



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-106595-22]

RIN 1545-BQ83

Substantiation Requirements and Qualified Nonpersonal Use Vehicles

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed regulations relating to the definition of qualified nonpersonal use vehicles. Qualified nonpersonal use vehicles are excepted from the substantiation requirements that apply to certain listed property. These proposed regulations add unmarked vehicles used by firefighters or members of a rescue squad or ambulance crew as a new type of qualified nonpersonal use vehicle. These regulations affect governmental units that provide firefighter or rescue squad or ambulance crew member employees with unmarked qualified nonpersonal use vehicles and the employees who use those vehicles.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-106595-22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal Rulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury

(Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper, to the IRS's public docket. Send paper submissions to CC:PA:01:PR (REG-106595-22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephanie Caden at (202) 317-4750; concerning submissions of comments or requests for a public hearing, the Publications and Regulations section by email at *publichearings@irs.gov* (preferred) or (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Authority

This notice of proposed rulemaking contains proposed regulations issued under the authority granted to the Secretary of the Treasury or her delegate (Secretary) by sections 274(p) and 132(o) of the Internal Revenue Code (Code) that would amend the Income Tax Regulations (26 CFR part 1) under sections 274(i) and 132(d) related to qualified nonpersonal use vehicles. Section 274(p) provides the Secretary with an express grant of regulatory authority with respect to section 274 as the Secretary may deem necessary to carry out the purposes of that section. Section 132(o) provides the Secretary with an express grant of regulatory authority with respect to section 132 to prescribe such regulations as may be necessary or appropriate to carry out the purposes of that section. In addition, section 7805(a) authorizes the Secretary to prescribe all needful rules and regulations for the enforcement of the Code.

Background

In general, section 274 limits or disallows deductions for certain expenditures that otherwise would be allowable under chapter 1 of the Code, primarily under section 162(a), which allows a deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

Section 274(d), as relevant to these proposed regulations, provides that a taxpayer is not allowed a deduction or credit for certain expenses unless the expenses are substantiated by adequate records or by sufficient evidence corroborating the taxpayer's own statement as to the amount, time and place, business purposes of the expenditure, and the business relationship to the taxpayer of the person receiving the benefit. These substantiation requirements apply to expenses incurred in the use of any listed property, as defined in section 280F(d)(4), which includes any passenger automobile and any other property used as a means of transportation.

In 1985, Congress modified section 274(d) and added section 274(i), creating an exception from the substantiation requirements for qualified nonpersonal use vehicles. Public Law 99-44 2, 99 Stat. 77 (1985). Section 274(i) provides that the term "qualified nonpersonal use vehicle" means any vehicle, which by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes.

Both the business and personal use of an employer-provided vehicle that is a qualified nonpersonal use vehicle under section 274(i) qualifies under section 132(d) as a working condition fringe benefit that is excluded from the employee's income. Thus, if an employer provides an employee with a qualified nonpersonal use vehicle, the employee does not need to keep records of how the vehicle is used, and the total use of the vehicle is excluded from the employee's income as a working condition fringe benefit under section 132(d). See §§1.132-5(h) and 1.274-5(k).

The legislative history to section 274(i) includes examples of qualified nonpersonal use vehicles such as school buses, qualified specialized utility repair trucks, qualified moving vans, clearly marked police and fire vehicles, and unmarked law enforcement vehicles. H.R. Rep. No. 99-67, at 16 (1985) (Conf. Rep.). The legislative history indicates that Congress intended the IRS and the Treasury Department to expand the list to include other vehicles that, by reason of their nature,

are highly unlikely to be used more than a very minimal amount for personal purposes. H.R. Rep. No. 99-34, at 11 (1985).

Temporary Regulations §1.274-5T(k) and (l) were issued in 1985, identifying categories of qualified nonpersonal use vehicles and providing definitions (by cross reference) of terms such as “automobile,” “vehicle,” and “personal use.” TD 8061, 50 FR 46006, 46033, and 46036. Police and fire vehicles that are clearly marked and law enforcement vehicles that are unmarked were included as categories of qualified nonpersonal use vehicles. However, clearly marked vehicles provided to Federal, State, and local government workers who respond to emergency situations as public safety officers but who are not employed by either a fire department or police department were not included as qualified nonpersonal use vehicles.

In 2008, proposed regulations were issued to incorporate the text of §1.274-5T(k) and add clearly marked public safety officer vehicles as a new type of qualified nonpersonal use vehicle. 73 FR 32500. An example illustrating the application of the rules to a clearly marked public safety officer vehicle was included at §1.274-5(k)(8) as *Example 3*.

In 2010, final regulations were published adding clearly marked public safety officer vehicles to the list of qualified nonpersonal use vehicles. TD 9483, 75 FR 27934 (current regulations). As a result, emergency responders who are provided a clearly marked vehicle receive the same tax treatment whether they work for the police department, fire department, or other governmental unit, or any agency or instrumentality thereof.

Explanation of Provisions

The Treasury Department and the IRS have become aware that certain emergency responders not covered by the current regulations are provided unmarked vehicles by a governmental unit or an agency or instrumentality thereof (governmental

unit). In particular, stakeholders have commented that fire chiefs or members of rescue squads or ambulance crews who, when not on a regular shift, need to be on call at all times to respond to emergencies will often be assigned unmarked command vehicles to travel safely and quickly to a scene and perform emergency services. While the authorized use of unmarked vehicles by law enforcement officers employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension or detention of persons for such crimes) satisfies the current regulations governing qualified nonpersonal use vehicles, the use of unmarked vehicles provided to firefighters or members of a rescue squad or ambulance crew does not satisfy the current regulations.

Section 274(i) defines a qualified nonpersonal use vehicle as one which, by reason of its nature, “is not likely to be used more than a de minimis amount for personal purposes.” The current regulations define qualified nonpersonal use vehicles to include clearly marked police, fire, or public safety officer vehicles that are owned or leased by a governmental unit and required to be used for commuting by a police officer, firefighter, or public safety officer (as defined in section 402(l)(4)(C)) who, when not on a regular shift, is on call at all times. Any personal use (other than commuting) of the vehicle outside the limit of the police officer’s arrest powers or the firefighter’s or public safety officer’s obligation to respond to an emergency must be prohibited by the governmental unit. See §1.274-5(k)(2)(ii)(A) and (k)(3). The various examples included in §1.274-5(k)(8) illustrate that a prohibition on personal use (other than commuting) is intended to exist in situations where both commuting and only de minimis personal use, such as personal errands, are permitted.

The current regulations also define qualified nonpersonal use vehicles as including unmarked law enforcement vehicles owned or leased by Federal, State, county, or local governmental agencies or departments that officially authorize the

business and personal use of the vehicle by law enforcement officers whom they employ, provided any personal use is incidental to law enforcement functions. See §1.274-5(k)(2)(ii)(R) and (k)(6). The regulations define law enforcement officers as individuals who are employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension or detention of persons for those crimes), who are authorized by law to carry firearms, execute search warrants, and to make arrests (other than merely a citizen's arrest), and who regularly carry firearms (except when it is not possible to do so because of the requirements of undercover work). See §1.274-5(k)(6)(ii). Unmarked law enforcement vehicles allow law enforcement officers to operate inconspicuously, e.g., so that they can conduct these duties while performing undercover work.

Historically, firefighters and rescue squad and ambulance crew members were provided with vehicles that had markings to indicate their status as emergency response vehicles. More recently, the IRS and Treasury Department have become aware that some governmental units are assigning these emergency responders unmarked vehicles due to increased incidents of harassment of first responders and vandalism of clearly marked fire and emergency vehicles and equipment.

Generally, fire and emergency response departments retain the title to the unmarked vehicles and maintain policies that limit the use of the vehicles for personal, non-work purposes. Because firefighters and members of a rescue squad or ambulance crew respond to a wide variety of emergencies at all hours, including fires, medical crises, vehicular accidents, natural disasters, and terrorist attacks, these vehicles typically are specially equipped to allow firefighters and members of rescue squads or ambulance crews who, even when not on a regular shift, are on call at all times to travel safely and efficiently to the scene of an emergency and provide

emergency services. Onboard equipment may include lights and sirens, medical emergency equipment, life-saving devices such as defibrillators, and radios that assist firefighters, rescue squads, or ambulance crews in communicating with a central source and other emergency response crews related, for example, to traffic or hospital capacity. Onboard equipment may also include items such as personal protective equipment (helmet, coat, boots), emergency oxygen tanks, reference books, and laptop computers that enable workers to access important information related to the emergency. Under the current regulations, emergency responders must substantiate all of the time they spend using these unmarked vehicles for work related purposes, and the value of any personal use of these vehicles, even if minimal, must be included in the employees' taxable income.

Unmarked firefighter and rescue squad or ambulance crew vehicles are less likely to be utilized in undercover work than unmarked law enforcement vehicles. However, the use of unmarked vehicles allows firefighters and other emergency personnel who commute and are required to be on call at all times, even when not on a regular shift, to travel inconspicuously, thereby reducing risk of harassment and vandalism. Also, as described above, unmarked firefighter and rescue squad or ambulance crew vehicles typically are specially outfitted with onboard equipment, which is used by firefighters and emergency personnel to suppress fires, conduct rescue activities, or provide emergency medical services as part of an official emergency response system. Because these vehicles are generally specially outfitted with such equipment, any personal use of these vehicles is likely to be minimal. Thus, adding unmarked firefighter, rescue squad or ambulance crew vehicles as a new category of qualified nonpersonal use vehicle is consistent with the underlying intent of section 274(i).

Accordingly, the proposed regulations would amend §1.274-5(k)(2)(ii) to add unmarked vehicles used by firefighters, members of rescue squads, or ambulance crews to the list of qualified nonpersonal use vehicles that are exempt from the substantiation requirements of section 274(d). In addition, the proposed regulations would amend §1.274-5(k) to add a new §1.274-5(k)(7) providing definitions for the terms “unmarked firefighter, rescue squad or ambulance crew vehicles”, “firefighter,” and “member of a rescue squad or ambulance crew,” and add §1.274-5(k)(9)(v) (*Example 5*) illustrating the new provision.

The proposed regulations provide that the substantiation requirements of section 274(d) do not apply to an unmarked firefighter, rescue squad, or ambulance crew vehicle that is required to be used for commuting by the firefighter or member of a rescue squad or ambulance crew, who, when not on a regular shift, is on call at all times. Because any personal use of an unmarked firefighter, rescue squad, or ambulance crew vehicle should be minimal and incidental to its main purpose in providing emergency services, the proposed regulations also provide that personal use of the vehicle, other than commuting and personal errands, that is outside the firefighter’s or rescue squad or ambulance crew member’s obligation to respond to an emergency must be prohibited by the governmental unit that owns or leases the vehicle and employs the firefighter or rescue squad or ambulance crew member.

The proposed regulations define an “unmarked firefighter, rescue squad, or ambulance crew vehicle” as a vehicle, that is owned or leased by a governmental unit, or any agency or instrumentality thereof, and that is specially outfitted to allow firefighters or members of rescue squads and ambulance crews to travel safely and efficiently to the scene of an emergency and provide emergency services. The description of the types of special equipment found in the unmarked vehicles is derived from information provided by stakeholders requesting updates to the current

regulations. The proposed regulations also provide that a license plate marking or insignia do not disqualify a vehicle from being an unmarked firefighter, rescue squad, or ambulance crew vehicle.

The definition of “firefighter” for purposes of these proposed regulations, is modeled in part on the definition of “law enforcement officer” in §1.274-5(k)(6)(ii) and draws from relevant language in the Public Safety Officers’ Benefits Act (PSOB Act)’s definition of “action outside of jurisdiction” in 34 U.S.C. 10284(1)(C), as well as from outside sources. The definition of “member of a rescue squad or ambulance crew” in these proposed regulations is the same definition that is set forth in 34 U.S.C. 10284(10), which was enacted as an amendment to the PSOB Act that establishes a framework for the expeditious and fair processing of claims brought by disabled law enforcement officers, firefighters, and other first responders or their survivors. H. Rep. No. 112-548 (2012).

These proposed regulations provide an example of circumstances in which a member of a rescue squad or ambulance crew assigned an unmarked vehicle would qualify for the exclusion under this new provision.

Finally, these proposed regulations provide conforming amendments to §§1.132-1(g) and 1.132-5(h)(1).

The purpose of these proposed regulations is to ensure that firefighters and members of rescue squads and ambulance crews who are officially authorized to use specially equipped unmarked vehicles to respond to emergencies are accorded the same tax treatment as other first responders who use qualified nonpersonal use vehicles. The Treasury Department and the IRS request comments on whether the definitions of “unmarked firefighter, rescue squad or ambulance crew vehicles,” “firefighter,” and “member of a rescue squad or ambulance crew,” are sufficient to

accomplish the intended purpose of these proposed regulations or whether any of them might lead to potential abuse.

Applicability Date

Proposed §1.274-5(k)(2)(ii)(S), (k)(7), (k)(9)(v) and references to §1.274-5(k)(9) in §1.132-5(h) are proposed to apply to tax years beginning on or after the date of publication of final regulations in the **Federal Register**. Until the date of publication of final regulations in the **Federal Register**, for purposes of proposed §1.274-5(k)(2)(ii)(S), (k)(7), (k)(9)(v) and references to §1.274-5(k)(9) in §1.132-5(h), taxpayers may rely on the guidance provided in these proposed regulations.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

This proposed regulation does not create new collection requirements, as defined under the Paperwork Reduction Act (44 U.S.C. 35); and does not alter any previously approved Office of Management and Budget information collection requirements and their associated burden.

III. Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that these proposed regulations do not impose any new or different requirements on small entities. The proposed regulations would apply only to employers that utilize unmarked

firefighter, rescue squad, or ambulance vehicles and therefore would affect a relatively small number of entities, most of which would be public entities. In addition, these proposed regulations would not affect employment tax reporting or require any additional substantiation. Rather, the proposed regulations exempt affected entities from substantiation requirements and for this reason do not add any economic burden to affected entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

IV. Section 7805(f)

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Council for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector, in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications,

do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Comments and Request for a Public Hearing

Before final regulations regarding the definition of qualified nonpersonal use vehicles are adopted, consideration will be given to any written or electronic comments on these proposed amendments that are submitted timely (in the manner described under the ADDRESSES heading) to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic or paper comments submitted, will be made available at <https://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a hearing are strongly encouraged to be submitted electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Stephanie L. Caden of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and IRS propose to amend 26 CFR part 1 as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entries for §§1.132-0 through 1.132-8T and §1.274-5 to read in part as follows:

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

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Sections 1.132-0 through 1.132-8T also issued under 26 U.S.C. 132(o).

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Section 1.274-5 also issued under 26 U.S.C. 274(p).

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Par. 2. Section 1.132-1 is amended by adding a sentence to the end of paragraph (g) to read as follows:

§1.132-1 Exclusion from gross income for certain fringe benefits.

* * * * *

(g) * * * In addition, references to §1.274-5(k)(9) in §1.132-5(h) are applicable as of [date of publication of final regulations in the **Federal Register**].

Par. 3. Section 1.132-5 is amended by revising paragraph (h)(1) to read as follows:

§1.132-5 Working condition fringes.

* * * * *

(h) * * * (1) *In general.* Except as provided in paragraph (h)(2) of this section, 100 percent of the value of the use of a qualified nonpersonal use vehicle (as described in §1.274-5(k)) is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in §1.274-5(k)(3) through (9), the use of the vehicle conforms to the requirements of §1.274-5(k)(3) through (9).

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Par. 4. Section 1.274-5 is amended by:

1. Redesignating paragraph (k)(2)(ii)(S) as paragraph (k)(2)(ii)(T) and adding new paragraph (k)(2)(ii)(S);
2. Redesignating paragraph (k)(8) as paragraph (k)(9);
3. Redesignating paragraph (k)(7) as new paragraph (k)(8) and adding new paragraph (k)(7);
4. In newly redesignated paragraph (k)(9), designating *Examples 1* through *4* as paragraphs (k)(9)(i) through (k)(9)(iv), respectively.
5. Adding paragraph (k)(9)(v); and
6. Revising paragraph (m).

The additions read as follows:

§1.274-5 Substantiation requirements.

* * * * *

(k) * * *

(2) * * *

(ii) * * *

(S) Unmarked firefighter, rescue squad, or ambulance crew vehicles (as defined in paragraph (k)(7) of this section).

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(7) *Unmarked firefighter, rescue squad, or ambulance crew vehicles--(i) In general.* The substantiation requirements of section 274(d) and this section do not apply to an unmarked firefighter, rescue squad, or ambulance crew vehicle required to be used for commuting by the firefighter or member of a rescue squad or ambulance crew, who, when not on a regular shift, is on call at all times. Personal use (other than commuting) of the vehicle outside the firefighter's or rescue squad or ambulance crew member's obligation to respond to an emergency must be prohibited by the

governmental unit, or any agency or instrumentality thereof, that owns or leases the vehicle and employs the firefighter, rescue squad, or ambulance crew member.

(ii) *Unmarked firefighter, rescue squad, or ambulance crew vehicle defined.* An *unmarked firefighter, rescue squad, or ambulance crew vehicle* is an unmarked vehicle used by a firefighter, or member of a rescue squad or ambulance crew, that is owned or leased by a governmental unit, or any agency or instrumentality thereof, and that is specially outfitted to allow firefighters or members of rescue squads and ambulance crews to travel safely and efficiently to the scene of an emergency and provide emergency services. Onboard equipment on the vehicles includes but is not limited to lights and sirens, medical emergency equipment, life-saving devices such as defibrillators, and radios that assist firefighters, rescue squads, or ambulance crews in communicating with a central source or other emergency response crews related, for example, to traffic or hospital capacity. Onboard equipment may also include items such as personal protective equipment (helmet, coat, boots), emergency oxygen tanks, reference books, and laptop computers that enable workers to access important information related to the emergency. A license plate marking or insignia does not disqualify a vehicle from being an unmarked firefighter, rescue squad, or ambulance crew vehicle for purposes of this paragraph (k)(7).

(iii) *Firefighter.* The term *firefighter* means an individual who is employed by a governmental unit, or any agency or instrumentality thereof, that is responsible for firefighting, rescue activity, or the provision of emergency medical care, and other related emergency services to prevent injury to persons or property and has the official authority to engage in fire suppression and provide related emergency services.

(iv) *Member of a rescue squad or ambulance crew.* For purposes of this paragraph (k)(7), the term *member of a rescue squad or ambulance crew* has the same meaning as in 34 U.S.C. 10284(10).

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(9) * * *

(v) *Example 5.* Emergency medical technician, X, is a *member of a rescue squad* employed by City M. X is provided with an unmarked vehicle (equipped with sirens and medical equipment) for use in responding to emergencies. X, along with other members of the rescue squad, is ordinarily on duty for a regular shift, and on call during the other hours of the day. X is required to use the unmarked rescue squad vehicle to commute to X's home in City M. The rescue squad's official policy regarding unmarked rescue squad vehicles prohibits personal use (other than commuting) of the vehicles outside the city limits. When not using the vehicle on the job, X uses the vehicle only for commuting, personal errands on the way between work and home, and personal errands within City M. All use of the vehicle by X conforms to the requirements of paragraph (k)(7) of this section. Therefore, the value of that use is excluded from X's gross income as a working condition fringe and the vehicle is not subject to the substantiation requirements of section 274(d).

* * * * *

(m) *Applicability date.* This section applies to expenses paid or incurred after December 31, 1997. However, paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002, and paragraph (k) of this section applies to clearly marked public safety officer vehicles, as defined in paragraph (k)(3) of this section, only with respect to uses occurring after May 19, 2010. The rules of paragraphs (k)(2)(ii)(S), (k)(7) and (k)(9)(v) of this section apply to taxable years ending on or after [date of publication of final regulations in the **Federal Register**].

Douglas W. O'Donnell,
Deputy Commissioner.

