduction contributions of each qualified employee, whichever is less.

If the contribution requirements are met using option (2) above, the rate of contribution to any salary reduction contribution of a highly compensated or key employee can not be greater than the rate of contribution to any other employee.

More information. For more information about cafeteria plans, see section 125 of the Internal Revenue Code and its regulations.

2. Fringe Benefit Exclusion Rules

This section discusses the exclusion rules that apply to fringe benefits. These rules exclude all or part of the value of certain benefits from the recipient's pay.

The excluded benefits are not subject to federal income tax withholding. Also, in most cases, they are not subject to social security, Medicare, or federal unemployment (FUTA) tax and are not reported on Form W-2.

This section discusses the exclusion rules for the following fringe benefits.

- Accident and health benefits.
- Achievement awards.
- Adoption assistance.
- Athletic facilities.
- *De minimis* (minimal) benefits.
- Dependent care assistance.
- Educational assistance.
- Employee discounts.
- Employee stock options.
- Employer-provided cell phones.

- Group-term life insurance coverage.
- Health savings accounts (HSAs).
- Lodging on your business premises.
- Meals.
- Moving expense reimbursements.
- No-additional-cost services.
- Retirement planning services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

See Table 2-1, later, for an overview of the employment tax treatment of these benefits.

Accident and Health Benefits

This exclusion applies to contributions you make to an accident or health plan for an employee, including the following.

- Contributions to the cost of accident or health insurance including qualified long-term care insurance.
- Contributions to a separate trust or fund that directly or through insurance provides accident or health benefits.
- Contributions to Archer MSAs or health savings accounts (discussed in Publication 969, Health Savings Accounts and Other Tax-Favored Health Plans).

This exclusion also applies to payments you directly or indirectly make to an employee under an accident or health plan for employees that are either of the following.

- Payments or reimbursements of medical expenses.
- Payments for specific injuries or illnesses (such as the loss of the use of an arm or leg). The payments must be figured without regard to any period of absence from work.

Accident or health plan. This is an arrangement that provides benefits for your employees, their spouses, their dependents, and their children (under age 27) in the event of personal injury or sickness. The plan may be insured or noninsured and does not need to be in writing.

Employee. For this exclusion, treat the following individuals as employees.

- A current common-law employee.
- A full-time life insurance agent who is a current statutory employee.
- A retired employee.
- A former employee you maintain coverage for based on the employment relationship.

Table 2-1. Special Rules for Various Types of Fringe Benefits
(For more information, see the full discussion in this section.)

Treatment Under Employment Taxes			
Type of Fringe Benefit	Income Tax Withholding	Social Security and Medicare (Including Additional Medicare Tax when wages are paid in excess of \$200,000)	Federal Unemployment (FUTA)
Accident and health benefits	Exempt ^{1,2} , except for long-term care benefits provided through a flexible spending or similar arrangement.	Exempt, except for certain payments to S corporation employees who are 2% shareholders.	Exempt
Achievement awards	Exempt ¹ up to \$1,600 for qualified plan awards (\$400 for nonqualified awards).		
Adoption assistance	Exempt ^{1,3}	Taxable	Taxable
Athletic facilities	Exempt if substantially all use during the calendar year is by employees, their spouses, and their dependent children and the facility is operated by the employer on premises owned or leased by the employer.		
<i>De minimis</i> (minimal) benefits	Exempt	Exempt	Exempt
Dependent care assistance	Exempt ³ up to certain limits, \$5,000 (\$2,500 for married employee filing separate return).		
Educational assistance	Exempt up to \$5,250 of benefits each year. (See <i>Educational Assistance</i> , later in this section.)		
Employee discounts	Exempt ³ up to certain limits. (See <i>Employee Discounts</i> , later in this section.)		
Employee stock options	See <i>Employee Stock Options</i> , later in this section.		
Employer-provided cell phones	Exempt if provided primarily for noncompensatory business purposes.		
Group-term life insurance coverage	Exempt	Exempt ^{4,7} up to cost of \$50,000 of coverage. (Special rules apply to former employees.)	Exempt
Health savings accounts (HSAs)	Exempt for qualified individuals up to the HSA contribution limits. (See <i>Health Savings Accounts</i> , later in this section.)		
Lodging on your business premises	Exempt ¹ if furnished for your convenience as a condition of employment.		
Meals	Exempt if furnished on your business premises for your convenience.		
	Exempt if <i>de minimis</i> .		
Moving expense reimbursements	Exempt ¹ if expenses would be deductible if the employee had paid them.		
No-additional-cost services	Exempt ³	Exempt ³	Exempt ³
Retirement planning services	Exempt ⁵	Exempt ⁵	Exempt ⁵
Transportation (commuting) benefits	Exempt ¹ up to certain limits if for rides in a commuter highway vehicle and/or transit passes (\$245), qualified parking (\$245), or qualified bicycle commuting reimbursement ⁶ (\$20). (See <i>Transportation (Commuting) Benefits</i> , later in this section.)		
	Exempt if <i>de minimis</i> .		
Tuition reduction	Exempt ³ if for undergraduate education (or graduate education if the employee performs teaching or research activities).		
Working condition benefits	Exempt	Exempt	Exempt

¹ Exemption does not apply to S corporation employees who are 2% shareholders.
² Exemption does not apply to certain highly compensated employees under a self-insured plan that favors those employees.
³ Exemption does not apply to certain highly compensated employees under a program that favors those employees.
⁴ Exemption does not apply to certain key employees under a plan that favors those employees.
⁵ Exemption does not apply to services for tax preparation, accounting, legal, or brokerage services.
⁶ If the employee receives a qualified bicycle commuting reimbursement in a qualified bicycle commuting month, the employee cannot receive commuter highway vehicle, transit pass, or qualified parking benefits in that same month.
⁷ You must include in your employee's wages the cost of group-term life insurance beyond \$50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code "C." The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

- A widow or widower of an individual who died while an employee.
- A widow or widower of a retired employee.
- For the exclusion of contributions to an accident or health plan, a leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Special rule for certain government plans. For certain government accident and health plans, payments to a deceased plan participant's beneficiary may qualify for the exclusion from gross income if the other requirements for exclusion are met. See section 105(j) for details.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Exclusion from wages. You can generally exclude the value of accident or health benefits you provide to an employee from the employee's wages.

Exception for certain long-term care benefits. You cannot exclude contributions to the cost of long-term care

insurance from an employee's wages subject to federal income tax withholding if the coverage is provided through a flexible spending or similar arrangement. This is a benefit program that reimburses specified expenses up to a maximum amount that is reasonably available to the employee and is less than five times the total cost of the insurance. However, you can exclude these contributions from the employee's wages subject to social security, Medicare, and federal unemployment (FUTA) taxes.

S corporation shareholders. Because you cannot treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the value of accident or health benefits you provide to the employee in the employee's wages subject to federal income tax withholding. However, you can exclude the value of these benefits (other than payments for specific injuries or illnesses) from the employee's wages subject to social security, Medicare, and FUTA taxes.

Exception for highly compensated employees. If your plan is a self-insured medical reimbursement plan that favors highly compensated employees, you must include all or part of the amounts you pay to these employees in their wages subject to federal income tax withholding. However, you can exclude these amounts (other than payments for specific injuries or illnesses) from the employee's wages subject to social security, Medicare, and FUTA taxes.

A self-insured plan is a plan that reimburses your employees for medical expenses not covered by an accident or health insurance policy.

A highly compensated employee for this exception is any of the following individuals.

- One of the five highest paid officers.
- An employee who owns (directly or indirectly) more than 10% in value of the employer's stock.
- An employee who is among the highest paid 25% of all employees (other than those who can be excluded from the plan).

For more information on this exception, see section 105(h) of the Internal Revenue Code and its regulations.

COBRA premiums. The exclusion for accident and health benefits applies to amounts you pay to maintain medical coverage for a current or former employee under the Combined Omnibus Budget Reconciliation Act of 1986 (COBRA). The exclusion applies regardless of the length of employment, whether you directly pay the premiums or reimburse the former employee for premiums paid, and whether the employee's separation is permanent or temporary.

Achievement Awards

This exclusion applies to the value of any tangible personal property you give to an employee as an award for either length of service or safety achievement. The exclusion does not apply to awards of cash, cash equivalents, gift certificates, or other intangible property such as vacations, meals, lodging, tickets to theater or sporting

events, stocks, bonds, and other securities. The award must meet the requirements for employee achievement awards discussed in chapter 2 of Publication 535, Business Expenses.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former common-law employee you maintain coverage for in consideration of or based on an agreement relating to prior service as an employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Exclusion from wages. You can generally exclude the value of achievement awards you give to an employee from the employee's wages if their cost is not more than the amount you can deduct as a business expense for the year. The excludable annual amount is \$1,600 (\$400 for awards that are not "qualified plan awards"). See chapter 2 of Publication 535 for more information about the limit on deductions for employee achievement awards.



To determine for 2013 whether an achievement award is a "qualified plan award" under the deduction rules described in Publication 535, treat any employee who received more than \$115,000 in pay for 2012 as a highly compensated employee.

If the cost of awards given to an employee is more than your allowable deduction, include in the employee's wages the larger of the following amounts.

- The part of the cost that is more than your allowable deduction (up to the value of the awards).
- The amount by which the value of the awards exceeds your allowable deduction.

Exclude the remaining value of the awards from the employee's wages.

Adoption Assistance

An adoption assistance program is a separate written plan of an employer that meets all of the following requirements.

1. It benefits employees who qualify under rules set up by you, which do not favor highly compensated

employees or their dependents. To determine whether your plan meets this test, do not consider employees excluded from your plan who are covered by a collective bargaining agreement, if there is evidence that adoption assistance was a subject of good-faith bargaining.

2. It does not pay more than 5% of its payments during the year for shareholders or owners (or their spouses or dependents). A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
3. You give reasonable notice of the plan to eligible employees.
4. Employees provide reasonable substantiation that payments or reimbursements are for qualifying expenses.

For this exclusion, a highly compensated employee for 2013 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

You must exclude all payments or reimbursements you make under an adoption assistance program for an employee's qualified adoption expenses from the employee's wages subject to federal income tax withholding. However, you cannot exclude these payments from wages subject to social security, Medicare, and federal unemployment (FUTA) taxes. For more information, see the Instructions for Form 8839, Qualified Adoption Expenses.

You must report all qualifying adoption expenses you paid or reimbursed under your adoption assistance program for each employee for the year in box 12 of the employee's Form W-2. Use code "T" to identify this amount.

Exception for S corporation shareholders. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, including using the benefit as a reduction in distributions to the 2% shareholder.

Athletic Facilities

You can exclude the value of an employee's use of an on-premises gym or other athletic facility you operate from an employee's wages if substantially all use of the facility during the calendar year is by your employees, their spouses, and their dependent children. For this purpose,

an employee's dependent child is a child or stepchild who is the employee's dependent or who, if both parents are deceased, has not attained the age of 25.

On-premises facility. The athletic facility must be located on premises you own or lease. It does not have to be located on your business premises. However, the exclusion does not apply to an athletic facility for residential use, such as athletic facilities that are part of a resort.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a former employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

De Minimis (Minimal) Benefits

You can exclude the value of a *de minimis* benefit you provide to an employee from the employee's wages. A *de minimis* benefit is any property or service you provide to an employee that has so little value (taking into account how frequently you provide similar benefits to your employees) that accounting for it would be unreasonable or administratively impracticable. Cash and cash equivalent fringe benefits (for example, use of gift card, charge card, or credit card), no matter how little, are never excludable as a *de minimis* benefit, except for occasional meal money or transportation fare.

Examples of *de minimis* benefits include the following.

- Personal use of an employer-provided cell phone provided primarily for noncompensatory business purposes. See *Employer-Provided Cell Phones*, later in this section, for details.
- Occasional personal use of a company copying machine if you sufficiently control its use so that at least 85% of its use is for business purposes.
- Holiday gifts, other than cash, with a low fair market value.
- Group-term life insurance payable on the death of an employee's spouse or dependent if the face amount is not more than \$2,000.
- Meals. See *Meals*, later in this section, for details.
- Occasional parties or picnics for employees and their guests.
- Occasional tickets for theater or sporting events.

- Transportation fare. See *Transportation (Commuting) Benefits*, later in this section, for details.

Employee. For this exclusion, treat any recipient of a *de minimis* benefit as an employee.

Dependent Care Assistance

This exclusion applies to household and dependent care services you directly or indirectly pay for or provide to an employee under a dependent care assistance program that covers only your employees. The services must be for a qualifying person's care and must be provided to allow the employee to work. These requirements are basically the same as the tests the employee would have to meet to claim the dependent care credit if the employee paid for the services. For more information, see *Qualifying Person Test* and *Work-Related Expense Test* in Publication 503, Child and Dependent Care Expenses.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you are a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude the value of benefits you provide to an employee under a dependent care assistance program from the employee's wages if you reasonably believe that the employee can exclude the benefits from gross income.

An employee can generally exclude from gross income up to \$5,000 of benefits received under a dependent care assistance program each year. This limit is reduced to \$2,500 for married employees filing separate returns.

However, the exclusion cannot be more than the smaller of the earned income of either the employee or employee's spouse. Special rules apply to determine the earned income of a spouse who is either a student or not able to care for himself or herself. For more information on the earned income limit, see Publication 503.

Exception for highly compensated employees. You cannot exclude dependent care assistance from the wages of a highly compensated employee unless the benefits provided under the program do not favor highly compensated employees and the program meets the requirements described in section 129(d) of the Internal Revenue Code.

For this exclusion, a highly compensated employee for 2013 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.

2. The employee received more than \$115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Form W-2. Report the value of all dependent care assistance you provide to an employee under a dependent care assistance program in box 10 of the employee's Form W-2. Include any amounts you cannot exclude from the employee's wages in boxes 1, 3, and 5. Report both the nontaxable portion of assistance (up to \$5,000) and any assistance above the amount that is non-taxable to the employee.

Example. Company A provides a dependent care assistance flexible spending arrangement to its employees through a cafeteria plan. In addition, it provides occasional on-site dependent care to its employees at no cost. Emily, an employee of company A, had \$4,500 deducted from her pay for the dependent care flexible spending arrangement. In addition, Emily used the on-site dependent care several times. The fair market value of the on-site care was \$700. Emily's Form W-2 should report \$5,200 of dependent care assistance in Box 10 (\$4,500 flexible spending arrangement plus \$700 on-site dependent care). Boxes 1, 3, and 5 should include \$200 (the amount in excess of the nontaxable assistance), and applicable taxes should be withheld on that amount.

Educational Assistance

This exclusion applies to educational assistance you provide to employees under an educational assistance program. The exclusion also applies to graduate level courses.

Educational assistance means amounts you pay or incur for your employees' education expenses. These expenses generally include the cost of books, equipment, fees, supplies, and tuition. However, these expenses do not include the cost of a 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.

Education expenses do not include the cost of tools or supplies (other than textbooks) your employee is allowed to keep at the end of the course. Nor do they include the cost of lodging, meals, or transportation.

Educational assistance program. An educational assistance program is a separate written plan that provides educational 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 set up by you that do not favor highly compensated employees. To determine whether your program meets this test, do not consider employees excluded from your program who are covered by a collective

bargaining agreement if there is evidence that educational assistance was a subject of good-faith bargaining.

- The program does not provide more than 5% of its benefits during the year for shareholders or owners. A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
- The program does not allow employees to choose to receive cash or other benefits that must be included in gross income instead of educational assistance.
- You give reasonable notice of the program to eligible employees.

Your program can cover former employees if their employment is the reason for the coverage.

For this exclusion, a highly compensated employee for 2013 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired, left on disability, or was laid off.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you are a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude up to \$5,250 of educational assistance you provide to an employee under an educational assistance program from the employee's wages each year.

Assistance over \$5,250. If you do not have an educational assistance plan, or you provide an employee with assistance exceeding \$5,250, you must include the value of these benefits as wages, unless the benefits are working condition benefits. Working condition benefits may be excluded from wages. Property or a service provided is a working condition benefit to the extent that if the employee paid for it, the amount paid would have been deductible as a business or depreciation expense. See *Working Condition Benefits*, later in this section.

Employee Discounts

This exclusion applies to a price reduction you give an employee on property or services you offer to customers in the ordinary course of the line of business in which the employee performs substantial services. However, it does not apply to discounts on real property or discounts on personal property of a kind commonly held for investment (such as stocks or bonds).

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of an employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

Exclusion from wages. You can generally exclude the value of an employee discount you provide an employee from the employee's wages, up to the following limits.

- For a discount on services, 20% of the price you charge nonemployee customers for the service.
- For a discount on merchandise or other property, your gross profit percentage times the price you charge nonemployee customers for the property.

Determine your gross profit percentage in the line of business based on all property you offer to customers (including employee customers) and your experience during the tax year immediately before the tax year in which the discount is available. To figure your gross profit percentage, subtract the total cost of the property from the total sales price of the property and divide the result by the total sales price of the property.

Exception for highly compensated employees. You cannot exclude from the wages of a highly compensated employee any part of the value of a discount that is not available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

For this exclusion, a highly compensated employee for 2013 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.

2. The employee received more than \$115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Employee Stock Options

There are three kinds of stock options—incentive stock options, employee stock purchase plan options, and non-statutory (nonqualified) stock options.

Wages for social security, Medicare, and federal unemployment taxes (FUTA) do not include remuneration resulting from the exercise, after October 22, 2004, of an incentive stock option or under an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option. The IRS will not apply these taxes to an exercise before October 23, 2004, of an incentive stock option or an employee stock purchase plan option or to a disposition of stock acquired by such exercise.

Additionally, federal income tax withholding is not required on the income resulting from a disqualifying disposition of stock acquired by the exercise after October 22, 2004, of an incentive stock option or under an employee stock purchase plan option, or on income equal to the discount portion of stock acquired by the exercise, after October 22, 2004, of an employee stock purchase plan option resulting from any disposition of the stock. The IRS will not apply federal income tax withholding upon the disposition of stock acquired by the exercise, before October 23, 2004, of an incentive stock option or an employee stock purchase plan option. However, the employer must report as income in box 1 of Form W-2, (a) the discount portion of stock acquired by the exercise of an employee stock purchase plan option upon disposition of the stock, and (b) the spread (between the exercise price and the fair market value of the stock at the time of exercise) upon a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option.

An employer must report the excess of the fair market value of stock received upon exercise of a nonstatutory stock option over the amount paid for the stock option on Form W-2 in boxes 1, 3 (up to the social security wage base), 5, and in box 12 using the code "V." See Regulations section 1.83-7.

An employee who transfers his or her interest in non-statutory stock options to the employee's former spouse incident to a divorce is not required to include an amount in gross income upon the transfer. The former spouse, rather than the employee, is required to include an amount in gross income when the former spouse exercises the stock options. See Revenue Ruling 2002-22 and Revenue Ruling 2004-60 for details. You can find Revenue Ruling 2002-22 on page 849 of Internal Revenue Bulletin 2002-19 at www.irs.gov/pub/irs-irbs/irb02-19.pdf. See Revenue Ruling 2004-60, 2004-24 I.R.B. 1051, available at www.irs.gov/irb/2004-24_IRB/ar13.html.

For more information about employee stock options, see sections 421, 422, and 423 of the Internal Revenue Code and their related regulations.

Employer-Provided Cell Phones

The value of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a working condition fringe benefit. Personal use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a *de minimis* fringe benefit. For the rules relating to these types of benefits, see *De Minimis (Minimal) Benefits*, earlier in this section, and *Working Condition Benefits*, later in this section.

Noncompensatory business purposes. You provide a cell phone primarily for noncompensatory business purposes if there are substantial business reasons for providing the cell phone. Examples of substantial business reasons include the employer's:

- Need to contact the employee at all times for work-related emergencies,
- Requirement that the employee be available to speak with clients at times when the employee is away from the office, and
- Need to speak with clients located in other time zones at times outside the employee's normal workday.

Cell phones provided to promote goodwill, boost morale, or attract prospective employees. You cannot exclude from an employee's wages the value of a cell phone provided to promote goodwill of an employee, to attract a prospective employee, or as a means of providing additional compensation to an employee.

Additional information. For additional information on the tax treatment of employer-provided cell phones, see Notice 2011-72, 2011-38 I.R.B. 407, available at www.irs.gov/irb/2011-38_IRB/ar07.html.

Group-Term Life Insurance Coverage

This exclusion applies to life insurance coverage that meets all the following conditions.

- It provides a general death benefit that is not included in income.
- You provide it to a group of employees. See *The 10-employee rule*, later.
- It provides an amount of insurance to each employee based on a formula that prevents individual selection. This formula must use factors such as the employee's age, years of service, pay, or position.
- You provide it under a policy you directly or indirectly carry. Even if you do not pay any of the policy's cost, you are considered to carry it if you arrange for payment of its cost by your employees and charge at least one employee less than, and at least one other

employee more than, the cost of his or her insurance. Determine the cost of the insurance, for this purpose, as explained under *Coverage over the limit*, later.

Group-term life insurance does not include the following insurance.

- Insurance that does not provide general death benefits, such as travel insurance or a policy providing only accidental death benefits.
- Life insurance on the life of your employee's spouse or dependent. However, you may be able to exclude the cost of this insurance from the employee's wages as a *de minimis* benefit. See *De Minimis (Minimal) Benefits*, earlier in this section.
- Insurance provided under a policy that provides a permanent benefit (an economic value that extends beyond 1 policy year, such as paid-up or cash surrender value), unless certain requirements are met. See Regulations section 1.79-1 for details.

Employee. For this exclusion, treat the following individuals as employees.

1. A current common-law employee.
2. A full-time life insurance agent who is a current statutory employee.
3. An individual who was formerly your employee under (1) or (2).
4. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction and control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

The 10-employee rule. Generally, life insurance is not group-term life insurance unless you provide it to at least 10 full-time employees at some time during the year.

For this rule, count employees who choose not to receive the insurance unless, to receive it, they must contribute to the cost of benefits other than the group-term life insurance. For example, count an employee who could receive insurance by paying part of the cost, even if that employee chooses not to receive it. However, do not count an employee who must pay part or all of the cost of permanent benefits to get insurance, unless that employee chooses to receive it. A permanent benefit is an economic value extending beyond one policy year (for example, a paid-up or cash-surrender value) that is provided under a life insurance policy.

Exceptions. Even if you do not meet the 10-employee rule, two exceptions allow you to treat insurance as group-term life insurance.

Under the first exception, you do not have to meet the 10-employee rule if all the following conditions are met.

1. If evidence that the employee is insurable is required, it is limited to a medical questionnaire (completed by the employee) that does not require a physical.
2. You provide the insurance to all your full-time employees or, if the insurer requires the evidence mentioned in (1), to all full-time employees who provide evidence the insurer accepts.
3. You figure the coverage based on either a uniform percentage of pay or the insurer's coverage brackets that meet certain requirements. See Regulations section 1.79-1 for details.

Under the second exception, you do not have to meet the 10-employee rule if all the following conditions are met.

- You provide the insurance under a common plan covering your employees and the employees of at least one other employer who is not related to you.
- The insurance is restricted to, but mandatory for, all your employees who belong to, or are represented by, an organization (such as a union) that carries on substantial activities besides obtaining insurance.
- Evidence of whether an employee is insurable does not affect an employee's eligibility for insurance or the amount of insurance that employee gets.

To apply either exception, do not consider employees who were denied insurance for any of the following reasons.

- They were 65 or older.
- They customarily work 20 hours or less a week or 5 months or less in a calendar year.
- They have not been employed for the waiting period given in the policy. This waiting period cannot be more than 6 months.

Exclusion from wages. You can generally exclude the cost of up to \$50,000 of group-term life insurance from the wages of an insured employee. You can exclude the same amount from the employee's wages when figuring social security and Medicare taxes. In addition, you do not have to withhold federal income tax or pay FUTA tax on any group-term life insurance you provide to an employee.

Coverage over the limit. You must include in your employee's wages the cost of group-term life insurance beyond \$50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code "C." The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

Figure the monthly cost of the insurance to include in the employee's wages by multiplying the number of thousands of dollars of all insurance coverage over \$50,000 (figured to the nearest \$100) by the cost shown in Table 2-2. For all coverage provided within the calendar year, use the employee's age on the last day of the employee's tax year. You must prorate the cost from the table if less than a full month of coverage is involved.

Table 2-2. Cost Per \$1,000 of Protection For 1 Month

Age	Cost
Under 25	\$.05
25 through 29	.06
30 through 34	.08
35 through 39	.09
40 through 44	.10
45 through 49	.15
50 through 54	.23
55 through 59	.43
60 through 64	.66
65 through 69	1.27
70 and older	2.06

You figure the total cost to include in the employee's wages by multiplying the monthly cost by the number of full months' coverage at that cost.

Example. Tom's employer provides him with group-term life insurance coverage of \$200,000. Tom is 45 years old, is not a key employee, and pays \$100 per year toward the cost of the insurance. Tom's employer must include \$170 in his wages. The \$200,000 of insurance coverage is reduced by \$50,000. The yearly cost of \$150,000 of coverage is \$270 (\$.15 x 150 x 12), and is reduced by the \$100 Tom pays for the insurance. The employer includes \$170 in boxes 1, 3, and 5 of Tom's Form W-2. The employer also enters \$170 in box 12 with code "C."

Coverage for dependents. Group-term life insurance coverage paid by the employer for the spouse or dependents of an employee may be excludable from income as a *de minimis* fringe benefit if the face amount is not more than \$2,000. If the face amount is greater than \$2,000, the entire cost of the dependent coverage must be included in income unless the amount over \$2,000 is purchased with employee contributions on an after-tax basis. The cost of the insurance is determined by using Table 2-2.

Former employees. When group-term life insurance over \$50,000 is provided to an employee (including retirees) after his or her termination, the employee share of social security and Medicare taxes on that period of coverage is paid by the former employee with his or her tax return and is not collected by the employer. You are not required to collect those taxes. Use the table above to determine the amount of social security and Medicare taxes owed by the former employee for coverage provided after separation from service. Report those uncollected amounts separately in box 12 of Form W-2 using codes "M" and "N." See the General Instructions for Forms W-2 and W-3 and the Instructions for Form 941.

Exception for key employees. Generally, if your group-term life insurance plan favors key employees as to participation or benefits, you must include the entire cost of the insurance in your key employees' wages. This exception generally does not apply to church plans. When figuring social security and Medicare taxes, you must also include the entire cost in the employees' wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you do not have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance you provide to an employee.

For this purpose, the cost of the insurance is the greater of the following amounts.

- The premiums you pay for the employee's insurance. See Regulations section 1.79-4T(Q&A 6) for more information.
- The cost you figure using Table 2-2.

For this exclusion, a key employee during 2013 is an employee or former employee who is one of the following individuals. See section 416(i) of the Internal Revenue Code for more information.

1. An officer having annual pay of more than \$165,000.
2. An individual who for 2013 was either of the following.
 - a. A 5% owner of your business.
 - b. A 1% owner of your business whose annual pay was more than \$150,000.

A former employee who was a key employee upon retirement or separation from service is also a key employee.

Your plan does not favor key employees as to participation if at least one of the following is true.

- It benefits at least 70% of your employees.
- At least 85% of the participating employees are not key employees.
- It benefits employees who qualify under a set of rules you set up that do not favor key employees.

Your plan meets this participation test if it is part of a cafeteria plan (discussed in section 1) and it meets the participation test for those plans.

When applying this test, do not consider employees who:

- Have not completed 3 years of service,
- Are part-time or seasonal,
- Are nonresident aliens who receive no U.S. source earned income from you, or
- Are not included in the plan but are in a unit of employees covered by a collective bargaining agreement, if the benefits provided under the plan were the subject of good-faith bargaining between you and employee representatives.

Your plan does not favor key employees as to benefits if all benefits available to participating key employees are also available to all other participating employees. Your

plan does not favor key employees just because the amount of insurance you provide to your employees is uniformly related to their pay.

S corporation shareholders. Because you cannot treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the cost of all group-term life insurance coverage you provide the 2% shareholder in his or her wages. When figuring social security and Medicare taxes, you must also include the cost of this coverage in the 2% shareholder's wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you do not have to withhold federal income tax or pay federal unemployment tax on the cost of any group-term life insurance coverage you provide to the 2% shareholder.

Health Savings Accounts

A Health Savings Account (HSA) is an account owned by a qualified individual who is generally your employee or former employee. Any contributions that you make to an HSA become the employee's property and cannot be withdrawn by you. Contributions to the account are used to pay current or future medical expenses of the account owner, his or her spouse, and any qualified dependent. The medical expenses must not be reimbursable by insurance or other sources and their payment from HSA funds (distribution) will not give rise to a medical expense deduction on the individual's federal income tax return. For more information about HSAs, visit the Department of Treasury's website at www.treasury.gov and enter "HSA" in the search box.

Eligibility. A qualified individual must be covered by a High Deductible Health Plan (HDHP) and not be covered by other health insurance except for permitted insurance listed under section 223(c)(3) or insurance for accidents, disability, dental care, vision care, or long-term care. For calendar year 2013, a qualifying HDHP must have a deductible of at least \$1,250 for self-only coverage or \$2,500 for family coverage and must limit annual out-of-pocket expenses of the beneficiary to \$6,250 for self-only coverage and \$12,500 for family coverage.

There are no income limits that restrict an individual's eligibility to contribute to an HSA nor is there a requirement that the account owner have earned income to make a contribution.

Exceptions. An individual is not a qualified individual if he or she can be claimed as a dependent on another person's tax return. Also, an employee's participation in a health flexible spending arrangement (FSA) or health reimbursement arrangement (HRA) generally disqualifies the individual (and employer) from making contributions to his or her HSA. However, an individual may qualify to participate in an HSA if he or she is participating in only a limited-purpose FSA or HRA or a post-deductible FSA. For more information, see *Other employee health plans* in Publication 969.

Employer contributions. Up to specified dollar limits, cash contributions to the HSA of a qualified individual (de-

termined monthly) are exempt from federal income tax withholding, social security tax, Medicare tax, and FUTA tax. For 2013, you can contribute up to \$3,250 for self-only coverage or \$6,450 for family coverage to a qualified individual's HSA.

The contribution amounts listed above are increased by \$1,000 for a qualified individual who is age 55 or older at any time during the year. For two qualified individuals who are married to each other and who each are age 55 or older at any time during the year, each spouse's contribution limit is increased by \$1,000 provided each spouse has a separate HSA. No contributions can be made to an individual's HSA after he or she becomes enrolled in Medicare Part A or Part B.

Nondiscrimination rules. Your contribution amount to an employee's HSA must be comparable for all employees who have comparable coverage during the same period. Otherwise, there will be an excise tax equal to 35% of the amount you contributed to all employees' HSAs.

For guidance on employer comparable contributions to HSAs under section 4980G in instances where an employee has not established an HSA by December 31 and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses, see Regulations section 54.4980G-4.

Exception. The Tax Relief and Health Care Act of 2006 allows employers to make larger HSA contributions for a nonhighly compensated employee than for a highly compensated employee. A highly compensated employee for 2013 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Partnerships and S corporations. Partners and 2% shareholders of an S corporation are not eligible for salary reduction (pre-tax) contributions to an HSA. Employer contributions to the HSA of a bona fide partner or 2% shareholder are treated as distributions or guaranteed payments as determined by the facts and circumstances.

Cafeteria plans. You may contribute to an employee's HSA using a cafeteria plan and your contributions are not subject to the statutory comparability rules. However, cafeteria plan nondiscrimination rules still apply. For example, contributions under a cafeteria plan to employee HSAs cannot be greater for higher-paid employees than they are for lower-paid employees. Contributions that favor lower-paid employees are not prohibited.

Reporting requirements. You must report your contributions to an employee's HSA in box 12 of Form W-2 using code "W." The trustee or custodian of the HSA,

generally a bank or insurance company, reports distributions from the HSA using Form 1099-SA, Distributions From an HSA, Archer MSA, or Medicare Advantage MSA.

Lodging on Your Business Premises

You can exclude the value of lodging you furnish to an employee from the employee's wages if it meets the following tests.

- It is furnished on your business premises.
- It is furnished for your convenience.
- The employee must accept it as a condition of employment.

Different tests may apply to lodging furnished by educational institutions. See section 119(d) of the Internal Revenue Code for details.

The exclusion does not apply if you allow your employee to choose to receive additional pay instead of lodging.

On your business premises. For this exclusion, your business premises is generally your employee's place of work. For special rules that apply to lodging furnished in a camp located in a foreign country, see section 119(c) of the Internal Revenue Code and its regulations.

For your convenience. Whether or not you furnish lodging for your convenience as an employer depends on all the facts and circumstances. You furnish the lodging to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the lodging is furnished as pay. However, a written statement that the lodging is furnished for your convenience is not sufficient.

Condition of employment. Lodging meets this test if you require your employees to accept the lodging because they need to live on your business premises to be able to properly perform their duties. Examples include employees who must be available at all times and employees who could not perform their required duties without being furnished the lodging.

It does not matter whether you must furnish the lodging as pay under the terms of an employment contract or a law fixing the terms of employment.

Example. A hospital gives Joan, an employee of the hospital, the choice of living at the hospital free of charge or living elsewhere and receiving a cash allowance in addition to her regular salary. If Joan chooses to live at the hospital, the hospital cannot exclude the value of the lodging from her wages because she is not required to live at the hospital to properly perform the duties of her employment.

S corporation shareholders. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the

year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Meals

This section discusses the exclusion rules that apply to *de minimis* meals and meals on your business premises.

De Minimis Meals

You can exclude any occasional meal or meal money you provide to an employee if it has so little value (taking into account how frequently you provide meals to your employees) that accounting for it would be unreasonable or administratively impracticable. The exclusion applies, for example, to the following items.

- Coffee, doughnuts, or soft drinks.
- Occasional meals or meal money provided to enable an employee to work overtime. However, the exclusion does not apply to meal money figured on the basis of hours worked.
- Occasional parties or picnics for employees and their guests.

This exclusion also applies to meals you provide at an employer-operated eating facility for employees if the annual revenue from the facility equals or exceeds the direct costs of the facility. For this purpose, your revenue from providing a meal is considered equal to the facility's direct operating costs to provide that meal if its value can be excluded from an employee's wages as explained under *Meals on Your Business Premises*, later.

TIP *If food or beverages you furnish to employees qualify as a de minimis benefit, you can deduct their full cost. The 50% limit on deductions for the cost of meals does not apply. The deduction limit on meals is discussed in chapter 2 of Publication 535.*

Employee. For this exclusion, treat any recipient of a *de minimis* meal as an employee.

Employer-operated eating facility for employees. An employer-operated eating facility for employees is an eating facility that meets all the following conditions.

- You own or lease the facility.
- You operate the facility. You are considered to operate the eating facility if you have a contract with another to operate it.
- The facility is on or near your business premises.
- You provide meals (food, drinks, and related services) at the facility during, or immediately before or after, the employee's workday.

Exclusion from wages. You can generally exclude the value of *de minimis* meals you provide to an employee from the employee's wages.

Exception for highly compensated employees. You cannot exclude from the wages of a highly compensated employee the value of a meal provided at an employer-operated eating facility that is not available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

For this exclusion, a highly compensated employee for 2013 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Meals on Your Business Premises

You can exclude the value of meals you furnish to an employee from the employee's wages if they meet the following tests.

- They are furnished on your business premises.
- They are furnished for your convenience.

This exclusion does not apply if you allow your employee to choose to receive additional pay instead of meals.

On your business premises. Generally, for this exclusion, the employee's place of work is your business premises.

For your convenience. Whether you furnish meals for your convenience as an employer depends on all the facts and circumstances. You furnish the meals to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the meals are furnished as pay. However, a written statement that the meals are furnished for your convenience is not sufficient.

Meals excluded for all employees if excluded for more than half. If more than half of your employees who are furnished meals on your business premises are furnished the meals for your convenience, you can treat all meals you furnish to employees on your business premises as furnished for your convenience.

Food service employees. Meals you furnish to a restaurant or other food service employee during, or

immediately before or after, the employee's working hours are furnished for your convenience. For example, if a waitress works through the breakfast and lunch periods, you can exclude from her wages the value of the breakfast and lunch you furnish in your restaurant for each day she works.

Example. You operate a restaurant business. You furnish your employee, Carol, who is a waitress working 7 a.m. to 4 p.m., two meals during each workday. You encourage but do not require Carol to have her breakfast on the business premises before starting work. She must have her lunch on the premises. Since Carol is a food service employee and works during the normal breakfast and lunch periods, you can exclude from her wages the value of her breakfast and lunch.

If you also allow Carol to have meals on your business premises without charge on her days off, you cannot exclude the value of those meals from her wages.

Employees available for emergency calls. Meals you furnish during working hours so an employee will be available for emergency calls during the meal period are furnished for your convenience. You must be able to show these emergency calls have occurred or can reasonably be expected to occur.

Example. A hospital maintains a cafeteria on its premises where all of its 230 employees may get meals at no charge during their working hours. The hospital must have 120 of its employees available for emergencies. Each of these 120 employees is, at times, called upon to perform services during the meal period. Although the hospital does not require these employees to remain on the premises, they rarely leave the hospital during their meal period. Since the hospital furnishes meals on its premises to its employees so that more than half of them are available for emergency calls during meal periods, the hospital can exclude the value of these meals from the wages of all of its employees.

Short meal periods. Meals you furnish during working hours are furnished for your convenience if the nature of your business restricts an employee to a short meal period (such as 30 or 45 minutes) and the employee cannot be expected to eat elsewhere in such a short time. For example, meals can qualify for this treatment if your peak work-load occurs during the normal lunch hour. However, they do not qualify if the reason for the short meal period is to allow the employee to leave earlier in the day.

Example. Frank is a bank teller who works from 9 a.m. to 5 p.m. The bank furnishes his lunch without charge in a cafeteria the bank maintains on its premises. The bank furnishes these meals to Frank to limit his lunch period to 30 minutes, since the bank's peak workload occurs during the normal lunch period. If Frank got his lunch elsewhere, it would take him much longer than 30 minutes and the bank strictly enforces the time limit. The bank can exclude the value of these meals from Frank's wages.

Proper meals not otherwise available. Meals you furnish during working hours are furnished for your convenience if the employee could not otherwise eat proper meals within a reasonable period of time. For example, meals can qualify for this treatment if there are insufficient eating facilities near the place of employment.

Meals after work hours. Meals you furnish to an employee immediately after working hours are furnished for your convenience if you would have furnished them during working hours for a substantial nonpay business reason but, because of the work duties, they were not eaten during working hours.

Meals you furnish to promote goodwill, boost morale, or attract prospective employees. Meals you furnish to promote goodwill, boost morale, or attract prospective employees are not considered furnished for your convenience. However, you may be able to exclude their value as discussed under De Minimis Meals, earlier.

Meals furnished on nonworkdays or with lodging. You generally cannot exclude from an employee's wages the value of meals you furnish on a day when the employee is not working. However, you can exclude these meals if they are furnished with lodging that is excluded from the employee's wages as discussed under Lodging on Your Business Premises, earlier in this section.

Meals with a charge. The fact that you charge for the meals and that your employees may accept or decline the meals is not taken into account in determining whether or not meals are furnished for your convenience.

S corporation shareholder-employee. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Moving Expense Reimbursements

This exclusion applies to any amount you directly or indirectly give to an employee, (including services furnished in kind) as payment for, or reimbursement of, moving expenses. You must make the reimbursement under rules similar to those described in chapter 11 of Publication 535 for reimbursement of expenses for travel, meals, and entertainment under accountable plans.

The exclusion applies only to reimbursement of moving expenses that the employee could deduct if he or she had paid or incurred them without reimbursement. However, it does not apply if the employee actually deducted the expenses in a previous year.

Deductible moving expenses. Deductible moving expenses include only the reasonable expenses of:

- Moving household goods and personal effects from the former home to the new home, and

- Traveling (including lodging) from the former home to the new home.

Deductible moving expenses do not include any expenses for meals and must meet both the distance test and the time test. The distance test is met if the new job location is at least 50 miles farther from the employee's old home than the old job location was. The time test is met if the employee works at least 39 weeks during the first 12 months after arriving in the general area of the new job location.

For more information on deductible moving expenses, see Publication 521, Moving Expenses.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Exclusion from wages. Generally, you can exclude qualifying moving expense reimbursement you provide to an employee from the employee's wages. If you paid the reimbursement directly to the employee, report the amount in box 12 of Form W-2 with the code "P." Do not report payments to a third party for the employee's moving expenses or the value of moving services you provided in kind.

No-Additional-Cost Services

This exclusion applies to a service you provide to an employee if it does not cause you to incur any substantial additional costs. The service must be offered to customers in the ordinary course of the line of business in which the employee performs substantial services.

Generally, no-additional-cost services are excess capacity services, such as airline, bus, or train tickets; hotel rooms; or telephone services provided free or at a reduced price to employees working in those lines of business.

Substantial additional costs. To determine whether you incur substantial additional costs to provide a service to an employee, count any lost revenue as a cost. Do not reduce the costs you incur by any amount the employee pays for the service. You are considered to incur substantial additional costs if you or your employees

spend a substantial amount of time in providing the service, even if the time spent would otherwise be idle or if the services are provided outside normal business hours.

Reciprocal agreements. A no-additional-cost service provided to your employee by an unrelated employer may qualify as a no-additional-cost service if all the following tests are met.

- The service is the same type of service generally provided to customers in both the line of business in which the employee works and the line of business in which the service is provided.
- You and the employer providing the service have a written reciprocal agreement under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer.
- Neither you nor the other employer incurs any substantial additional cost either in providing the service or because of the written agreement.

Employee. For this exclusion, treat the following individuals as employees.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
6. A partner who performs services for a partnership.

Treat services you provide to the spouse or dependent child of an employee as provided to the employee. For this fringe benefit, dependent child means any son, stepson, daughter, or stepdaughter who is a dependent of the employee, or both of whose parents have died and who has not reached age 25. Treat a child of divorced parents as a dependent of both parents.

Treat any use of air transportation by the parent of an employee as use by the employee. This rule does not apply to use by the parent of a person considered an employee because of item (3) or (4) above.

Exclusion from wages. You can generally exclude the value of a no-additional-cost service you provide to an employee from the employee's wages.

Exception for highly compensated employees. You cannot exclude from the wages of a highly compensated employee the value of a no-additional-cost service that is not available on the same terms to one of the following groups.

- All of your employees.

- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

For this exclusion, a highly compensated employee for 2013 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Retirement Planning Services

You may exclude from an employee's wages the value of any retirement planning advice or information you provide to your employee or his or her spouse if you maintain a qualified retirement plan as defined in section 219(g)(5) of the Internal Revenue Code. In addition to employer plan advice and information, the services provided may include general advice and information on retirement. However, the exclusion does not apply to services for tax preparation, accounting, legal, or brokerage services. You cannot exclude from the wages of a highly compensated employee retirement planning services that are not available on the same terms to each member of a group of employees normally provided education and information about the employer's qualified retirement plan.

Transportation (Commuting) Benefits

This section discusses exclusion rules that apply to benefits you provide to your employees for their personal transportation, such as commuting to and from work. These rules apply to the following transportation benefits.

- *De minimis* transportation benefits.
- Qualified transportation benefits.

Special rules that apply to demonstrator cars and qualified nonpersonal-use vehicles are discussed under *Working Condition Benefits*, later in this section.

De Minimis Transportation Benefits

You can exclude the value of any *de minimis* transportation benefit you provide to an employee from the employee's wages. A *de minimis* transportation benefit is any local transportation benefit you provide to an employee if it has so little value (taking into account how frequently you provide transportation to your employees) that accounting for it would be unreasonable or administratively impracticable. For example, it applies to occasional transportation fare you give an employee because the employee is working overtime if the benefit is reasonable and is not based on hours worked.

Employee. For this exclusion, treat any recipient of a *de minimis* transportation benefit as an employee.

Qualified Transportation Benefits

This exclusion applies to the following benefits.

- A ride in a commuter highway vehicle between the employee's home and work place.
- A transit pass.
- Qualified parking.
- Qualified bicycle commuting reimbursement.

The exclusion applies whether you provide only one or a combination of these benefits to your employees.

Qualified transportation benefits can be provided directly by you or through a bona fide reimbursement arrangement. However, cash reimbursements for transit passes qualify only if a voucher or a similar item that the employee can exchange only for a transit pass is not readily available for direct distribution by you to your employee. A voucher is readily available for direct distribution only if an employee can obtain it from a voucher provider that does not impose fare media charges or other restrictions that effectively prevent the employer from obtaining vouchers. See Regulations section 1.132-9(b)(Q&A 16-19) for more information.

Generally, you can exclude qualified transportation fringe benefits from an employee's wages even if you provide them in place of pay. However, qualified bicycle commuting reimbursements cannot be excluded if the reimbursements are provided in place of pay. For information about providing qualified transportation fringe benefits under a compensation reduction agreement, see Regulations section 1.132-9(b)(Q&A 11-15).

Commuter highway vehicle. A commuter highway vehicle is any highway vehicle that seats at least 6 adults (not including the driver). In addition, you must reasonably expect that at least 80% of the vehicle mileage will be for transporting employees between their homes and work place with employees occupying at least one-half the vehicle's seats (not including the driver's).

Transit pass. A transit pass is any pass, token, farecard, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate, on one of the following.

- On mass transit.
- In a vehicle that seats at least 6 adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it.

Mass transit may be publicly or privately operated and includes bus, rail, or ferry. For guidance on the use of smart cards and debit cards to provide qualified transportation fringes, see Revenue Ruling 2006-57, 2006-47 I.R.B. 911, available at www.irs.gov/irb/2006-47_IRB/ar05.html and Notice 2010-94, 2010-52 I.R.B. 927, available at www.irs.gov/irb/2010-52_IRB/ar18.html.

Qualified parking. Qualified parking is parking you provide to your employees on or near your business premises. It includes parking on or near the location from which your employees commute to work using mass transit, commuter highway vehicles, or carpools. It does not include parking at or near your employee's home.

Qualified bicycle commuting reimbursement. For any calendar year, the exclusion for qualified bicycle commuting reimbursement includes any employer reimbursement during the 15-month period beginning with the first day of the calendar year for reasonable expenses incurred by the employee during the calendar year.

Reasonable expenses include:

- The purchase of a bicycle, and
- Bicycle improvements, repair, and storage.

These are considered reasonable expenses as long as the bicycle is regularly used for travel between the employee's residence and place of employment.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

A self-employed individual is not an employee for qualified transportation benefit purposes.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Relation to other fringe benefits. You cannot exclude a qualified transportation benefit you provide to an employee under the *de minimis* or working condition benefit rules. However, if you provide a local transportation benefit other than by transit pass or commuter highway vehicle, or to a person other than an employee, you may be able to exclude all or part of the benefit under other fringe benefit rules (*de minimis*, working condition, etc.).

Exclusion from wages. You can generally exclude the value of transportation benefits that you provide to an employee during 2013 from the employee's wages up to the following limits.

- \$245 per month for combined commuter highway vehicle transportation and transit passes.
- \$245 per month for qualified parking.

- For a calendar year, \$20 multiplied by the number of qualified bicycle commuting months during that year for qualified bicycle commuting reimbursement of expenses incurred during the year.

Qualified bicycle commuting month. For any employee, a qualified bicycle commuting month is any month the employee:

1. Regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment and
2. Does not receive:
 - a. Transportation in a commuter highway vehicle,
 - b. Any transit pass, or
 - c. Qualified parking benefits.

Benefits more than the limit. If the value of a benefit for any month is more than its limit, include in the employee's wages the amount over the limit minus any amount the employee paid for the benefit. You cannot exclude the excess from the employee's wages as a *de minimis* transportation benefit.

More Information. For more information on qualified transportation benefits, including van pools, and how to determine the value of parking, see Regulations section 1.132-9.

Tuition Reduction

An educational organization can exclude the value of a qualified tuition reduction it provides to an employee from the employee's wages.

A tuition reduction for undergraduate education generally qualifies for this exclusion if it is for the education of one of the following individuals.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A dependent child or spouse of any individual listed in (1) through (4) above.

A tuition reduction for graduate education qualifies for this exclusion only if it is for the education of a graduate student who performs teaching or research activities for the educational organization.

For more information on this exclusion, see Publication 970.

Working Condition Benefits

This exclusion applies to property and services you provide to an employee so that the employee can perform his

or her job. It applies to the extent the employee could deduct the cost of the property or services as a business expense or depreciation expense if he or she had paid for it. The employee must meet any substantiation requirements that apply to the deduction. Examples of working condition benefits include an employee's use of a company car for business, an employer-provided cell phone provided primarily for noncompensatory business purposes, and job-related education provided to an employee.

This exclusion also applies to a cash payment you provide for an employee's expenses for a specific or prearranged business activity for which a deduction is otherwise allowable to the employee. You must require the employee to verify that the payment is actually used for those expenses and to return any unused part of the payment.

For information on deductible employee business expenses, see *Unreimbursed Employee Expenses* in Publication 529, *Miscellaneous Deductions*.

The exclusion does not apply to the following items.

- A service or property provided under a flexible spending account in which you agree to provide the employee, over a time period, a certain level of unspecified noncash benefits with a predetermined cash value.
- A physical examination program you provide, even if mandatory.
- Any item to the extent the employee could deduct its cost as an expense for a trade or business other than your trade or business.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A partner who performs services for a partnership.
- A director of your company.
- An independent contractor who performs services for you.

Vehicle allocation rules. If you provide a car for an employee's use, the amount you can exclude as a working condition benefit is the amount that would be allowable as a deductible business expense if the employee paid for its use. If the employee uses the car 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. See *Business use of your car under Personal versus Business Expenses* in chapter 1 of Publication 535. Also, see the special rules for certain demonstrator cars and qualified nonpersonal-use vehicles discussed below.

However, instead of excluding the value of the working condition benefit, you can include the entire annual lease value of the car in the employee's wages. The employee can then claim any deductible business expense for the car as an itemized deduction on his or her personal income tax return. This option is available only if you use the

lease value rule (discussed in section 3) to value the benefit.

Demonstrator cars. Generally, all of the use of a demonstrator car by your full-time auto salesperson qualifies as a working condition benefit if the use is primarily to facilitate the services the salesperson provides for you and there are substantial restrictions on personal use. For more information and the definition of "full-time auto salesperson," see Regulations section 1.132-5(o). For optional, simplified methods used to determine if full, partial, or no exclusion of income to the employee for personal use of a demonstrator car applies, see Revenue Procedure 2001-56. You can find Revenue Procedure 2001-56 on page 590 of Internal Revenue Bulletin 2001-51 at www.irs.gov/pub/irs-irbs/irb01-51.pdf.

Qualified nonpersonal-use vehicles. All of an employee's use of a qualified nonpersonal-use vehicle is a working condition benefit. A qualified nonpersonal-use vehicle is any vehicle the employee is not likely to use more than minimally for personal purposes because of its design. Qualified nonpersonal-use vehicles generally include all of the following vehicles.

- Clearly marked, through painted insignia or words, police, fire, and public safety vehicles.
- Unmarked vehicles used by law enforcement officers if the use is officially authorized.
- An ambulance or hearse used for its specific purpose.
- Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.
- Delivery trucks with seating for the driver only, or the driver plus a folding jump seat.
- A passenger bus with a capacity of at least 20 passengers used for its specific purpose.
- School buses.
- Tractors and other special-purpose farm vehicles.
- Bucket trucks, cement mixers, combines, cranes and derricks, dump trucks (including garbage trucks), flat-bed trucks, forklifts, qualified moving vans, qualified specialized utility repair trucks, and refrigerated trucks.

See Regulations section 1.274-5(k) for the definition of qualified moving van and qualified specialized utility repair truck.

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, business, or function and meets either of the following requirements.

1. It is equipped with at least one of the following items.

- a. A hydraulic lift gate.
- b. Permanent tanks or drums.
- c. Permanent side boards or panels that materially raise the level of the sides of the truck bed.
- d. Other heavy equipment (such as an electric generator, welder, boom, or crane used to tow automobiles and other vehicles).

2. 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, 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.

Education. Certain job-related education you provide to an employee may qualify for exclusion as a working condition benefit. To qualify, the education must meet the same requirements that would apply for determining whether the employee could deduct the expenses had the employee paid the expenses. Degree programs as a whole do not necessarily qualify as a working condition benefit. Each course in the program must be evaluated individually for qualification as a working condition benefit. The education must meet at least one of the following tests.

- The education is required by the employer or by law for the employee to keep his or her present salary, status, or job. The required education must serve a bona fide business purpose of the employer.
- The education maintains or improves skills needed in the job.

However, even if the education meets one or both of the above tests, it is not qualifying education if it:

- Is needed to meet the minimum educational requirements of the employee's present trade or business, or
- Is part of a program of study that will qualify the employee for a new trade or business.

Outplacement services. An employee's use of outplacement services qualifies as a working condition benefit if you provide the services to the employee on the basis of need, you get a substantial business benefit from the services distinct from the benefit you would get from the payment of additional wages, and the employee is seeking employment in the same trade or business of the

employer. Substantial business benefits include promoting a positive business image, maintaining employee morale, and avoiding wrongful termination suits.

Outplacement services do not qualify as a working condition benefit if the employee can choose to receive cash or taxable benefits in place of the services. If you maintain a severance plan and permit employees to get outplacement services with reduced severance pay, include in the employee's wages the difference between the unreduced severance and the reduced severance payments.

Exclusion from wages. You can generally exclude the value of a working condition benefit you provide to an employee from the employee's wages.

Exception for independent contractors. You cannot exclude the value of parking (unless *de minimis*), transit passes (if their monthly value exceeds \$245 per month), or the use of consumer goods you provide in a product testing program from the compensation you pay to an independent contractor who performs services for you.

Exception for company directors. You cannot exclude the value of the use of consumer goods you provide in a product testing program from the compensation you pay to a director.

3. Fringe Benefit Valuation Rules

This section discusses the rules you must use to determine the value of a fringe benefit you provide to an employee. You must determine the value of any benefit you cannot exclude under the rules in section 2 or for which the amount you can exclude is limited. See *Including taxable benefits in pay* in section 1.

In most cases, you must use the general valuation rule to value a fringe benefit. However, you may be able to use a special valuation rule to determine the value of certain benefits.

This section does not discuss the special valuation rule used to value meals provided at an employer-operated eating facility for employees. For that rule, see Regulations section 1.61-21(j). This section also does not discuss the special valuation rules used to value the use of aircraft. For those rules, see Regulations sections 1.61-21(g) and (h). The fringe benefit valuation formulas are published in the Internal Revenue Bulletin as Revenue Rulings twice during the year. The formula applicable for the first half of the year is usually available at the end of March. The formula applicable for the second half of the year is usually available at the end of September.

General Valuation Rule

You must use the general valuation rule to determine the value of most fringe benefits. Under this rule, the value of a fringe benefit is its fair market value.

Fair market value. The fair market value (FMV) of a fringe benefit is the amount an employee would have to pay a third party in an arm's-length transaction to buy or lease the benefit. Determine this amount on the basis of all the facts and circumstances.

Neither the amount the employee considers to be the value of the fringe benefit nor the cost you incur to provide the benefit determines its FMV.

Employer-provided vehicles. In general, the FMV of an employer-provided vehicle is the amount the employee would have to pay a third party to lease the same or similar vehicle on the same or comparable terms in the geographic area where the employee uses the vehicle. A comparable lease term would be the amount of time the vehicle is available for the employee's use, such as a 1-year period.

Do not determine the FMV by multiplying a cents-per-mile rate times the number of miles driven unless the employee can prove the vehicle could have been leased on a cents-per-mile basis.

Cents-Per-Mile Rule

Under this rule, you determine the value of a vehicle you provide to an employee for personal use by multiplying the standard mileage rate by the total miles the employee drives the vehicle for personal purposes. Personal use is any use of the vehicle other than use in your trade or business. This amount must be included in the employee's wages or reimbursed by the employee. For 2013, the standard mileage rate is 56.5 cents per mile.

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 in your trade or business throughout the calendar year (or for a shorter period during which you own or lease it).
- The vehicle meets the mileage test.



Maximum automobile value. You cannot use the cents-per-mile rule for an automobile (any four-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 automobile 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. The maximum automobile value for 2013 will be published in a revenue procedure in the Internal Revenue Bulletin early in 2013. If you and the employee own or lease the automobile together, see Regulations section 1.61-21(e)(1)(iii)(B).

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 trade or 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 your trade or business.
- 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 for occasional trips to the airport or between your multiple business premises, is not regular use of the vehicle in your trade or business.

Mileage test. A 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 used 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 year and that employee drives the vehicle at least 10,000 miles in that year, the vehicle meets the mileage test even if all miles driven by the employee are personal.

Consistency requirements. If you use the cents-per-mile rule, 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 (discussed later) 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 of the vehicle qualifies under the commuting rules. 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 the employee (and the vehicle qualifies for the use of this rule) and your primary reason for the replacement is to reduce federal taxes.

Items included in cents-per-mile rate. The cents-per-mile rate includes the value of maintenance and insurance for the vehicle. 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 Rule, earlier.

For miles driven in the United States, its territories and possessions, Canada, and Mexico, 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.

For special rules that apply to fuel you provide for miles driven outside the United States, Canada, and Mexico, see Regulations section 1.61-21(e)(3)(ii)(B).

The value of any other service you provide for a vehicle is not included in the cents-per-mile rate. Use the general valuation rule to value these services.

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 the vehicle, this value applies to each employee. This amount must be included in the employee's wages 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 noncompensatory 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). 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.
- If this 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. See Control employee, later.

Vehicle. For this rule, a vehicle is any motorized wheeled vehicle, including an automobile manufactured primarily for use on public streets, roads, and highways.

Control employee. A control employee of a nongovernment employer for 2013 is generally any of the following employees.

- A board or shareholder-appointed, confirmed, or elected officer whose pay is \$100,000 or more.
- A director.
- An employee whose pay is \$205,000 or more.
- An employee who owns a 1% or more equity, capital, or profits interest in your business.

A control employee for a government employer for 2013 is either of the following.

- A government employee whose compensation is equal to or exceeds Federal Government Executive Level V. See the Office of Personnel Management website at www.opm.gov/oca/payrates/index.asp for 2013 compensation information.
- An elected official.

Highly compensated employee alternative. Instead of using the preceding definition, you can choose to define a control employee as any highly compensated employee. A highly compensated employee for 2013 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Lease Value Rule

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 lease value.

If the automobile is used by the employee 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. In order to do this, the employee must account to the employer for the business use. This is done by substantiating the usage (mileage, for example), 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 a company-provided vehicle that is not substantiated as business use is included in income. The working condition benefit is the amount that would be an allowable business expense deduction for the employee if the employee paid for the use of the vehicle. However, you can choose to include the entire lease value in the employee's wages. See *Vehicle allocation rules*, under *Working Condition Benefit* in section 2.

Automobile. For this rule, an automobile is any four-wheeled vehicle (such as a car, pickup truck, or van) manufactured primarily for use on public streets, roads, and highways.

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

1. 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.
 - a. If you use the commuting rule (discussed earlier in this section) 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.
 - b. If you use the cents-per-mile rule (discussed earlier in this section) 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 on which the automobile no longer qualifies for the cents-per-mile rule.
2. 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.
3. You must continue to use this rule if you provide a replacement automobile to the employee and your primary reason for the replacement is to reduce federal taxes.

Annual Lease Value

Generally, you figure the annual lease value of an automobile as follows.

1. Determine the fair market value (FMV) of the automobile on the first date it is available to any employee for personal use.
2. Using *Table 3-1. Annual Lease Value Table*, read down column (1) until you come to the dollar range within which the FMV of the automobile falls. Then read across to column (2) to find the annual lease value.
3. Multiply the annual lease value by the percentage of personal miles out of total miles driven by the employee.

Table 3-1. Annual Lease Value Table

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

For automobiles with a FMV of more than \$59,999, the annual lease value equals (.25 x the FMV of the automobile) + \$500.

FMV. The FMV of an automobile is the amount a person would pay to buy it from a third party in an arm's-length transaction in the area in which the automobile is bought or leased. That amount includes all purchase expenses, such as sales tax and title fees.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(5)(v). If you and the employee own or lease the automobile together, see Regulations section 1.61-21(d)(2)(ii).

You do not have to include the value of a telephone or any specialized equipment added to, or carried in, the automobile if the equipment is necessary for your business. However, include the value of specialized equipment if the employee to whom the automobile is available uses the

specialized equipment in a trade or business other than yours.

Neither the amount the employee considers to be the value of the benefit nor your cost for either buying or leasing the automobile determines its FMV. However, see *Safe-harbor value*, next.

Safe-harbor value. You may be able to use a safe-harbor value as the FMV.

For an automobile you bought at arm's length, the safe-harbor value is your cost, including sales tax, title, and other purchase expenses. You cannot have been the manufacturer of the automobile.

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 automobile reported by a nationally recognized pricing source if that retail value is reasonable for the automobile.

Items included in annual lease value table. Each annual lease value in the table includes the value of maintenance and insurance for the automobile. 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 by the value of a maintenance service contract or insurance you did not provide. You can take into account the services actually provided for the automobile by using the general valuation rule discussed earlier.

Items not included. The annual lease value does not 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. You must include the value of the fuel separately in the employee's wages. You can value fuel you provided at FMV or at 5.5 cents per mile for all miles driven by the employee. However, you cannot value at 5.5 cents per mile fuel you provide for miles driven outside the United States (including its possessions and territories), Canada, and Mexico.

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 automobiles, see Regulations section 1.61-21(d)(3)(ii)(D).

If you provide any service other than maintenance and insurance for an automobile, you must add the FMV of that service to the annual lease value of the automobile 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 automobile 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 automobile on January 1 of the first year of the later 4-year period and selecting the amount in column (2) of the table that corresponds to the appropriate dollar range in column (1).

Using the special accounting rule. If you use the special accounting rule for fringe benefits discussed in section 4, 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.

For example, assume that you use the special accounting rule and that, beginning on November 1, 2012, the special accounting period is November 1 to October 31. You elected to use the lease value rule as of January 1, 2013. You can refigure the annual lease value on November 1, 2016, rather than on January 1, 2017.

Transferring an automobile 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 automobile on January 1 of the calendar year of transfer.

However, if you use the special accounting rule for fringe benefits discussed in section 4, you can refigure the annual lease value (based on the FMV of the automobile) at the beginning of the special accounting period in which the transfer occurs.

Prorated Annual Lease Value

If you provide an automobile to an employee for a continuous period of 30 or more days 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 an automobile continuously for at least 30 days, but the period covers 2 calendar years (or 2 special accounting periods if you are using the special accounting rule for fringe benefits discussed in section 4), you can use the prorated annual lease value or the daily lease value.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(6).

If an automobile is unavailable to the employee because of his or her personal reasons (for example, if the employee is on vacation), you cannot take into account the periods of unavailability when you use a prorated annual lease value.



You cannot use a prorated annual lease value if the reduction of federal tax is the main reason the automobile is unavailable.

Daily Lease Value

If you provide an automobile to an employee 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 automobile as if it had been available for 30 days. Use a prorated annual lease value if it would result in a lower valuation than applying the daily lease value to the shorter period of availability.

Unsafe Conditions Commuting Rule

Under this rule, the value of commuting transportation you provide to a qualified employee solely because of unsafe conditions is \$1.50 for a one-way commute (that is, from home to work or from work to home). This amount must be included in the employee's wages or reimbursed by the employee.

You can use the unsafe conditions commuting rule for qualified employees if all of the following requirements are met.

- The employee would ordinarily walk or use public transportation for commuting.
- You have a written policy under which you do not provide the transportation for personal purposes other than commuting because of unsafe conditions.
- The employee does not use the transportation for personal purposes other than commuting because of unsafe conditions.

These requirements must be met on a trip-by-trip basis.

Commuting transportation. This is transportation to or from work using any motorized wheeled vehicle (including an automobile) manufactured for use on public streets, roads, and highways. You or the employee must buy the transportation from a party that is not related to you. If the employee buys it, you must reimburse the employee for its cost (for example, cab fare) under a bona fide reimbursement arrangement.

Qualified employee. A qualified employee for 2013 is one who:

- Performs services during the year;
- Is paid on an hourly basis;
- Is not claimed under section 213(a)(1) of the Fair Labor Standards Act (FLSA) of 1938 (as amended) to be exempt from the minimum wage and maximum hour provisions;
- Is within a classification for which you actually pay, or have specified in writing that you will pay, overtime pay of at least one and one-half times the regular rate provided in section 207 of FLSA; and

- Received pay of not more than \$115,000 during 2012.

However, an employee is not considered a qualified employee if you do not comply with the recordkeeping requirements concerning the employee's wages, hours, and other conditions and practices of employment under section 211(c) of FLSA and the related regulations.

Unsafe conditions. Unsafe conditions exist if, under the facts and circumstances, a reasonable person would consider it unsafe for the employee to walk or use public transportation at the time of day the employee must commute. One factor indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or home at the time of day the employee commutes.

4. Rules for Withholding, Depositing, and Reporting

Use the following guidelines for withholding, depositing, and reporting taxable noncash fringe benefits. For additional information on how to withhold on fringe benefits, see Publication 15 (Circular E), section 5.

Valuation of fringe benefits. Generally, you must determine the value of noncash fringe benefits no later than January 31 of the next year. Before January 31, you may reasonably estimate the value of the fringe benefits for purposes of withholding and depositing on time.

Choice of period for withholding, depositing, and reporting. For employment tax and withholding purposes, you can treat fringe benefits (including personal use of employer-provided highway motor vehicles) as paid on a pay period, quarter, semiannual, annual, or other basis. But the benefits must be treated as paid no less frequently than annually. You do not have to choose the same period for all employees. You can withhold more frequently for some employees than for others.

You can change the period as often as you like as long as you treat all of the benefits provided in a calendar year as paid no later than December 31 of the calendar year.

You can also treat the value of a single 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 your employee receives a fringe benefit valued at \$1,000 in one pay period during 2013, you can treat it as made in four payments of \$250, each in a different pay period of 2013. You do not have to notify the IRS of the use of the periods discussed above.

Transfer of property. The above choice for reporting and withholding does not apply to a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property. For this kind of fringe benefit, you must use the actual date the property was transferred to the employee.

Withholding and depositing taxes. You can add the value of fringe benefits to regular wages for a payroll pe-

riod and figure income tax withholding on the total. Or you can withhold federal income tax on the value of fringe benefits at the flat 25% rate that applies to supplemental wages. See section 7 in Publication 15 (Circular E) for the flat rate (39.6%) when supplemental wage payments to an individual exceed \$1 million during the year.

You must withhold the applicable income, social security, and Medicare taxes on the date or dates you chose to treat the benefits as paid. Deposit the amounts withheld as discussed in section 11 of Publication 15 (Circular E).

Additional Medicare Tax withholding. In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay to an employee in excess of \$200,000 in a calendar year. You are required to begin withholding Additional Medicare Tax in the pay period in which you pay wages in excess of \$200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the \$200,000 withholding threshold. For more information on what wages are subject to Medicare tax, see Table 2-1, earlier, and the chart, *Special Rules for Various Types of Services and Payments*, in section 15 of Publication 15, (Circular E).

Amount of deposit. To estimate the amount of income tax withholding and employment taxes and to deposit them on time, make a reasonable estimate of the value of the fringe benefits provided on the date or dates you chose to treat the benefits as paid. Determine the estimated deposit by figuring the amount you would have had to deposit if you had paid cash wages equal to the estimated value of the fringe benefits and withheld taxes from those cash wages. Even if you do not know which employee will receive the fringe benefit on the date the deposit is due, you should follow this procedure.

If you underestimate the value of the fringe benefits and deposit less than the amount you would have had to deposit if the applicable taxes had been withheld, you may be subject to a penalty.

If you overestimate the value of the fringe benefit and overdeposit, you can either claim a refund or have the overpayment applied to your next Form 941. See the Instructions for Form 941.

If you paid the required amount of taxes but withheld a lesser amount from the employee, you can recover from the employee the social security, Medicare, or income taxes you deposited on the employee's behalf and included on the employee's Form W-2. However, you must recover the income taxes before April 1 of the following year.

Paying your employee's share of social security and Medicare taxes. If you choose to pay your employee's social security and Medicare taxes on taxable fringe benefits without deducting them from his or her pay, you must include the amount of the payments in the employee's income. Also, if your employee leaves your employment

and you have unpaid and uncollected taxes for noncash benefits, you are still liable for those taxes. You must add the uncollected employee share of social security and Medicare tax to the employee's wages. Follow the procedure discussed under *Employee's Portion of Taxes Paid by Employer* in section 7 of Publication 15-A. Do not use withheld federal income tax to pay the social security and Medicare tax.

Special accounting rule. You can treat the value of taxable noncash benefits as paid on a pay period, quarterly, semi-annually, annually, or on another basis, provided that the benefits are treated as paid no less frequently than annually. You can treat the value of taxable noncash fringe benefits provided during the last two months of the calendar year, or any shorter period within the last two months, as paid in the next year. Thus, the value of taxable noncash benefits actually provided in the last two months of 2012 could be treated as provided in 2013 together with the value of benefits provided in the first 10 months of 2013. This does not mean that all benefits treated as paid during the last two months of a calendar year can be deferred until the next year. Only the value of benefits actually provided during the last two months of the calendar year can be treated as paid in the next calendar year.

Limitation. The special accounting rule cannot be used, however, for a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property.

Conformity rules. Use of the special accounting rule is optional. You can use the rule for some fringe benefits but not others. The period of use need not be the same for each fringe benefit. However, if you use the rule for a particular fringe benefit, you must use it for all employees who receive that benefit.

If you use the special accounting rule, your employee also must use it for the same period you use it. But your employee cannot use the special accounting rule unless you do.

You do not have to notify the IRS if you use the special accounting rule. You may also, for appropriate reasons, change the period for which you use the rule without notifying the IRS. But you must report the income and deposit the withheld taxes as required for the changed period.

Special rules for highway motor vehicles. If an employee uses the employer's vehicle for personal purposes, the value of that use must be determined by the employer and included in the employee's wages. The value of the personal use must be based on fair market value or determined by using one of the following three special valuation rules previously discussed in section 3.

- The lease value rule.
- The cents-per-mile rule.
- The commuting rule (for commuting use only).

Election not to withhold income tax. You can choose not to withhold income tax on the value of an

employee's personal use of a highway motor vehicle you provided. You do not have to make this choice for all employees. You can withhold income tax from the wages of some employees but not others. You must, however, withhold the applicable social security and Medicare taxes on such benefits.

You can choose not to withhold income tax on an employee's personal use of a highway motor vehicle by:

- Notifying the employee as described below that you choose not to withhold, and
- Including the value of the benefits in boxes 1, 3, 5, and 14 on a timely furnished Form W-2. For use of a separate statement in lieu of using box 14, see the General Instructions for Forms W-2 and W-3.

The notice must be in writing and must be provided to the employee by January 31 of the election year or within 30 days after a vehicle is first provided to the employee, whichever is later. This notice must be provided in a manner reasonably expected to come to the attention of the affected employee. For example, the notice may be mailed to the employee, included with a paycheck, or posted where the employee could reasonably be expected to see it. You can also change your election not to withhold at any time by notifying the employee in the same manner.

Amount to report on Forms 941 (or Form 944) and W-2. The actual value of fringe benefits provided during a calendar year (or other period as explained under *Special accounting rule*, earlier in this section) must be determined by January 31 of the following year. You must report the actual value on Forms 941 (or Form 944) and W-2. If you choose, you can use a separate Form W-2 for fringe benefits and any other benefit information.

Include the value of the fringe benefit in box 1 of Form W-2. Also include it in boxes 3 and 5, if applicable. You may show the total value of the fringe benefits provided in the calendar year or other period in box 14 of Form W-2. However, if you provided your employee with the use of a highway motor vehicle and included 100% of its annual lease value in the employee's income, you must also report it separately in box 14 or provide it in a separate statement to the employee so that the employee can compute the value of any business use of the vehicle.

If you use the special accounting rule, you must notify the affected employees of the period in which you used it. You must give this notice at or near the date you give the Form W-2, but not earlier than with the employee's last paycheck of the calendar year.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.



Internet. You can access the IRS website at IRS.gov 24 hours a day, 7 days a week to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products.
- Research your tax questions.
- Search publications by topic or keyword.
- Use the Internal Revenue Code, regulations, or other official guidance.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.



Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-TAX-FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions (limited to 5 years). You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS Business and Specialty Tax Line with your employment tax questions at 1-800-829-4933.
- *Solving problems.* You can get face-to-face help solving tax problems most business days in IRS Taxpayer Assistance Centers (TAC). An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.
- *TDD/TTY equipment.* If you have access to TDD/TTY equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications. The TDD/TTY telephone number is for individuals who are deaf, hard of hearing, or have a speech disability. These individuals can also access the IRS through relay services at www.gsa.gov/fedrelay.
- *TeleTax topics.* Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.

Evaluating the quality of our telephone services. To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One

method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.



Walk-in. Some products and services are available on a walk-in basis.

- *Products.* You can walk in to some post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, and city and county government offices have a collection of products available to photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- *Services.* You can walk in to your local Taxpayer Assistance Center most business days for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your tax return, or you are more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary—just walk in. Before visiting, check www.irs.gov/localcontacts for hours of operation and services provided. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested by calling your local TAC. You can leave a message and a representative will call you back within 2 business days. All other issues will be handled without an appointment. To call your local TAC, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.



Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Taxpayer Advocate Service. The Taxpayer Advocate Service (TAS) is your voice at the IRS. Its job is to ensure that every taxpayer is treated fairly, and that you know and understand your rights. TAS offers free help to guide you through the often-confusing process of resolving tax problems that you haven't been able to solve on your own. Remember, the worst thing you can do is nothing at all.

TAS can help if you can't resolve your problem with the IRS and:

- Your problem is causing financial difficulties for you, your family, or your business.

- You face (or your business is facing) an immediate threat of adverse action.
- You have tried repeatedly to contact the IRS but no one has responded, or the IRS has not responded to you by the date promised.

If you qualify for help, they will do everything they can to get your problem resolved. You will be assigned to one advocate who will be with you at every turn. TAS has offices in every state, the District of Columbia, and Puerto Rico. Although TAS is independent within the IRS, their advocates know how to work with the IRS to get your problems resolved. And its services are always free.

As a taxpayer, you have rights that the IRS must abide by in its dealings with you. The TAS tax toolkit at www.TaxpayerAdvocate.irs.gov can help you understand these rights.

If you think TAS might be able to help you, call your local advocate, whose number is in your phone book and on our website at www.irs.gov/advocate. You can also call the toll-free number at 1-877-777-4778. Deaf and hard of hearing individuals who have access to TDD/TTY equipment can call 1-800-829-4059. These individuals can also access the IRS relay services such as the Federal Relay Service at www.gsa.gov/fedrelay.

TAS also handles large-scale or systemic problems that affect many taxpayers. If you know of one of these broad issues, please report it through our Systemic Advocacy Management System at www.irs.gov/advocate.

Free tax services. Publication 910, IRS Guide to Free Tax Services, is your guide to IRS services and resources. Learn about free tax information from the IRS, including publications, services, and education and assistance programs. The publication also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on the telephone. The majority of the information and services listed in this publication are available to you free of charge. If there is a fee associated with a resource or service, it is listed in the publication.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.



DVD for tax products. You can order Publication 1796, IRS Tax Products DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Internal Revenue Code—Title 26 of the U.S. Code.
- Links to other Internet-based tax research materials.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.

- Toll-free and email technical support.
- Two releases during the year.
 - The first release will ship the beginning of January 2013.
 - The final release will ship the beginning of March 2013.

Purchase the DVD from National Technical Information Service (NTIS) at www.irs.gov/cdorders for \$30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for \$30 (plus a \$6 handling fee).

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To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.

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Bernard P. Carvalho, Jr.
Mayor



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November 4, 2013

TO: Department Heads
FROM: Steven A. Hunt, Director of Finance
RE: TAKE HOME VEHICLE POLICY AUDIT FINDING

Although the 2013 edition of the Take Home Vehicle Policy is relatively new, there have already been some findings related to the improper authorization of take home vehicles by Department Heads and Supervisors. While I certainly appreciate decisions that are made to gain efficiency and potentially save the County money, there is also risk associated with sending our vehicles out on the road in an "off duty" capacity. There are instances where employees may require the use a take home vehicle on an incidental basis. This policy section is shown below:

"Incidental and occasional use of non-exempt Take Home Vehicles shall be considered a nontaxable fringe benefit. Examples are situations whereby an employee's assigned exempt vehicle is down for repairs, an employee is unable to return the vehicle to the designated baseyard before it closes, an employee will be conducting business away from the employee's normal assigned work location and outside an employee's normally scheduled work hours, or impending inclement weather necessitates other employees to be on-call."

The incidental or occasional use states that such uses do not constitute taxable fringe benefits; it does not mean these employees are exempt from being authorized for their take home vehicles by the Director of Finance and the Mayor. To be clear, incidental or occasional uses of take home vehicles may include but are not limited to the following reasons:

- Cleaning of vehicles
- Work activities beginning prior to hours of operation
- Repairs to another authorized take home vehicle
- In preparation of an emergency or potential disaster
- Conducting business away from assigned work place
- Inclement weather prohibits return of vehicle
- Baseyard closed

Please register those employees and vehicles that may, on an incidental or occasional basis, be used as take home vehicles.