

**Internal Revenue Service**

Department of the Treasury

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Date:  
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Legend

- = State
- = Department

Dear \_\_\_\_\_ :

This is in reply to your request for a ruling dated February 25, 2002, submitted on behalf of the Department, regarding whether certain vehicles operated by employees of the Department are qualified non-personal use vehicles that are exempt from taxation under the fringe benefit regulations.

The Department is a government agency of State. The Department is responsible for highway construction, maintenance and safety activities within State. In connection with these activities, Department employees operate certain vehicles that are one-half ton pickup trucks. The uses of such vehicles include "off-duty" call to respond to highway emergencies. In this regard, employees may be required to use the vehicles to respond to life threatening emergencies to the traveling public on weekends, holidays and after regular work hours. The vehicles are painted white or bright orange and are marked by insignia indicating that they are property of the Department. The vehicles are used to carry non-fixed equipment, tools and materials needed to respond to emergencies. Modifications to the vehicles include flashing lights and a device supporting the lights and used to attach work related items. Additionally, toolboxes have been installed in some of the vehicles.

The employees who are assigned such vehicles, generally maintenance supervisors, are required by the Department to drive them home. The Department's policy titled, "Use of State Vehicles," provides that personal use during work hours or after work is prohibited.

Section 61(a)(1) of the Internal Revenue Code (the "Code") provides that gross income means all income from whatever source derived, including (but not limited to) compensation for services, including fees, commissions, fringe benefits, and similar items.

Section 132(a)(3) of the Code provides that gross income shall not include any fringe benefit which qualifies as a working condition fringe.

PLR-116317-02

Section 132(d) of the Code defines a "working condition fringe" as any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

Section 1.132-5(h) of the Income Tax Regulations provides that 100 percent of the value of the use of a qualified non-personal use vehicle (as described in section 1.274-5T(k)) is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in paragraphs (k)(3) through (7) of section 1.274-5T, the use of the vehicle conforms to the requirements of that paragraph.

Section 1.274-5T(k)(2) of the regulations provides that for purposes of section 274(d) of the Code (regarding substantiation requirements) and the regulations, the term "qualified non-personal use vehicle" means any vehicle which, by reason of its nature (i.e. design), is not likely to be used more than a de minimis amount for personal purposes.

Section 1.274-5T(k)(7) of the regulations provides that the substantiation requirements of section 274(d) of the Code will not apply to any pickup truck or van only if it has been specially modified with the result that it is not likely to be used more than a de minimis amount for personal purposes.

Rev. Rul. 86-97, 1986-2 C.B. 42 (1986) provides guidelines for pick-up trucks that have been modified. "A pickup truck with a loaded gross vehicle weight not over 14,000 pounds is a qualified non-personal use vehicle if it falls into one of the following two categories:

1. The vehicle is clearly marked with permanently affixed decals or with special painting or other advertising associated with the employer's trade, business, or function and is equipped with at least one of the following: a hydraulic lift gate, permanently installed tanks or drums, permanently installed side boards or panels materially raising the level of the sides of the bed of the pickup truck, or other heavy equipment, such as an electric generator, welder, boom, or crane used to tow automobiles and other vehicles.

2. The vehicle is clearly marked with permanently affixed decals or with special painting or other advertising associated with the employer's trade, business, or function, is actually used primarily for transporting a particular type of load other than over the public highway in connection with a construction, manufacturing, processing, farming, mining, drilling, timbering, or other similar operation, and has been specially designed or modified to a significant degree for such use."

Additionally, Rev. Rul. 86-97 states that a pick-up truck that does not meet the requirements of the two categories set forth above may still be a qualified non-personal

PLR-116317-02

use vehicle if, based upon the particular facts, it satisfies requirements that are similar to these requirements.

The issue raised is whether the pick-up trucks are clearly marked and modified with the result that they are not likely to be used more than a de minimis amount for personal purposes. The trucks are painted either all white or all orange and have decals associated with and naming the employer, Department. Therefore, the trucks are clearly marked. However, the modifications (flashing lights, a device used to attach work related items, along with toolboxes) are not significant when compared to the examples listed in Rev. Rul. 86-97, such as a hydraulic lift gate, permanently installed tanks or drums. The toolboxes attached to some of the trucks do not “*materially* raise the level of the sides of the bed of the pickup truck.” Moreover, the vehicles have not been specially modified to a significant degree for use in transporting a particular type of load other than over the public highway in connection with a construction, manufacturing, processing, farming, mining, drilling, timber or other similar operation. Therefore, the vehicles do not meet the requirements set forth in Rev. Rul. 86-97, nor do they meet requirements similar to those requirements.

Accordingly, we conclude that the vehicles described herein and operated by the Department employees are not qualified non-personal use vehicles for purposes of the regulations. Therefore, the value of the vehicle's availability for personal use should be included in the gross income of the employees who are required to drive the vehicles home for “off-duty” call.<sup>1</sup>

This ruling is directed only to the taxpayer to whom it is addressed. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

No opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code.

Sincerely,  
Lynne Camillo  
Chief, Employment Tax Branch 2  
Office of the Assistant Chief Counsel  
(Exempt Organizations/Employment Tax/Government Entities)

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<sup>1</sup>We note, without ruling on this issue, that Department may be eligible to use the special substantiation rules set forth in section 1.274-6T(a)(3) of the regulations.