Attachment 5

IRS Qualified Non-Personal-Use Vehicles

A qualified non-personal use vehicle is a vehicle the employee is not likely to use more than a minimal amount for personal purposes because of its design. The IRS has determined, in its regulations, which vehicles are qualified non-personal use vehicles. Employees who drive qualified non-personal use vehicles are exempt from the IRS vehicle fringe reporting requirements and are exempt from including their use of the vehicles in gross income[1] when the conditions for that vehicle type are met:

1. Clearly marked police and fire vehicles, when the employee is **required** to use the vehicle for commuting and is on call at all times. Personal use (other than commuting), if allowed, must be permitted for and confined to within the physical jurisdiction of the police officer's arrest powers or firefighter's obligation to respond to an emergency. A police or fire vehicle is clearly marked if painted insignia or words (other than mere markings on a license plate) make it readily apparent as a police or fire vehicle.

2. Unmarked law enforcement vehicles used by law enforcement officers when any personal use, including commuting, is authorized by the State and incident to law enforcement functions, such as reporting directly from home to a stakeout, surveillance site, or an emergency situation. Recreation and vacation trips do not qualify as authorized use.

   A "law enforcement officer" is an individual who: (1) is a full-time employee of a governmental unit that is responsible for preventing or investigating crimes involving injury to persons or property, (2) is authorized to carry firearms, execute warrants, and make arrests, and (3) regularly carries firearms (except when it is not possible to do so because of the requirements of undercover work).

3. Ambulances and hearses used for those purposes.

4. Certain cargo and specialized heavy use vehicles, including only:

   a) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds
   b) Bucket trucks ("cherry pickers")
   c) Cement mixers
   d) Combines
   e) Cranes and derricks
   f) Dump trucks (including garbage trucks)
   g) Flatbed trucks
   h) Forklifts
   i) Refrigerated trucks

[1] 26 CFR §1.132-5(h) (providing that 100% of the use of qualified non-personal use vehicles (as defined in 26 CFR §1.274-5T(k)) is excluded from income as a working condition fringe benefit). *See also* IRS Pub. 15-B http://www.irs.gov/pub/irs-pdf/p15b.pdf.

j) Qualified moving vans, limited to any truck or van used by a professional moving company in the trade or business of moving household or business goods and for which personal use is not authorized or permitted except under specialized circumstances

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

6. Buses, but only the driver (and not any passenger) of a bus is exempt from reporting and including their use of the vehicle in gross income. Buses means only:

   a) Passenger buses with a capacity of at least 20 passengers and used for that purpose, or
   b) School buses.

7. Qualified specialized utility repair trucks (not including any van or pick-up truck) specially designed and used to carry heavy tools, testing equipment parts if both of the following conditions are also met: (1) the truck has permanent interior construction (such as shelves or racks) which have been installed to carry and store the heavy items and it is unlikely the truck will be used for more than minimal personal use and (2) the State requires the employee to drive the truck home in order to be able to respond to emergency situations regarding utility repair.

8. Tractors and other special-purpose farm vehicles

9. **Pick-up trucks**. A pick-up truck with a loaded gross vehicle weight of 14,000 pounds or less is a qualified non-personal use vehicle **if it has been specially modified so that it is not likely to be used more than minimally for personal purposes.** For example, a pick-up 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:

   a) It is equipped with **at least one** of the following items:

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

   b) 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.

10. **Vans.** A van with a loaded gross vehicle weight of 14,000 pounds or less is a qualified non-personal-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 carry merchandise, material, or equipment used in your trade, business, or function.

11. Clearly marked public safety officer vehicles, when the employee is required to use the vehicle for commuting and is on call at all times. A public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a public safety officer vehicle.

    The IRS defines a "public safety officer" as an "individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer,[2] a firefighter, a chaplain, or as a member of a rescue squad or ambulance crew.''[3] The facts and circumstances of any particular situation, not merely a job title, determine whether an individual is a public safety officer. The IRS uses the criteria in the Public Safety Officers' Benefits Act and the corresponding regulations (PSOB Regulations, 28 CFR part 32). As one example, the PSOB Regulations at 28 CFR 32.3 define ''rescue squad or ambulance crew'' as follows: ''a squad or crew whose members are rescue workers, ambulance drivers, paramedics, health-care responders, emergency medical technicians, or other similar workers who—

    (1) Are trained in rescue activity or the provision of emergency medical services; and

    (2) As such members, have the legal authority and responsibility to (i) Engage in rescue activity; or (ii) Provide emergency medical services."

    Rescue activity means "search or rescue assistance in locating or extracting from danger persons lost, missing, or in imminent danger of serious bodily harm." *Emergency medical services* means "(1) Provision of first-response emergency medical care (other than in a permanent medical-care facility); or (2) Transportation of persons in medical distress (or under emergency conditions) to medical-care facilities."

    In determining whether you are a public safety official in connection with use of a clearly marked vehicle, you should consult the PSOB Regulations and may request legal assistance from your agency counsel.

[2] See section 2 above on this Attachment 5.

[3] 26 USC §402(l)(4)(C), referring to the Public Safety Officers' Benefits Act, codified at 42 USC §3796b (9)(A).