LEGISLATIVE SPECIAL REPORT

STATEWIDE VEHICLE USE

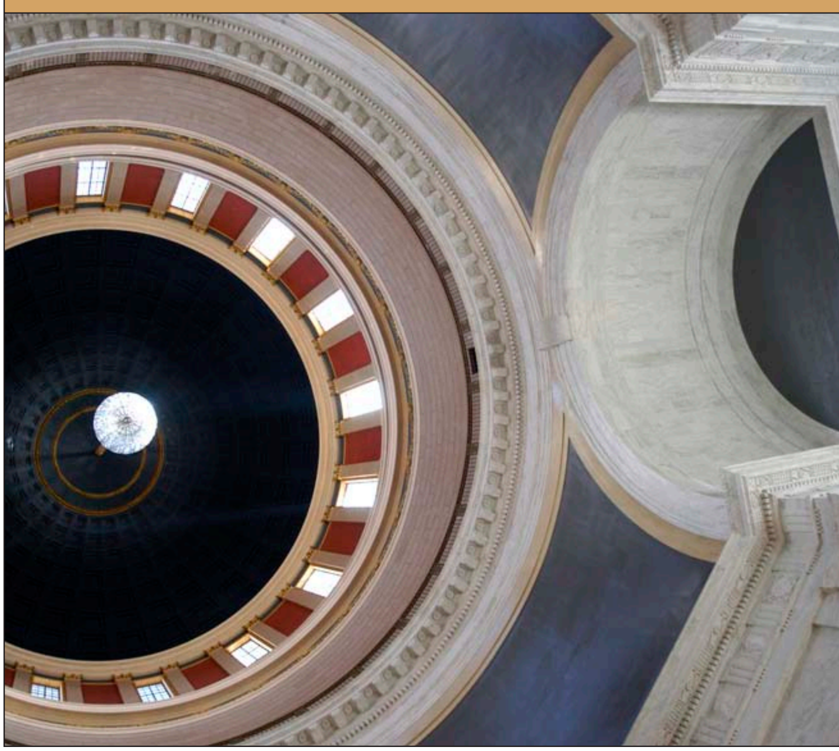
FOR THE PERIOD JANUARY 1, 2008 - DECEMBER 31, 2008

REPORT OVERVIEW

Lack of monitoring over all State vehicles

Inaccurate Legislative Rule Title 148, Series 3

Improper reporting on the commuting of State vehicles



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WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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The Joint Committee on Government and Finance:

The objective of this special report was to determine whether those State spending units with employees who were assigned State vehicles and using those vehicles to commute to and from work were following the provisions of U.S. Code Title 26 – Internal Revenue Code and, if applicable, the Department of Administration's Legislative Rule Title 148, Series 3. Another objective was to determine the business and personal use of assigned State vehicles.

In order to achieve the objectives noted above, we performed the following:

a. Reviewed applicable sections of the U.S. Internal Revenue Code, West Virginia Code, Legislative Rules, as well as other rules and regulations, policies and procedures as they pertain to vehicle usage and the commuting value of State owned vehicles.

b. Prepared a survey to determine if and how State spending units were valuing and reporting the commuting value of State vehicles.

c. Reviewed results of the survey and evaluated if State spending units were complying with U.S. Internal Revenue Code, West Virginia Code, Legislative Rules, as well as other rules and regulations, policies and procedures. In addition, we estimated the amount of business and personal use of some State vehicles.

The period covered in this special report was January 1, 2008 through December 31, 2008. We conducted our special report in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Our review of the survey results disclosed certain findings, which are detailed in this report. Each of the 30 spending units mentioned in this report have responded to the report findings; we have included their responses at the end of the report in Appendix A.

Respectfully submitted,

Stacy L. Sneed

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

SPECIAL REPORT ON STATEWIDE VEHICLE USE

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SPECIAL REPORT ON STATEWIDE VEHICLE USE

EXECUTIVE SUMMARY

Finding 1 The State of West Virginia does not maintain control or supervise the use of all State vehicles.

- During our research for this special report, we found no consistency between State spending units and their monitoring of State vehicles. Further, we discovered that the State lacks a centralized monitoring system for all State vehicles. Even though the Department of Administration (DOA) has promulgated rules governing some State vehicles, these rules are not accurate, enforced, nor inclusive for all State spending units. The spending units that are exempt from these rules are not offered any direction or reference from the State on how to monitor and report the use of State vehicles. As a result, there is not a single spending unit within the State directed with the responsibility of monitoring State vehicle use.

Auditor's Recommendation

The DOA, or another spending unit appointed by the Legislature, should promulgate rules that govern State vehicle usage by all State spending units. Further, these rules should be parallel to the Internal Revenue Service (IRS) Publication 15-B, *Employer's Tax Guide to Fringe Benefits,* to cause less confusion and promote more accuracy in reporting the commuting value of State vehicles. Lastly, the rules should be enforced and monitored.

Spending Unit's Response

See the DOA's response in Appendix A.

Finding 2 State spending units did not keep adequate mileage records.

- We noted 26 out of 29 State spending units (90%) had employees who commuted in State vehicles and did not maintain adequate mileage records. In accordance with the DOA's Legislative Rule, Title 148, Series 3, the operator of a vehicle must submit a "State Owned Vehicle Log" to substantiate the mileage. Also, according to the Taxable Fringe Benefit Guide created by the IRS Office of Federal, State, and Local Governments, the substantiation requirements for an employer-provided vehicle is to separate records for business and personal mileage.

Auditor's Recommendation

We recommend State spending units comply with U.S. Code Title 26 – Internal Revenue Code and, if applicable, the DOA's Legislative Rule Title 148, Series 3, *State Owned Vehicles,* by maintaining complete mileage records for all State vehicles used for business and personal purposes.

<u>Spending Unit's Response</u>

See each spending unit's response in Appendix A.

Finding 3 Title 148, Series 3 of the DOA's Legislative Rule did not parallel IRS Publications published by the U.S. Department of Treasury, IRS.

- We discovered that Title 148, Series 3 of the DOA's Legislative Rule did not accurately reflect the reporting requirements for the commuting value of State vehicles as prescribed in two IRS Publications.

<u>Auditor's Recommendation</u>

To eliminate further inconsistencies in reporting the commuting value of State vehicles, we recommend the DOA only reference the Internal Revenue Code and Publications in the rules.

<u>Spending Unit's Response</u>

See each spending unit's response in Appendix A.

Finding 4 The DOA did not implement Legislative Rule Title 148, Series 3, *State Owned Vehicles.*

- We noted that the DOA did not have a standardized "Statement of Commuting Value" which was required to be used by State spending units to report the commuting value of their State vehicles. Furthermore, the DOA did not require spending units to submit any documentation regarding the commuting value of any State vehicles to their Travel Management Office. Lastly, the DOA did not enforce or supply spending units with a "State Owned Vehicle Log" as prescribed in Section 11.4 of Title 148, Series 3.

<u>Auditor's Recommendation</u>

We recommend that the DOA implement the rules in Title 148, Series 3, Sections 9.3.4, 9.4.2, and 11.4 or change the rule to reflect their actions.

<u>Spending Unit's Response</u>

See each spending unit's response in Appendix A.

Finding 5 Spending units did not report the commuting value of their State vehicles in accordance with IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits* or the DOA's Legislative Rule Title 148, Series 3, *State Owned Vehicles.*

- Based on the information gathered from the spending units, we noted that 15 out of 29 spending units (52%) did not report the commuting value of assigned State vehicles to their employees as a taxable fringe benefit. Eight of the 15 spending units had employees who commuted in State vehicles and these spending units were required to report the commuting value as a taxable fringe benefit to their employees in accordance with Title 148, Series 3 of the DOA's Legislative Rule and IRS Publication 15-B. However, seven of the 15 spending units were exempt from Title 148, Series 3 of the DOA's Legislative Rule. These spending units were required by U.S. Code Title 26 – Internal Revenue Code to report the value of commuting in a State vehicle as a taxable fringe benefit to their employees.

<u>Auditor's Recommendation</u>

We recommend these 15 spending units comply with the DOA's Legislative Rule Title 148, Series 3, and IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefit,* and report the commuting value for the employees who commute in State vehicles as a taxable fringe benefit.

<u>Spending Unit's Response</u>

See each spending unit's response in Appendix A.

Finding 6 **State spending units reported the commuting value of their State vehicles as a fringe benefit to their employees past the December 31, 2008 deadline as stated in IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits.***

- According to the State Auditor's Office EPICS Payroll System records, we noted three out of 29 State spending units (10%) that had employees who commuted in State vehicles and reported the commuting value of these vehicles to the IRS past the December 31, 2008 deadline required by IRS Publication 15-B, Section 4, *Valuation of Fringe Benefits*.

<u>Auditor's Recommendation</u>

We recommend State spending units comply with IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits,* by valuing and reporting the commuting value of State vehicles by December 31 of every year.

<u>Spending Unit's Response</u>

See each spending unit's response in Appendix A.

Finding 7 **Employees may have used State vehicles for less than 50% business use.**

- Based on our assumptions, we found that it was probable for some State employees to use their assigned State vehicles for less than 50% business purposes. Since most of the State spending units included in this special report did not maintain adequate mileage records, we attempted to re-create mileage information for State vehicles used to commute to and from work. In our efforts, we noted six out of 29 spending units (21%) had at least one employee whose vehicle use calculated to be less than 50% business purposes.

<u>Auditor's Recommendation</u>

We recommend State spending units review the use of their State vehicles to determine if all State vehicles are being used for at least 50% business purposes. Also, we recommend State spending units re-evaluate the commuting valuation methods set forth in IRS Publication 15-B on a case-by-case basis to ensure the correct valuation method is being used to report the commuting value of State vehicles. Furthermore, we recommend State spending units document the employee's bona fide business reason detailing the need for use of the vehicle.

Lastly, we recommend State spending units assess the need for employees to drive State vehicles if they are used for less than 50% business purposes.

<u>Spending Unit's Response</u>

See each spending unit's response in Appendix A.

Finding 8 **Spending units reported the commuting value of State vehicles for their employees when it was not required by IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits.***

- We found four out of 29 spending units (14%) reported the commuting value of State vehicles for their employees when it was not necessary to do so.

<u>Auditor's Recommendation</u>

We recommend these four spending units comply with IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, and report the commuting value of State vehicles only for those employees who meet the qualifications outlined.

<u>Spending Unit's Response</u>

See each spending unit's response in Appendix A.

SPECIAL REPORT ON STATEWIDE VEHICLE USE
December 31, 2008

INTRODUCTION

POST AUDIT AUTHORITY

This is a special report on State spending units whose employees used State vehicles to commute to and from work. This special report was conducted pursuant to Chapter 4, Article 2 of the West Virginia Code, which requires the Legislative Auditor to "make post audits of the revenues and funds of the spending units of the state government, at least once every two years, if practicable, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the State and of the organization and functions of the State and its spending units."

BACKGROUND

This report is a follow-up to the special report titled *Special Report of Reporting of Vehicle Usage by State Employees for Commuting Purposes under Title 148, Series 3, Department of Administration Rules.* The Post Audit Subcommittee released the original report on December 8, 2003.

The objective of the original report was to determine whether those State spending units who had employees that were assigned State owned vehicles and were using those vehicles to commute to and from work were following the provisions of Title 148, Series 3 of the Department of Administration's Legislative Rule. Only spending units that leased vehicles from the Department of Administration were analyzed in the original report.

SPENDING UNIT CONTACTS

Department of Administration

Robert W. Ferguson, Jr. …………………………………………………………………………………………...Cabinet Secretary

David R. Tincher ………………………………………………………………………………………..Director, Purchasing Division

Ken Frye …..……………………………………………………………………Assistant Director, Program Services Section

Janice Hartman ……Fleet Manager

Alcohol Beverage Control Administration

Virgil T. Helton ………………………………………………………………………...Cabinet Secretary, Department of Revenue

Kathy Lawson ……………………………………………………………………………………………………Deputy General Council

Dallas Staples ……………………………………………………………………………………………………..........Commissioner

Belinda Burdette ………………………………………………………………………….Procurement Officer/Fleet Manager

Bluefield State College

Sheila Johnson……………….……………………………………….Vice President, Financial and Administrative Affairs

Diana Gibson …………………………………………………………………………………………….Administrative Assistant Sr.

Coal Heritage Highway Authority

Christy Bailey ……Executive Director

Commission on Special Investigations

Gary Slater …….Director

Department of Agriculture

Sandra Gillispie ……………………………………………………………………………….Director, Administration Services

Department of Environmental Protection

Jim Calvert ……………………………………………………………………………….Assistant Chief, Office of Administration

Brent A. Kessinger ……Fleet Manager

Department of Health and Human Resources

Greg Nicholson ……………………………………………………………………………………………….Chief Operations Officer

Judy Taylor ………Office Assistant

Department of Military Affairs and Public Safety

Barbara Wimer ……………………………………………………………………………..Administrative Services Manager II

Joan Smith ……………………………………………………………………………Executive Assistant to the Cabinet Secretary

Division of Corrections

Bryan Arthur ………Fleet Coordinator

Division of Forestry

Scott Fairchild …………………………………………………………………………………………………….Chief Financial Officer

Gregory Cook ……………………………………………………………………………………………………….Deputy State Forester

Steve Meester ………Assistant Director

Division of Highways

Danny Ellis ………Business Manager

Fred Thomas ………………………………………………………………………………………………….Director, Finance Division

Maria Catalano ………Payroll Manager

Division of Homeland Security and Emergency Management

Jimmy Gianato ………..Director

Tommy L. Dingess ………………………………………………………………………………………..Director of Administration

Laverne Stout ………Operations Officer

Division of Juvenile Services

Bruce Blackhurst ……………………………………………………………………………………………………..Assistant Director

Gordon Clark ……………………………………………………………………………………………………Director of Investigations

Melody Kimbler ……………………………………………………Executive Secretary to the Director

Division of Motor Vehicles

Joe E. Miller………Commissioner

Danny Ellis ………Business Manager

Fred Thomas ………………………………………………………………………………………………….Director, Finance Division

Maria Catalano ………Payroll Manager

Division of Natural Resources

Harry Price ……………………………………………………………………………………….Administrative Services Manager

Emily Fleck ………Business Manager

Curtis Taylor ………………………………………………………………………………………Chief, Wildlife Resources Section

Educational Broadcasting Authority

Stephen G. Chapman ………………………………………………………………………………..Purchasing Administrator

Jan Johnson………………………………………………………………Administrative Assistant to the Executive Director

New River Community and Technical College

Larry Barnhill …………………………………………………………..Vice President, Finance and Business Administration

Office of the Attorney General

Jerome Clay ……………………………………………………………………………….Comptroller/Chief Financial Officer

Office of the Governor

Mary Lipford ………Fiscal Officer

Office of Miner's Health, Safety, & Training

Tom McClure ……………………………………………………………………..Administrator, Finance and Personnel

Barb Hunter …………………………………………………………………………………………..Accounting Technician IV

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David Kovarik ……………………………………………………………………………………Director, Administration Division

Herb Brooks ……….Finance/Budget

Elizabeth Sharp ………………………………………………………………………………………………….Human Resources

Southern West Virginia Community and Technical College

Samuel Litteral …………………………………………………………………………………………Chief Financial Officer

Emma Baisden ………………………………………………………………………………………Assistant to the President

Melissa Creakman ……………………………………………………………………………..Director of Purchasing I

State Auditor's Office

Glen B. Gainer III …………………………………………………………………………………………………...State Auditor

Michael E. Sizemore ………………………………………………………………………………………………Internal Auditor

Charles Quigley ……………………………………………………………………………….Support Services Technician

State Treasurer's Office

Blair Taylor ……………………………………………………………………………………………………….Deputy Treasurer

Diana Stout ……………………………………………………………………………………...…………….General Counsel

West Virginia University at Parkersburg

Christopher Clifford…………………………………………………………………………………………..Chief Financial Officer

Wayne Riley ………………………………………………………………………………………………….Chief Procurement Officer

West Virginia Higher Education Policy Commission

Richard Donovan …………………………………………………………………………………………….Chief Financial Officer

Terry Hess ………………………………………………………………………………………Assistant Director, Finance and Facilities

Ashley Schumaker ……………………………………………………………………………Executive Assistant to the Chancellor

West Virginia School Building Authority

Mary Blashford …………………………………………………………………………Coordinator, Finance and Administration

West Virginia School of Osteopathic Medicine

Kevin Williams …………………………………………………………………………………………………….Trade Specialist I

Barbara Bragg ……Controller

West Virginia State Police

Lt. Colonel B.A. Sloan ……………………………………………………………………………………………Deputy Superintendent

Major K. J. Foreman ……………………………………………………………………………………………..Chief of Staff Services

First Sergeant R.L. Pursley ……………………………………………………………………………………………Procurement

REPORT SCOPE

We have reviewed all State spending units' vehicle usage, valuation, and reporting methods for the commuting value of State vehicles for the period of January 1, 2008 through December 31, 2008. This special report was conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

OBJECTIVES and METHODOLOGIES

The objective of this special report was to determine whether those State spending units with employees who were assigned State vehicles and using those vehicles to commute to and from work were following the provisions of U.S. Code Title 26 – Internal Revenue Code and, if applicable, the DOA's Legislative Rule Title 148, Series 3. Another objective was to determine the business and personal use of the vehicles. We will make recommendations to the Legislature concerning our findings from this special report.

In preparation for our report, we studied U.S. Title 26 – Internal Revenue Code, WV State Code, the DOA's Legislative Rule Title 148, Series 3, and other applicable laws, rules, and regulations pertaining to vehicle use and the reporting of commuting value. We examined IRS Publication 15-B for calendar year 2008 and various other IRS publications, guides, and information. We also received legal opinions from the legal counsel of Legislative Services and from Charles Lorensen, a Charleston attorney practicing Federal Income Tax Law and a former West Virginia State Tax Commissioner. Mr. Lorensen received an L.L.M. in Tax Law from New York University and has formerly served as an Adjunct Lecturer of Tax Law at the West Virginia University College of Law.

A survey was prepared and sent to 146 State spending units addressing the use of State vehicles. Only spending units who responded that they had employees who used State vehicles to commute were evaluated further. These 29 spending units were sent a document request in which we asked for supporting information concerning those employees who commuted to and from work. We analyzed each spending unit's documentation to determine their compliance with applicable laws, rules, and regulations. It should be noted that the vehicle information contained in this report, such as the number of vehicles and types of vehicles maintained by the spending units, was provided to the Post Audit Division from each spending unit in their individual survey.

This communication is intended solely for the information and use of the Post Audit Subcommittee, the members of the WV Legislature, management of the spending units, and others within the spending units. However, once released by the Post Audit Subcommittee, this report is a matter of public record and its distribution is not limited.

Our reports are designed to assist the Post Audit Subcommittee in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

CONCLUSIONS

A summary of our survey results are included in the following table.

Summary of Spending Units' Responses	Number of Spending Units
Do not own/lease State vehicles	58
Own/lease State vehicles but do not have employees that commute	59
Own/lease State vehicles and have employees who use these vehicles to commute	29
Total	146

Our report details the findings regarding significant instances of noncompliance with applicable laws, rules, and regulations of the spending units who own/lease State vehicles and use these vehicles to commute.

EXIT CONFERENCES

We discussed this report with the Department of Administration on September 28, 2009. All findings and recommendations were reviewed and discussed. The DOA's response has been included at the end of this report in Appendix A.

Between September 24 and October 5, 2009, we discussed this report with every spending unit who had employees that used State vehicles to commute. All findings and recommendations were reviewed and discussed. Each spending unit's responses have been included at the end of this report in Appendix A.

FINDINGS OF SIGNIFICANT DEFICIENCIES IN INTERNAL CONTROL, REPORTABLE COMPLIANCE AND OTHER MATTERS

Finding 1 **The State of West Virginia does not maintain control or supervise the use of all State vehicles.**

Condition

During our research for this special report, we found no consistency between State spending units and their monitoring of State vehicles. Further, we discovered that the State lacks a centralized monitoring system for all State vehicles. Even though the DOA has promulgated rules governing some State vehicles, these rules are neither accurate, enforced, nor inclusive for all State spending units. The spending units that are exempt from these rules are not offered any direction or reference from the State on how to monitor and report the use of State vehicles. As a result, there is not a single spending unit within the State directed with the responsibility of monitoring vehicle use. Some issues that we found include:

- The State, as a whole, does not maintain an accurate/updated record of the number of vehicles currently owned.
- Mileage records for vehicles assigned to employees who commute to and from work were either not maintained or inadequate.
- Gasoline purchases exceeded over approximately 24 million dollars during calendar year 2008. It is possible that some of this amount is due to unauthorized use of the vehicles issued to State employees such as excessive personal use.
- Since spending units were not maintaining adequate mileage records, tracking of routine maintenance becomes responsibility of the driver.
- Spending units were not monitoring how and if the commuting value of State vehicles was reported.
- The DOA was not enforcing Legislative Rule, Title 148, Series 3, *State Owned Vehicles*.

Criterion

West Virginia Code Chapter 5F, Article 2, Section 2, states in part:

(b) "The secretaries of the departments hereby created shall engage in a comprehensive review of practices, policies, and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

(1) The elimination, reduction, and restriction of the state's vehicle or other transportation fleet..."

Cause The State does not have a spending unit directed with the administration of all State vehicles, including those that are maintained by spending units exempt from Title 148, Series 3. Furthermore, there are no procedures in place to adequately monitor State vehicle usage.

Effect Based on the information gathered from spending unit surveys, 29 out of 146 spending units (20%) reported that they had at least one State vehicle used by an employee to commute to and from work. Due to the State's lack of control over its vehicles, we found spending units did not keep adequate mileage records, did not report or properly report the commuting value of their State vehicles, and reported past the December 31st deadline stated in IRS Publication 15-B. In addition, by not knowing the exact number of vehicles the State owns, it makes it impossible to accurately insure and license all State vehicles.

Without a centralized monitoring system in place such as requiring State spending units to maintain accurate mileage records, the State's gas expenses will continue to rise. Also, routine maintenance may be overlooked, which can lead to more serious mechanical issues that will cost the State additional money in vehicle expenses. Failure to monitor vehicle usage can also lead to unnecessary personal use. Unnecessary personal use can decrease the value and shorten the useful lives of State vehicles causing the State to replace these vehicles more often.

Lastly, if rules promulgated by the DOA are not inclusive, accurate, and enforced for all State spending units, the spending units will continue to incorrectly value the commuting use of these vehicles.

Recommendation The Department of Administration or another spending unit appointed by the Legislature, needs to promulgate rules that govern vehicle usage by all State spending units. Further, these rules should be parallel to IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits,* to cause less confusion and promote more accuracy in reporting the commuting value of State vehicles. Lastly, the rules should be enforced and monitored.

Spending Units Responses See the DOA's response in Appendix A.

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Finding 2 **State spending units did not keep adequate mileage records detailing the use of their State vehicles; therefore, they improperly valued the commuting value of State vehicles in accordance with U.S. Code Title 26 – Internal Revenue Code and the DOA's Legislative Rule, Title 148, Series 3, *State Owned Vehicles.***

Condition During our research for this special report, we noted 26 out vehicles did not maintain adequate mileage records. In accordance with the DOA's Legislative Rule, Title 148, Series 3, the operator of the vehicle must submit a "State Owned Vehicle Log" to their Travel Management Office.

In addition, of the 29 State spending units, only one[1] spending unit who did not have adequate mileage records properly reported the commuting value by valuing all mileage on the vehicle as personal mileage. According to the Taxable Fringe Benefit Guide created by the IRS Office of Federal, State, and Local Governments, the substantiation requirements for an employer-provided vehicle is to separate records for business and personal mileage. If an employer-provided vehicle is used for both business and personal purposes, such as commuting, substantiated business use is not taxable to the employee. However, if the employee cannot prove how much the vehicle was driven for business purposes, all mileage put on the vehicle is taxable income to the employee. From the employer's point-of-view, without mileage records State spending units cannot be certain they are reporting the correct amounts of taxable income to their employees.

The following spending units did not maintain adequate mileage records:

- Alcohol Beverage Control Administration
- Bluefield State College
- Coal Heritage Highway Authority
- Commission on Special Investigations
- Department of Agriculture
- Department of Health and Human Resources
- Department of Military Affairs and Public Safety[2]
- Division of Corrections
- Division of Highways
- Division of Homeland Security and Emergency Management[2]
- Division of Juvenile Services
- Division of Motor Vehicles
- Educational Broadcasting Authority
- Higher Education Policy Commission
- New River Community and Technical College
- Office of the Attorney General
- Office of the Governor
- Office of Miner's Health, Safety, & Training
- Office of the State Treasurer

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[1] Office of the Attorney General

[2] In accordance with Section 17C-15-26, this vehicle is designated as an emergency vehicle by the Cabinet Secretary of the Department of Military Affairs and Public Safety.

- Public Service Commission
- School Building Authority
- Southern West Virginia Community and Technical College
- State Auditor's Office
- West Virginia School of Osteopathic Medicine
- West Virginia State Police
- West Virginia University Parkersburg

** This list is not inclusive of all State spending units who should have maintained mileage records. Any State spending unit governed by Title 148, Series 3 was required to maintain mileage records for every State vehicle they owned/leased regardless of whether the vehicle was used for commuting.*

Criteria

The DOA's Legislative Rule Title 148, Series 3 states in part:

Section 11.4

"Each month the assigned operator of a vehicle must complete a "State Owned Vehicle Log" as designated by the Travel Management Office. The log is to be returned to the Travel Management Office by the vehicle operator."

The *Taxable Fringe Benefit Guide* published by the IRS Office of Federal, State, and Local Governments states in part:

Page 41, Employer-Provided Vehicle

"If an employer-provided vehicle is used for both business and personal purposes, substantiated business use is not taxable to the employee. **Personal use is taxable to the employee as wages**."

Page 42, Substantiation Requirements.

"Separate records for business and personal mileage are required."

"If records are not provided by the employee, the value of all use of the automobile is wages to the employee, and the employee can take itemized deductions for any substantiated business use on Form 1040, Schedule A."

"If records are provided by the employee to the employer, only the personal use of the automobile is wages to the employee."
(Emphasis Added)

Cause

Due to the lack of monitoring over State vehicle use, State spending units were not required to maintain detailed mileage records for calendar year 2008; thus, 26 out of 29 spending units were not properly reporting the commuting value of State vehicles as prescribed in Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published by the IRS.

Effect For all of the spending units listed above, we were unable to verify the personal and business use of the vehicles and had to estimate usage because the spending units did not maintain records. In addition, we could not verify that the commuting value reported to the IRS was correct. With our estimates, we have found that failure to maintain mileage records could have possibly caused an under payment, over payment, or no payment of an employee's commuting value. Lastly, due to the spending units miscalculating the commuting value of State vehicles, the State ultimately could improperly report Federal, State, FICA and Social Security taxes and retirement contributions.

Recommendation We recommend that the State spending units comply with U.S. Code Title 26 – Internal Revenue Code and, if applicable, the DOA's Legislative Rule, Title 148, Series 3, *State Owned Vehicles*, by maintaining complete mileage records for all State vehicles used for business and personal purposes and properly report the commuting value assigned to employees who commute in State vehicles.

Spending Units Response See each spending unit's response in Appendix A.

Finding 3 **Title 148, Series 3 of the DOA's Legislative Rule did not parallel IRS Publications published by the U.S. Department of Treasury.**

Condition During our research, we discovered that Title 148, Series 3 of the DOA's Legislative Rule did not accurately reflect the reporting requirements for the commuting value of State vehicles as prescribed in Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, and the Taxable Fringe Benefit Guide published by the IRS Office of Federal, State, and Local Governments. Some discrepancies we found in Title 148, Series 3 include, but were not limited to, the following:

- Definition of the term "qualified non-personal use" was incorrect as described in *Section 2.7*.

- In Section 9.4, criteria required for proper reporting under the "Commuting Valuation Rule" was incomplete.

- Reimbursement methods available to employees for the commuting value of their State vehicles were not fully disclosed in Section 9.4.3.

- Requirements for using another commuting valuation method if the criteria were not met for the "Commuting Valuation Rule" were not disclosed in Section 9.4.

- In Section 9.4.1, the DOA attempted to compute the number of commuting days to be used when calculating the commuting value by assigning values based on a daily, monthly, or yearly basis instead of requiring $3.00 for every day commuted in the year.

Criteria Publication 15-B issued by the U.S. Department of Treasury, IRS states in part:

Section 2, *Fringe Benefit Exclusion Rules*

"A qualified non-personal use vehicle is any vehicle the employee is not likely to use more than minimally for personal purposes because of its design. Qualified non-personal use vehicles generally include all of the following vehicles.

- Clearly marked police and fire 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."

The Taxable Fringe Benefit Guide published by the IRS Office of Federal, State, and Local Governments states in part:

"A clearly marked police, fire, or public safety officer vehicle qualifies only if the following apply:

- Employee must always be on call.
- Employee must be required by the employer to use the vehicle for commuting.
- Employer must prohibit personal use (other than commuting) for travel outside of the office or firefighter's jurisdiction."

"A police, fire, or public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a police, fire, or public safety officer vehicle. A marking on the license plate is not a clear marking for this purpose.

Unmarked law enforcement vehicles are qualified nonpersonal use vehicles only if the following apply:

- The employer must officially authorize personal use.
- Personal use must be incident to use for law-enforcement purposes; i.e., no vacation use.
- The employer must be a governmental unit responsible for prevention or investigation.

The vehicle must be used by a full-time ***law enforcement*** officer; i.e., officer authorized to carry firearms, execute warrants, and make arrests. The officer must regularly carry firearms except when it is not possible to do so because of the requirements of undercover work."

Section 3, *Fringe Benefit Valuation Rules*, Commuting Rule, of IRS Publication 15-B states in part:

"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…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." (Emphasis Added)**

Section 1, Fringe Benefit Overview

"Any fringe benefit you provide is taxable and must be included in the recipient's pay unless the law specifically excludes it…Any benefit not excluded under the rules discussed in section 2 is taxable."

Section 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….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." (Emphasis Added)**

Cause The DOA's Legislative Rule did not parallel Publication 15-B issued by the IRS in regard to reporting the commuting value of State vehicles. There was not enough information in Title 148, Series 3 to completely and correctly explain the reporting rules required by the IRS.

Effect The spending units that followed Title 148, Series 3 of the DOA's Legislative Rule may not have been properly reporting the commuting value of their State vehicles as described in IRS Publication 15-B.

Recommendation To eliminate further inconsistencies in reporting the commuting value of State vehicles, we recommend the DOA only reference IRS Publications in the rules.

Spending Units Responses See each spending unit's response in Appendix A.

Finding 4 **The DOA did not implement Legislative Rule Title 148, Series 3, *State Owned Vehicles.***

Condition We noted that the DOA did not have a standardized "Statement of Commuting Value" which was required to be used by State spending units to report the commuting value of their State vehicles. In accordance with the DOA's Legislative Rule Title 148, Series 3, the employees who use State vehicles to commute to and from work were required to report the commuting value of those vehicles as a taxable fringe benefit to the IRS. The employee may elect to either make an authorized monthly payroll deduction for the commuting value of the vehicle or complete a "Statement of Commuting Value" as designated by the Travel Management Office of the DOA and reimburse the State for the commuting value of the vehicle. Furthermore, the DOA does not require spending units to submit any documentation regarding the commuting value of State vehicles to the Travel Management Office. According to their Legislative Rule, the spending units that lease vehicles from the DOA are instructed to submit a copy of the employee's "Statement of Commuting Value" within 15 business days from the last day of the reporting month to the DOA.

Lastly, the DOA does not enforce or supply spending units with a "State Owned Vehicle Log" as prescribed in Section 11.4 of Title 148, Series 3. This section requires assigned vehicle operators of State vehicles to submit a "State Owned Vehicle Log" each month to the Travel Management Office.

Criteria The DOA's Legislative Rule Title 148, Series 3 states in part:

Section 9.3

"When a State owned vehicle is leased for State business use by primarily one employee the vehicle:

9.3.4 is assigned to an employee that authorizes a monthly payroll deduction for the commuting value or completes a "Statement of Commuting Value" as designated by the Travel Management Office."

Section 9.4.2

"A "Statement of Commuting Value" must be completed for each month in which the employee has been assigned a State owned vehicle and has used it for commuting. The "Statement of Commuting Value" must be submitted to the employee's spending unit business office with a copy to the Travel Management Office within fifteen (15) business days from the last day of the reporting month. Failure to submit the form may result in the termination of the assignment of a vehicle to the employee as well as any applicable penalties by the Department of the Treasury, Internal Revenue Service of the Federal Government."

Section 11.4

"**Each month the assigned operator of a vehicle must complete a "State Owned Vehicle Log" as designated by the Travel Management Office. This log is to be returned to the Travel Management Office by the vehicle operator.** Instructions on what information is to be reported are found on the log. Any questions concerning the completion of the log may be directed to the Travel Management Office or the designated contractor for vehicle services (the designated contractor and applicable telephone numbers are found in the information & registration packet in each vehicle)." **(Emphasis Added)**

Cause The DOA did not make a standardized "Statement of Commuting Value" or the "State Owned Vehicle Log" available to State spending units. In addition, the DOA did not require spending units to forward copies of any documentation related to the commuting value of State vehicles to their agency in accordance with their Legislative Rule.

Effect According t o t he survey results, there are currently 15[3] State spending units with commuters who lease vehicles from the DOA. Without a standardized form for calculating the commuting value, it is possible that in an effort to comply with the above-mentioned rules these spending units may develop their own documentation, which may not supply the State with the information, needed to accurately determine the commuting value that the employee should have reimbursed. Furthermore, failure to provide these spending units with the "Statement of Commuting Value" and "State Owned Vehicle Log" may lead personnel to believe that they are not responsible for submitting the required documentation or reporting the commuting value of their State vehicles. Also, since the DOA does not require spending units to submit any documentation regarding the commuting value of the State vehicles leased from their agency, they do not know if spending units that lease vehicles from them are properly reporting the commuting value of those vehicles.

Recommendation We recommend that the DOA implement the rules in Title 148, Series 3,Sections 9.3.4, 9.4.2, and 11.4 or change the rule to reflect their actions.

Spending Units Responses See each spending unit's response in Appendix A.

[3] Alcohol Beverage Control Administration, Coal Heritage Highway Authority, Department of Agriculture, Department of Environmental Protection, Department of Health and Human Resources, Department of Military Affairs and Public Safety, Department of Motor Vehicles, Division of Corrections, Division of Homeland Security and Emergency Management, Division of Juvenile Services, Educational Broadcasting Authority, Office of the Governor, Office of Miner's Health, Safety, and Training, Public Service Commission, and School Building Authority.

Finding 5 **Spending units did not report the commuting value of State vehicles for their employees in accordance with IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits* or the DOA's Legislative Rule Title 148, Series 3, *State Owned Vehicles.***

Condition Based on the information gathered from the spending units, we noted that 15 out of 29 spending units (52%) did not report the commuting value of assigned State vehicles for their employees as a taxable fringe benefit. The 15 spending units consist of:

Spending Unit	Number of Employees who Commuted	Number of Employees who Did Not Report Commuting Value	Percentage of Employees who Did Not Report
Bluefield State College	3	1*	33%
Coal Heritage Highway Authority	1	1	100%
Department of Agriculture	10	1*	10%
Department of Environmental Protection	251	3 (partial year [4]- out of 15 sampled)	20%
Department of Health & Human Resources	1	1	100%
Department of Military Affairs & Public Safety [5]	1	1 (partial Year)	100%
Division of Corrections	5	3 (whole year[6]), 1 (partial year)	80%
Division of Forestry	78	11 (out of 11 sampled – uncertain due to type of vehicle) **	100%
Division of Homeland Security and Emergency Management[5]	1	1	100%
Division of Natural Resources	65	29	45%
New River Community and Technical College	1	1	100%
Office of Miner's Health, Safety, & Training	34	1 (whole year), 11 (partial year)	35%
Office of the State Treasurer	3	1*	33%

[4] Partial year – the employee commuted for a full year but only reported the commuting value for part of the year.

[5] In accordance with Section 17-C-15-26, this vehicle is designated as an emergency vehicle by the Cabinet Secretary of the Department of Military Affairs and Public Safety.

[6] Whole year – the employee commuted for a full year but did not report any commuting value for the year.

Public Service Commission	11	8 (whole year), 3 (partial year)	100%
WV State Police	29	12	41%
Total	**494**	**90**	**18%**

** Employee is the elected official or the head of the spending unit and is considered a control employee as defined in Publication 15-B published by the Internal Revenue Service. An employee is defined as a control employee if (a) their salary equals or exceeds $139,600 (2008 Federal Government Executive V) or (b) is an elected official.*

*** A sample of vehicles from the Division of Forestry were photographed; however, due to the nature and type of work performed by the employees we could not determine whether their vehicles meet the requirements set forth by the IRS to be categorized as "qualified nonpersonal use" vehicles.*

Eight of the 15 spending units had employees who commuted in a State vehicle and **these spending units were required to report the commuting value of State vehicles for their employees as a taxable fringe benefit in accordance with Title 148, Series 3 of the DOA's Legislative Rule and IRS Publication 15-B**. According to Title 148, Series 3 the commuting value of a State owned vehicle is required to be reported as a monthly payroll deduction to the employee who commutes in the vehicle or the commuting employee is required to complete a "Statement of Commuting Value" and reimburse the State for the commuting value of the vehicle. These eight spending units are:

- Coal Heritage Highway Authority
- Department of Environmental Protection
- Department of Health & Human Resources
- Division of Corrections
- Division of Homeland Security and Emergency Management
- Public Service Commission
- Office of Miner's Health, Safety, & Training
- Office of the State Treasurer

However, seven of the 15 spending units were exempt from Title 148, Series 3 of the DOA's Legislative Rule. These spending units **were required by U.S. Code Title 26 – Internal Revenue Code to report the value of commuting in a State owned vehicle as a taxable fringe benefit to the employee if the vehicle was not considered a "qualified nonpersonal use" vehicle**. These seven spending units are:

- Bluefield State College
- Department of Agriculture
- Department of Military Affairs and Public Safety
- Division of Forestry
- Division of Natural Resources
- New River Community and Technical College
- WV State Police

Spending units exempt from Title 148, Series 3 should have chosen a valuation method from Section 3 of IRS Publication 15-B to determine the commuting value of State owned vehicles. Once the valuation method was chosen, the spending units should have developed a policy that required employees who commute from their home to work to report the commuting value of their State owned vehicles in accordance with Publication 15-B.

Criteria

SPENDING UNITS THAT WERE REQUIRED TO REPORT THE COMMUTING VALUE IN ACCORDANCE WITH TITLE 148, SERIES 3:

The DOA's Legislative Rule Title 148, Series 3, Section 9.3 states in part:

Section 9.3, Use by Primarily One Employee

"When a State owned vehicle is leased for State business use by primarily one employee, the vehicle:

9.3.4. is **assigned to an employee that authorizes a monthly payroll deduction for the commuting value or completes a "Statement of Commuting Value"** as designated by the Travel Management Office." **(Emphasis Added)**

SPENDING UNITS THAT WERE REQUIRED TO REPORT THE COMMUTING VALUE IN ACCORDANCE WITH IRS PUBLICATION 15-B:

The DOA's Legislative Rule Title 148, Series 3 states in part:

"§148-3-1. General.

1.1. Scope. -- This Legislative Rule governs all State owned vehicles with the exception of those vehicles owned or leased by Division of Highways of the Department of Transportation, the Division of Public Safety of the Department of Military Affairs and Public Safety, the Division of Natural Resources, the Division of Forestry, the Department of Agriculture, the Higher Education Policy Commission and the Higher Education Governing Boards and their Institutions…."

Title 26, Section 61, of the U.S. Code – Internal Revenue Code states in part:

"(a) General definition

Except as otherwise provided in this subtitle, **gross income means income from whatever source derived, including (but not limited to) the following items:**

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items…" (Emphasis Added)

IRS Publication 15-B issued by the U.S. Department of Treasury, states in part:

Section 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….

Any fringe benefit you provide is taxable and must be included in the recipient's pay unless the law specifically excludes it…. "

Section 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."

IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, states in part:

Section 2, Fringe Benefit Exclusion Rules

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…"

"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 police and fire 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."

*The Taxable Fringe Benefit Guide***,** published by the Internal Revenue Service Office of Federal, State, and Local Governments states in part:

"Use of a qualified nonpersonal use vehicle, including commuting, is excludable to the employee; and recordkeeping and substantiation by the employee are not required by the IRS."

"A clearly marked police, fire, or public safety officer vehicle qualifies only if the following apply:

- Employee must always be on call.
- Employee must be required by the employer to use the vehicle for commuting.
- Employer must prohibit personal use (other than commuting) for travel outside of the officer or firefighter's jurisdiction.

A police, fire, or public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a police, fire, or public safety officer vehicle. "

Cause

The 15 spending units were not reporting the commuting value of State vehicles as prescribed in Title 148, Series 3 of the DOA's Legislative Rule and Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published by the IRS. We believe these spending units did not report the commuting value of State vehicles due to the lack of monitoring by the State.

Effect

Due to the spending units not reporting the commuting value of State vehicles, the State ultimately could improperly report Federal, State, FICA and Social Security taxes and retirement contributions. We were unable to compute an amount due to the lack of documentation provided by the spending units and the various valuation methods the spending units could have elected to use to evaluate the commuting value of State vehicles.

Recommendation

We recommend these 15 spending units comply with the DOA's Legislative Rule Title 148, Series 3, and Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published by the IRS and report the commuting value for the employees who commute in State vehicles. Since we could not determine if the Division of Forestry's vehicles were exempt from reporting, we recommend they obtain an opinion from the IRS to determine if the vehicles are considered "qualified nonpersonal use" vehicles.

Spending Units Responses

See each spending unit's response in Appendix A.

Finding 6 **State spending units reported the commuting value of their State vehicles as a fringe benefit to the IRS past the December 31, 2008 deadline as stated in IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*.**

Condition According to the State Auditor's Office EPICS Payroll System records, we noted three out of 29 State spending units (10%) that had employees who commuted in State vehicles reported the commuting value of these vehicles to the IRS past the December 31, 2008 deadline required by IRS Publication 15-B, Section 4, *Valuation of Fringe Benefits*.

Spending units and items noted are listed below.

- Department of Environmental Protection (DEP) - Twelve out of 15 employees sampled (80%) reported a total of $220.50 as a commuting value fringe benefit past the December 31 deadline.

- Division of Miner's Health, Safety, and Training (MHST) – Twelve out of 34 employees (35%) reported a total of $1,599.00 as a commuting value fringe benefit past the December 31 deadline.

- Division of Juvenile Services - Two out of five employees (40%) reported a total of $636.00 as a commuting value fringe benefit past the December 31 deadline.

Criterion Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published by the IRS states in part:

Section 4, Rules for Withholding, Depositing, and Reporting

"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**…" **(Emphasis Added)**

Cause The DOA's Legislative Rule Title 148, Series 3 does not completely and correctly explain the reporting rules required by the IRS.

Effect We believe that not reporting the commuting value in the calendar year that it was accrued did not reflect the true commuting value of State vehicles. In addition, reporting past the December 31 deadline may have uncertain consequences with the IRS. Lastly, due to the spending units reporting the commuting value of State vehicles past the December 31 deadline, the State ultimately could improperly report Federal, State, FICA and Social Security taxes and retirement contributions.

Recommendation We recommend that the State spending units comply with IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits* by valuing and reporting the commuting value of State vehicles by December 31 of every year.

Spending Units Responses See each spending unit's response in Appendix A.

Finding 7 **Employees may have used State vehicles for less than 50% business use.**

Condition

Based on our assumptions, we found that it was probable for some State employees to use their assigned State vehicles for less than 50% business purposes. Since none of the State spending units included in this special report maintained adequate mileage records, we attempted to re-create mileage information for the State vehicles used to commute to and from work. In our efforts, we noted six* out of 29 spending units (21%) had at least one employee whose vehicle usage calculated to be less than 50% business purposes. Our theories are explained below.

** This list is not inclusive of all State spending units. While it is possible that other spending units had employees that used their assigned State vehicles for less that 50% business use, this information could not be determined due to the lack of documentation maintained by the spending units.*

Commission on Special Investigations (CSI)

CSI provided us with documentation that told us the number of one-way commutes driven by each employee during calendar year 2008. To obtain the number of miles driven by each person from home to work, we researched their one-way travel distance using the online web mapping service MapQuest. We multiplied the number of one-way commutes by the number of miles driven one-way to determine the personal mileage for each vehicle. We then obtained an approximate total mileage on the vehicles from the Automotive Rentals, Inc. (ARI) gas card website. Since CSI employees have their own PIN numbers for ARI fleet cards, we were able to pull individual reports from the ARI website that documented odometer readings at each fill-up. Personal mileage was then subtracted from the total mileage to obtain business mileage. Based on the above calculations, four out of seven employees who commuted (57%) used their State vehicle for less than 50% business purposes.

Department of Health & Human Resources (DHHR)

No documentation detailing personal and business use of the State vehicle was provided to us by DHHR. To estimate the number of days commuted, we used the Division of Personnel's 2008 Holiday/Payday Calendar and took into account the 14 State holidays for calendar year 2008 and an average of 20 annual and sick leave days for the employee. To obtain the number of miles driven by the employee roundtrip[7], we researched the travel distance on MapQuest. We multiplied the number of commuting days by the number of miles driven roundtrip to determine the personal mileage for the vehicle. We then obtained an approximate total mileage on the vehicle from the ARI website. Personal mileage was then subtracted from the total mileage to obtain business mileage. Based on the above calculations, the only employee who commuted during calendar year 2008 used their State vehicle for less than 50% business purposes.

[7] Roundtrip - Miles driven from home to work and from work to home.

Office of Miner's Health, Safety, & Training (MHST)

MHST provided us with documentation detailing the number of one-way commutes driven by each employee during calendar year 2008. To obtain the number of miles driven by each person from home to work, we researched their one-way travel distance on MapQuest. We multiplied the number of one-way commutes by the number of miles driven one-way to determine the personal mileage for each vehicle. We then obtained an approximate total mileage on the vehicles from the ARI website. Since MHST employees have their own PIN numbers for ARI fleet cards, we were able to pull individual reports from the ARI website that documented odometer readings at each fill-up. Personal mileage was then subtracted from the total mileage to obtain business mileage. Based on the above calculations, six out of 34 employees who commuted (18%) used their State vehicle for less than 50% business purposes.

West Virginia State Police (WVSP)

WVSP provided us with documentation detailing the number of one-way commutes driven by each civilian[8] employee during calendar year 2008. To obtain the number of miles driven by civilian employees from home to work, we researched their one-way travel distance on MapQuest. We multiplied the number of one-way commutes by the number of miles driven one-way to determine the personal mileage for each vehicle. Since ARI information was incomplete, the average total mileage was determined by subtracting beginning mileage of the vehicles from ending mileage and dividing the result by the number of years the vehicle was owned by the spending unit. We acquired the beginning mileage of the vehicle on the date it was made available to the spending unit from the WVSP. Ending mileage was documented as of August 2009 by photographing the odometers in the vehicles. Personal mileage was then subtracted from the total mileage to obtain business mileage. Based on the above calculations, four out of 28 civilian employees who commuted (14%) used their State vehicle for less than 50% business purposes.

WV School of Osteopathic Medicine (WVSOM)

WVSOM provided us with documentation detailing the number of days the employee commuted and the amount of personal and business mileage put on the vehicle during calendar year 2008. Based on their documentation, the only employee who commuted during calendar year 2008 used their State vehicle for less than 50% business purposes. However, WVSOM appropriately selected an alternative valuation method to value the commuting.

[8] Civilian – a person who is not on active duty with a military, naval, police, or fire fighting organization

Office of the Attorney General

The Office of the Attorney General valued the entire mileage of one State vehicle as personal mileage. Accordingly, the only employee who commuted during calendar year 2008 used their State vehicle for less than 50% business purposes. If the spending unit maintained adequate mileage records, a distinction between business and personal use could have been determined. In addition, the Office of the Attorney General reported the commuting value of this State vehicle using the Cents-Per-Mile Rule. IRS Publication 15-B restricts the use of the Cents-Per-Mile Rule to vehicles that are used for at least 50% business purposes; therefore, the Office should have chosen another valuation method from IRS Publication 15-B.

Criteria

IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, states in part:

Page 20, Cents-Per-Mile Rule.

"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…"

Page 21, Commuting Rule.

"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…"

A legal opinion documented in a memorandum from a tax attorney hired by the Legislative Auditor states in part:

"Specifically, a State agency, as the employer providing vehicles to employees, to rely upon the commuting valuation rule, should address each of the following elements in a written policy statement:

1. The State agency should establish that the vehicle is provided to the employee for use in connection with the State's official business and is, in fact, used for the State's official business. Insofar as an employee's commute from home to a State office is considered *personal use* and not official State business, the agency should be prepared to establish that the vehicle is in fact used by the employee to whom the vehicle is issued for substantial activities comprising official State business (other than the employee's commute to work).

While this element sets forth a "facts-and-circumstances" inquiry, I believe that the **safe practice in this regard would be for the agency to assure (and retain**

sufficient records evidencing) that at least 50% of the vehicle's total miles are for the agency's business."[9] **(Emphasis Added)**

Cause Due to the lack of monitoring by the State, employees could have used their assigned State vehicles for less than 50% business purposes.

Effect If State vehicles were used for less than 50% business purposes, then spending units may have been using the incorrect commuting valuation method. According to a memorandum written by a tax attorney, "Regulation §1.61-21(b)(4) provides: In general, that [commuting value] equals the amount that an individual would have to pay in an arm's length transaction to lease the same or comparable vehicle… Regulation §1.61-21(d), (e), and (f) provide relief from the general comparable-arms-length-lease-value rule in the form of three separate "special" valuation rules.

The first special valuation rule provides for an "annual lease value" of a vehicle determined by reference to a standardized table in Publication 15-B based on the market value of the vehicle (determined when the vehicle is first available for personal use.) The personal use of the vehicle is determined by dividing the proportion of miles driven for personal purposes (included commuting) by total miles during the year.

The second special valuation rule is the cents-per-mile rule, which provides that, if the employer either (1) "reasonably expects [that a vehicle] will be regularly used in the employer's trade or business throughout the calendar year or (2) the vehicle satisfies a mileage rule requirement[10], then the value of the benefit provided the employee is determined by multiplying the standard mileage rate by the total mileage driven for personal purposes. Regulation §1.61-21(e) states whether an employer "reasonably expects" the vehicle to "be regularly used in the employer's trade or business" is made based on facts or circumstances, two safe-harbors are provided, one being that at least 50% of the vehicles total miles are for the employer's business.

The third and final special valuation rule is known as the "commuting valuation rule," pursuant to which the deemed value of the commuting use of an employer-provided vehicle is fixed at $1.50 per one-way commute. For the commuting valuation rule to apply, the employer and the employee must meet the following five requirements:

[9] A memorandum from a tax attorney states: "The "at least 50%" standard is found in a Safe-Harbor Regulation §1.61-21(e)(1)(iv), provided in relation to the "regularly-used-in-the-employer's-trade-or-business" element set forth in the cents-per-mile valuation rule, the separate (but related) commuting valuation rule contains a comparable "used-in-the-employer's-trade-or-business" element. I believe that the mileage threshold for the commuter valuation rule would be *at least as high* as the mileage threshold used in connection with the less taxpayer-friendly cents-per-mile valuation rule. Reading the Regulation sections as a whole, one would be hard pressed to argue for a less stringent mileage threshold to determine whether a vehicle is sufficiently used in the employer's business in seeking to qualify for the commuting valuation rule."

[10] A vehicle satisfies the mileage rule if it is *both* (A) actually driven at least 10,000 miles in that year *and* (B) use of the vehicle is primarily by employees, even if all miles driven by employees are personal.

i. The vehicle is owned or leased by the employer and is provided to one or more employees **for use in connection with the employer's trade or business and is used in the employer's trade or business**;
ii. **For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle**;
iii. The employer has established a written policy under which neither the employee, nor any individual whose use would be taxable to the employee, may 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 home);
iv. Except for *de minimis* personal use, the employee does not use the vehicle for any personal purpose other than commuting; and
v. The employee required to use the vehicle for commuting is not a *control employee* of the employer…" **(Emphasis Added)**

The tax attorney's memorandum continues to state that "research does not reveal significant published authority or additional guidance concerning the application of the commuting valuation rule to specific facts, although one published opinion supports the IRS's insistence on a taxpayers' strict compliance with the special valuation rules to avoid application of the general rule in Regulation §1.61-21(b). Accordingly, it is imperative for an employer that provides vehicles to employees to be prepared to substantiate utilization of the commuting special rule by demonstrable compliance with each of the five elements set forth above. If the affected State agency cannot establish each of these elements, the use of the commuting valuation rule appears to be inappropriate."

The following table illustrates the impact of using the commuting valuation rule versus the annual lease value rule. We chose 10 employees from the six spending units mentioned above.

Employee – Spending Unit	% of Personal Use for 2008	Approximate Personal Mileage	Commuting Value Actually Reported w/ Commuting Valuation Rule	Commuting Value Estimated w/ Annual Lease Value Rule*	Difference**
1 – WVSP	92%	12,826	$ 0.00	$ 785.66	$ 785.66
2 – MHST	91%	12,408	$ 496.50	$ 4,653.97	$ 4,157.47
3 – MHST	82%	22,536	$ 367.00	$ 3,966.41	$ 3,599.41
4 – MHST	76%	27,936	$ 417.00	$ 3,488.33	$ 3,071.33
5 – CSI	71%	14,177	$ 481.50	$ 4,145.80	$ 3,664.30
6 – MHST	69%	16,228	$ 547.50	$ 2,466.25	$ 1,918.75
7 – DHHR	64%	10,935	$ 0.00	$ 1,673.57	$ 1,673.57
8 – WVSP	63%	10,660	$ 630.00	$ 1,157.50	$ 527.50
9 – MHST	57%	4,907	$ 520.50	$ 2,616.84	$ 2,096.34
10 – CSI	54%	16,379	$ 355.50	$ 1,404.74	$ 1,049.24

**We determined the FMV from the Kelly Blue Book website.*

*****The employees listed above would have had to pay taxes on the amount shown in the "Difference" column.***

Finally, due to the spending units miscalculating the commuting value of State vehicles, the State ultimately could improperly report Federal, State, FICA and Social Security taxes and retirement contributions.

Recommendation

We recommend State spending units review the usage of their State vehicles to determine if all State vehicles are being used for at least 50% business purposes. In addition, we recommend State spending units re-evaluate the commuting valuation methods set forth in IRS Publication 15-B on a case-by-case basis to ensure the correct valuation method is being used to report the commuting value of State vehicles. Furthermore, we recommend State spending units document the employee's bona fide business reason detailing the need for use of the vehicle. Lastly, we recommend State spending units assess the need for employees to drive State vehicles if they are used for less than 50% business purposes.

Spending Unit Responses

See each spending unit's response in Appendix A.

Finding 8 **Spending units reported the commuting value of State vehicles for their employees when it was not required by IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits.***

Condition Based on the information provided by the spending units, we found four out of 29 spending units (14%) reported the commuting value of State vehicles for their employees when it was not necessary to do so. Spending units and items noted are detailed below.

<u>Employees Worked From Home</u>

- **Office of the State Treasurer and State Auditor's Office** – We noted these spending units valued commuting for employees who worked from their home and drove directly to the field. These employees rarely, if ever, commuted from their home to the office. According to a legal opinion provided by an attorney with Legislative Services, if the employee's home is designated by his or her employer as the employee's official headquarters, then business travel from the home would not be considered commuting. Consequently, there would be no commuting value assigned to the vehicle.

<u>Employees Drove Qualified Non-Personal Use Vehicles</u>

- **Department of Agriculture and Division of Juvenile Services** – We noted these spending units valued commuting for employees who drove qualified non-personal use vehicles. These types of vehicles are defined in IRS Publication 15-B and employees who drive these vehicles are exempt from reporting the commuting value due to their nature and design.

Criteria **<u>Employees Worked From Home</u>**

Instructions for IRS Form 2106, *Employee Business Expenses*, published by the Internal Revenue Service states in part:

Commuting.

"Generally, commuting is travel between your home and a work location. However, travel that meets any of the following conditions is not commuting.

- You have at least one regular work location away from your home and the travel is to a temporary work location in the same trade or business, regardless of the distance. Generally, a temporary work location is one where your employment is expected to last 1 year or less. See Publication 463 for more details.
- The travel is to a temporary work location outside the metropolitan area where you live and normally work.
- **Your home is your principal place of business under section 280A(c)(1)(A) (for purposes of deducting expenses for business use of your home) and the travel is to another work location in the same trade or business,**

regardless of whether that location is regular or temporary and regardless of distance." (Emphasis Added)

A legal opinion documented in a memorandum from an attorney with Legislative Services states in part:

"**If the employee's home is designated by his or her employer as the employee's official headquarters, then the bolded provision (from Instructions for IRS Form 2106) would probably apply and business travel from the home would not be commuting**. **Consequently, there would be no commuting value to the vehicle**, and the occasional trip to a regional or field office, or other state office would not be considered commuting. However, if the employee travels to a regional or field office or other state office on a regular and frequent basis the employee's home might not be properly designated as his or her official headquarters and the vehicle may have a commuting value for the employee." **(Emphasis Added)**

<u>**Employees Drove Qualified Non-Personal Use Vehicles**</u>

IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, states in part:

Section 2, Fringe Benefit Exclusion Rules

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…"

"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 police and fire 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." **(Emphasis Added)**

The Taxable Fringe Benefit Guide, published by the Internal Revenue Service Office of Federal, State, and Local Governments states in part:

"Use of a qualified nonpersonal use vehicle, including commuting, is excludable to the employee; and recordkeeping and substantiation by the employee are not required by the IRS."

"A clearly marked police, fire, or public safety officer vehicle qualifies only if the following apply:

- Employee must always be on call.
- Employee must be required by the employer to use the vehicle for commuting.
- Employer must prohibit personal use (other than commuting) for travel outside of the officer or firefighter's jurisdiction.

A police, fire, or public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a police, fire, or public safety officer vehicle."

Cause

Due to the lack of monitoring by the State, the four spending units were reporting the commuting value of State vehicles as prescribed in IRS Publication 15-B when it is not necessary to do so.

Effect

We believe reporting the commuting value of an employer-provided vehicle when it is not required by the IRS could result in an unnecessary payment of monies to the State and ultimately the IRS. Due to the spending units miscalculating the commuting value of State vehicles, the State could also improperly report Federal, State, FICA and Social Security taxes and retirement contributions.

Recommendation

We recommend that these four spending units comply with IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, and report the commuting value of State vehicles only for those employees who meet the qualifications outlined.

Spending Units Responses

See each spending unit's response in Appendix A.

APPENDIX A

SPENDING UNIT RESPONSES*

- Department of Administration
- Alcohol Beverage Control Administration
- Bluefield State College
- Coal Heritage Highway Authority
- Commission on Special Investigations
- Department of Agriculture
- Department of Environmental Protection
- Department of Health & Human Resources
- Department of Military Affairs & Public Safety
- Division of Corrections
- Division of Forestry
- Division of Highways
- Division of Homeland Security & Emergency Management
- Division of Juvenile Services
- Division of Motor Vehicles
- Division of Natural Resources
- Educational Broadcasting Authority
- Higher Education Policy Commission
- New River Community & Technical College
- Office of the Governor
- Office of Miners' Health, Safety, & Training
- Office of the State Treasurer
- Public Service Commission
- School Building Authority
- Southern West Virginia Community & Technical College
- State Auditor's Office
- West Virginia School of Osteopathic Medicine
- West Virginia State Police
- West Virginia University Parkersburg

* No response was received from the Office of the Attorney General.

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

JOE MANCHIN III
GOVERNOR

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

October 7, 2009

Ms. Stacy Sneed, Director
West Virginia Legislature
Post Audit Division
1900 Kanawha Boulevard, East
Building 1, Room W-314

Re: Statewide Vehicle Use

Dear Ms. Sneed,

I am in receipt of your special report regarding statewide vehicle use and respond as follows:

1. ***The State of West Virginia does not maintain control or supervise the use of State vehicles.***

   The Department of Administration agrees that there is not a centralized point of control for all vehicles and agrees with the recommendation.

2. ***State spending units did not keep adequate mileage records.***

   To the extent that a response is required, the Department of Administration does not disagree, however, the state spending units should respond to the recommendation.

3. ***Title 148, Series 3, of the DOA's Legislative Rule did not parallel IRS Publications published by the U.S. Department of Treasury, IRS.***

   The Department of Administration agrees with the recommendation and will revise the rule to reference the IRS rule.

4. ***The DOA did not implement their Legislative Rule Title 148, Series 3, State Owned Vehicles.***

The Department of Administration agrees with the recommendation and will develop a standardized "Statement of Commuting Value" and "State Owned Vehicle Log" based upon examples submitted by the Legislative Auditor. The Department of Administration will enforce the rule by reminding agencies to furnish said documents and follow up regularly.

5. ***Spending units did not report the commuting value of their State Vehicles in accordance with IRS Publication 15-B, Employer's Tax Guide for Fringe Benefits or the DOA's Legislative Rule Title 148, Series 3, State Owned Vehicles.***

   To the extent a response is required, the Department of Administration does not disagree, however, the state spending units should respond to the recommendation.

6. ***State spending units reported the commuting value of the State vehicles as a fringe benefit to their employees past the December 31, 2008, deadline as state in IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits.***

   To the extent that a response is required, the Department of Administration does not disagree, however, the state spending units should respond to the recommendation.

7. ***Employees may have used State vehicles for less than 50% business use.***

   To the extent a response is required, the Department of Administration does not disagree, however, the state spending units should respond to the recommendation.

8. ***Spending units reported the commuting value of State vehicles for their employees when it was not required by the IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits.***

   To the extent that a response is required, the Department of Administration does not disagree, however, the state spending units should respond to the recommendation.

If you have any questions, or need any additional information, please do not hesitate to contact me.

Sincerely,

Robert W. Ferguson, Jr.
Cabinet Secretary

STATE OF WEST VIRGINIA
DEPARTMENT OF REVENUE
ALCOHOL BEVERAGE CONTROL ADMINISTRATION

322 70th Street, SE
Charleston, West Virginia 25304-2900

JOE MANCHIN III
GOVERNOR

DALLAS S. STAPLES
COMMISSIONER

VIRGIL T. HELTON
CABINET SECRETARY

October 6, 2009

VIA HAND DELIVERY
Stacy L. Sneed, CPA, Director
Legislature Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd., E.
Charleston, WV 25034

Re: Response to Legislative Auditor's Special Report of Statewide Vehicle Use for the Period January 1, 2008 – December 31, 2008

Dear Ms. Sneed:

In response to your auditors' findings:

Finding #2: During the stated audit period of January 1, 2008, through December 31, 2008, the WVABCA agrees with the issues regarding mileage records. The WVABCA did maintain mileage records for each vehicle in use (see attached mileage form). However the agency was not instructed to record mileage in a vehicle log that required specifically listing business or personal use mileage.

Please note, the WVABCA is implementing the Legislative Auditor's recommendation of a vehicle log for each vehicle to substantiate mileage records as of October 9, 2009 in compliance with 148 CSR 3.

If you have any further questions, please contact me at 304-558-2481.

Sincerely,

Dallas S. Staples
WVABCA Commissioner

STATE OF WEST VIRGINIA
MONTHLY MILEAGE REPORT

PLEASE COMPLETE AND MAIL BY THE LAST DAY OF THE MONTH. ALL FIELDS MUST BE COMPLETED

LICENSE PLATE NUMBER

ODOMETER READING THIS PERIOD	1- BEGINNING OFMONTH	2- END OF MONTH
MILES THIS PERIOD	PERSONAL	BUSINESS

MUST COMPLETE LAST 8 DIGITS OF VIN # ⟶

DRIVER'S NAME______________________________

MONTH REPORTED______/______/______ DRIVER'S TEL. # (_______) . ☐☐☐ . ☐☐☐☐

SA-232 (2/07) 500/PKG

PRINT OR WRITE LEGIBLY

National Coal Heritage Area Authority
P. O. Box 5176
Beckley, WV 25801
304-256-6941

October 6, 2009

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd. East
Charleston, WV 25305-0844

Dear Ms. Sneed:

As you have reported in the Special Report on State Vehicle Usage, the Coal Heritage Highway Authority was cited in findings 2 and 5 of the report. We offer the following responses to remediate the issues raised in those findings:

Finding 2: State Spending Units did not keep adequate mileage records detailing the use of their State vehicles.

Response: Not keeping adequate mileage records is an oversight on the part of our agency. To remediate the situation, beginning on October 1, 2009 we began keeping a mileage log for our vehicle in compliance with U. S. Code Title 26-Internal Revenue Code. We have created a mileage log based on the sample form provided to us by your office which is now in the vehicle. The forms will be collected on a monthly basis and forwarded to the State Travel Management Office and to our payroll office for determination of any taxable income to be reported for the employee. A copy of the form is attached to this response.

Finding 5: Spending units did not report the commuting value of State vehicles to their employees on accordance with IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits.

Response: Once again, this was an oversight on the part of our agency. To remediate the situation for 2009, we will review our calendars and work schedules from January 1 to October to determine any times the vehicle was used for commuting purposes. From October 1 through December 30 we will use the vehicle log to document commuting mileage and will comply with the DOA's Legislative Rule Title 148, Series 3, and IRS Publication 15-B to report commuting values as a fringe benefit and will continue to make that our policy for subsequent years. Additionally, for 2008, we calculated that our Executive Director commuted in the state vehicle 86 days. For those days, she will reimburse the agency at the rate of $3 per day for a total of $258.00.

We will continue to work with the Office of Travel Management and implement any other policies that are instituted as a result of your report.

Thank you for bringing this matter to our attention. Please advise us if further action or information is needed.

Sincerely,

Christy Bailey
Executive Director

MONTHLY VEHICLE MILEAGE LOG

AGENCY: Coal Heritage Highway Authority VEHICLE: 2006 Ford Explorer vin #UB99683 MONTH/YR: 10/2009

DATE	DRIVER	BEG. MILEAGE	END. MILEAGE	DESTINATION	REMARKS
10/2/09	Christy Bailey	79 859	79873	Sophia & Return to office	Set up Display
10/6/09	Ronn Raszetnik	79873	79880	Sophia	Pick up display
10/6/09	Ronn Raszetnik	79880	79887	Beckley	Return to office
10/7/09	Ronn Raszetnik	79887	79932	Montgomery	Miners Conference
10/7/09	Ronn Raszetnik	79932	79971	Beckley	Return to office

Bluefield State College
Response to State of West Virginia Special Report
Of Statewide Vehicle Use
January 1, 2008 – December 31, 2008

Finding 2 Response:

Bluefield State College will keep adequate mileage records detailing the use of the state vehicle for personal use and report the commuting value as per U. S. Code Title 26 – Internal Revenue Code. For the first three quarters of 2009 calendar year this process has begun, with the 2.1 personal miles to campus (and return if relevant) will be reported. Beginning with the fourth quarter of 2009, appropriate reporting will occur at the end of each quarter.

Finding 5 Response:

Bluefield State College will comply with IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits and report the commuting value for the employee who commutes in State owned vehicles.

WEST VIRGINIA LEGISLATURE
COMMISSION ON SPECIAL INVESTIGATIONS

301 EAGLE MOUNTAIN ROAD
ROOM 218

PHONE (304) 558-2345
FAX (304) 558-3325
CSI@mail.wvnet.edu

CHARLESTON, WEST VIRGINIA 25311-1061

October 7, 2009

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd. E.
Charleston, West Virginia 25305-0844

Dear Director Sneed:

Please find below my responses on behalf of the Commission on Special Investigations to your Draft Report as presented to me and my staff during the recent exit interview.

I would note that as we discussed, CSI has complied fully with the recommendations of the Post Audit Division's 2003 report on this matter, including maintenance of records and submission of commuting value information to the Fiscal Office of the Legislative Manager. All investigators have received Form W-2s reporting the commuting value under the IRS Commuting Value Rule.

Sincerely,

Gary W. Slater

Gary W. Slater
Director

GWS:lmw
10-07-09

Commission on Special Investigations Responses to Special Report Findings

Finding 1 **The State of West Virginia does not maintain control or supervise the use of State vehicles.**

CSI has no response to this finding.

Finding 2 **State spending units did not keep mileage records.**

CSI has kept vehicle records as previously recommended by the Post Audit Division.

Finding 3 **Title 148, Series 3 of the DOA's Legislative Rule did not parallel IRS Publications published by the U. S. Department of Treasury, IRS.**

CSI has no response to this finding.

Finding 4 **The DOA did not implement their Legislative Rile Title 148, Series 3, State *Owned Vehicles.***

CSI has no response to this finding.

Finding 5 **Spending units did not report the commuting value of their State vehicles in accordance with IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits* or the DOA's Legislative Rule Title 148, Series 3, *State Owned Vehicles.***

CSI has reported all required documentation to the Legislative Auditor's Financial Office, as previously recommended by the Post Audit Division, necessary to report vehicle use values as a taxable fringe benefit in accordance with IRS rules applicable to the Commuting Valuation Rule.

Finding 6 **State spending units reported the commuting value of their State vehicles as a fringe benefit to their employees past December 31, 2008 deadline as stated in IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits.***

CSI reported the commuting value as required and Form W-2s were issued in a timely manner by the Legislative Auditor's Financial Office.

Finding 7 **Employee may have used State vehicles for less than 50% business use.**

Because CSI was not required to track mileage under the Commuting Value Rule, and because CSI investigators sometimes trade vehicles for management and investigative reasons, the specific mileage driven by individual investigators cannot be determined with certainty; however some investigators may have used State vehicles for less than 50% business in a particular time period.

Finding 8 **Spending units reported the commuting value of State vehicles for their employees when it was not required by IRS Publication 15-B, *Employer's Tax Guide to Fringe benefits.***

This finding does not apply to CSI.

State of West Virginia

DEPARTMENT OF AGRICULTURE

Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

October 6, 2009

Ms. Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
State Capitol Complex
Charleston, WV 25305-0610

Dear Ms. Sneed:

This letter is in response to the findings related to the Department of Agriculture in your special report on statewide vehicle use for the period January 1, 2008 through December 31, 2008. We are providing the following information in response to the findings identified for the Department of Agriculture.

Finding 2 **..."did not keep adequate mileage records detailing the use of their State vehicles...they improperly valued the commuting value of State vehicles in accordance with U.S. Code Title 26 – Internal Revenue Code"...**

Response The Department of Agriculture maintained adequate records in accordance with U.S. Code Title 26 – Internal Revenue Code which states in part **"For vehicles not used for personal purposes other than commuting ($1.50 each way), the following conditions must apply:**

- For bona fide non-compensatory reasons, the employer requires the employee to commute to and/or from work in the vehicle
- Vehicle is owned or leased by the employer
- Vehicle is provided to the employee for business use
- Employer requires the employee to commute in the vehicle for valid business reasons
- Employer has a written policy prohibiting personal use other than commuting, employee does not use the vehicle for personal use"

The Department of Agriculture requires employees that use a State vehicle for commuting to maintain a Monthly Commuting Log to record each trip between their residence and their workstation and values it at $1.50 each way in accordance with IRC requirements. The IRC does not specify that mileage must be recorded.

Further, the section defining Employer Monitoring Required in the Taxable Fringe Benefit Guide created by the IRS Office of Federal, State, and Local Governments, states "Although detailed recordkeeping is not required, the employer must have some way to prove that the vehicles are being used in accordance with the rules. For example, internal controls such as requiring signed statements by the employees agreeing to...no personal use other than commuting." Although employees are reminded of the "no personal use" requirement in the packet of information they are given when they begin commuting in a State vehicle, the Department of Agriculture has revised their Monthly Commuting Log form to also include a statement attesting to that requirement.

Finding 5 ..."did not report the commuting value of State vehicles to their employees in accordance with IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits...Employee is the elected official...and is considered a control employee as defined in Publication 15-B"...

Response The Department of Agriculture relied upon incorrect information provided by another agency during this reporting period and thus, was not in compliance with reporting requirements. However, as of January 2009, corrective action was implemented and this commuting is now being properly recorded.

Finding 8 ..."reported the commuting value of State vehicles for their employees when it was not required by IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits."..."employees who drive these vehicles are exempt from reporting the commuting value due to their nature and design."..."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."...

Response This finding is related to the State Veterinarian's use of an Incident Management Team vehicle that is marked with Department of Agriculture insignia and logos. This vehicle is among those used by the Incident Management Team during an incident response. The vehicle is diesel powered and must be driven periodically to prevent engine damage. The statutory authority to activate and direct activities carried out for incident management rests solely with the Commissioner of Agriculture. Typically, the Commissioner travels to an incident site in his assigned vehicle which has the specialized communications equipment to serve as the command center but does not bear the IMT markings. The Department of Agriculture will not report the use of the above vehicle as income to the State Veterinarian in the future.

The preceding response to the Legislative Post Audit Division's special report represents

Gus R. Douglass

Gus R. Douglass, Commissioner

Janet L. Fisher

Janet Fisher, Deputy Commissioner

Steve Hannah

Steve Hannah, Deputy Commissioner

Sandra Gillispie

Sandra Gillispie, Director

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of the Chief Operations Officer
State Capitol Complex, Building 3, Room 554
Charleston, West Virginia 25305
Telephone: (304) 558-3217 Fax: (304) 558-5706

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 7, 2009

Ms. Stacy L. Sneed, CPA, CICA Director
Legislative Post Audit Division
Building 1, Room W-329
State Capitol Complex
Charleston, WV 25305-0610

Dear Ms. Sneed:

The West Virginia Department of Health and Human Resources has reviewed the Special Report of Statewide Vehicle Use for the period of January 1, 2008 through December 31, 2008 as prepared by the Office of the Legislative Auditor and presented to the DHHR for a draft review. The DHHR recognizes the stated conditions and recommendations as expressed by the Office of Legislative Auditor within Finding Numbers 2, 5 and 7 of their Special Report of Statewide Vehicle Use and appreciates the opportunity to respond to the portions of those findings attributable to the DHHR.

With respect to the overall objectives and scope of the Special Report, please note that it is not a standard practice for the DHHR to grant permission to its employees for the use of State owned vehicles for commuting purposes. The DHHR is consistent in its policy to deny the use of State owned vehicles to its employees for commuting purposes, as evidenced through the results of the Legislative Auditor's Special Report and referenced surveys whereby there was only one instance of such use and within the context as referenced in the aforementioned paragraph. Nonetheless, the DHHR recognizes the need to plan for future contingencies by ensuring its internal control processes and procedures with respect to the utilization of State owned vehicles for commuting purposes and adequate documentation related thereto are in place. In direct response to Finding Numbers 2, 5 and 7, en bloc, the DHHR offers the following corrective action plan:

If the DHHR approves the further use of the State owned vehicle for commuting purposes, the DHHR will require the affected employee to keep detailed mileage records and complete a "State

Owned Vehicle Log" as designated by the Travel Management Office of the Department of Administration and as required per Legislative Rule, Title 148, Series 3 Furthermore, in accordance with Publication 15-B (Employer's Guide to Fringe Benefits) issued by the Internal Revenue Service, the DHHR will ensure, to the extent practicable, that the said employees-differentiate between the travel miles utilized for business purposes versus personal use and if business use falls below 50%, will consider removing the commuting privileges bestowed upon this employees.

If the State owned vehicle referenced in the Legislative Audit Report is further utilized by the affected DHHR employee for commuting purposes, the DHHR will attain authorization for monthly payroll deductions of the commuting value or, as designated by the Travel Management Office of the Department of Administration, will require the employee to complete a "Statement of Commuting Value" for direct reimbursement of the computed amount to the State. The DHHR utilizes the "Commuting Rule" to determine the commuting value, but acknowledges the need to review all of the general valuation rules established by the Internal Revenue Service to determine whether utilization of the Commuting Rule is the appropriate valuation methodology for the employee and circumstance in question

Thank you once again for the opportunity to respond to the Office of the Legislative Auditor's Special Report of Statewide Vehicle Use.

Sincerely,

Greg Nicholson

Greg Nicholson, Chief Operations Officer
West Virginia Department of Health and Human Resources

cc: Warren Keefer, Deputy Secretary for Administration west virginia department of environmental protection

Office of Administration
601 57th Street, S.E.
Charleston, WV 25304

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

MEMORANDUM

TO: Lori B. Elliott, CPA
Auditor-in-Charge
Legislative Post Audit Division

FROM: Jim Calvert JC
Assistant Chief
Office of Administration

Brent A. Kessinger BAK
Fleet Manager

DATE: October 7, 2009

RE: *Response to Special Report of Statewide Vehicle Use*

The Department of Environmental Protection (DEP) was cited in two audit findings in the Legislative Post Audit Division Special Report of Statewide Vehicle Use. Our official response to each of the findings can be found below.

<u>Finding 5</u>: Spending units did not report the commuting value of State vehicles to their employees in accordance with IRS publication 15-B, *Employer's Tax Guide to Fringe Benefits* or the DOA's Legislative Rule Title 148, Series 3, *State Owned Vehicles*.

The DEP Human Resources section, (HR), for I.R.S. commuting reporting purposes, works from a 12-month calendar that begins in December and ends in November. This allows DEP's HR to have time to ensure that all commuting benefits are entered into the ERIS Time & Activity/Commuting Database by the employee prior to December 31 of each year. This is the reason it appears that some DEP employees did not report; or partially reported, their commuting values.

Some employees did miss the cutoff for having commuting values added to the payroll and their reports were included in the next report. HR has taken steps to alleviate this problem and will continue to do so, as indicated in our response to Finding 6 below.

<u>Finding 6</u>: State spending units reported the commuting value of their State vehicles as a fringe benefit to the IRS past the December 31, 2008 deadline as stated in IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*.

Due to employee retirements, resignations, illnesses, vacations, and time constraints, employees were not always compliant with submission of paper commuting reports. This meant that payroll staffs were not always able to process that time into the payroll system prior to the December 31 cutoff date.

Our previous schedule of reporting/withholding was:

- Period: December to February (Payroll Reported: March 31 pay day)
- Period: March to May (Payroll Reported: June 30 pay day)
- Period: June to August (Payroll Reported: September 30 pay day)
- Period: September to November (Payroll Reported: December 31 pay day)

The DEP is working diligently to bring all employees, regardless of their status, in compliance with this procedure. The beginning of this process started with the switch from hard copy forms that were physically sent to HR by employees to adding a field for commuting in the ERIS Time & Activity/Commuting System. This process was implemented in January of 2009. The supervisor of each employee must approve each time sheet/commuting report, which increases their accountability for what is being reported.

HR staff are also implementing a new reporting schedule in compliance with IRS Publication 15-B which states: *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 non-cash benefits actually provided in the last two months of 2008 could be treated as provided in 2009 together with the value of benefits provided in the first 10 months of 2009.*

The previous reporting schedule had called for reporting up through November in the current calendar year. The new schedule will move to a two month carry over, which will allow payroll staff to use all avenues available to assure that time & activity/commuting reports are in and approved prior to the taxable benefit data being included in payroll.

Reporting in the final quarter of the year has always been somewhat challenging because of the large number of holidays and the large number of employees exhausting use or lose annual leave at this time of the year. We believe that the change to the reporting schedule will allow HR staff to more effectively enforce compliance with reporting.

The reporting/withholding schedule will be as follows:

- Period: November to January (Payroll Reported: February 28 pay day)
- Period: February to April (Payroll Reported: May 31)
- Period: May to July (Payroll Reported: August 31)
- Period: August to October (Payroll Reported: December 31)

Likewise, because the submission of commuting information is now tied into the submission of the electronic time and activity reports, employees who are leaving or retiring and their supervisor are not able to simply forget to submit the final report prior to their last day of employment, since all employees are required to submit their final timesheet on their last work day.

We believe that these changes will allow DEP to assure compliance with reporting and withholding requirements in a more consistent manner.

Thank you for the opportunity to respond to the two audit findings that cited DEP. If you have questions or require additional information, please feel free to contact us at: Brent A. Kessinger, 304-926-0499, ext. 1667; and Jim Calvert, 304-926-0499, ext. 1041.

BAK

cc: June A. Casto, Chief, Office of Administration, WVDEP

State of West Virginia
OFFICE OF THE CABINET SECRETARY
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
State Capitol Complex
1900 Kanawha Blvd., E.
Charleston, West Virginia 25305
Telephone (304) 558-2930
Facsimile (304) 558-6221

JOE MANCHIN III
GOVERNOR

JAMES W. SPEARS
CABINET SECRETARY
STATE HOMELAND SECURITY ADVISOR

October 6, 2009

Ms Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
State Capitol Complex
Charleston, WV 25305-0610

Dear Ms Sneed:

Thank you for the opportunity to respond and comment on the findings presented to the Department of Military Affairs and Public Safety Office of the Secretary as stated in the *State of West Virginia Special Report of Statewide Vehicle Use, January 1, 2008 – December 31, 2008.*

<u>Finding 2</u>: State spending units did not keep adequate mileage records detailing the use of their State vehicles; therefore, they improperly valued the commuting value of State vehicles in accordance with U.S. Code Title 26 – Internal Revenue Code and the DOA's Legislative Rule, Title 148, Series 3, State Owned Vehicles.

Response: Due to the round-the-clock homeland security and emergency response function and responsibilities of this office, the vehicle has been treated as an emergency, unmarked vehicle and therefore not subject to the mileage records requirements. Therefore, we were also unaware that a separate State Owned Vehicle Log was necessary to help in showing Commuting Value. A log has been placed in the vehicle until such time as the vehicle is marked.

<u>Finding 5:</u> Spending units did not report the commuting value of State vehicles to their employees in accordance with IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits or the DOA's Legislative Rule Title 148, Series 3, State Owned Vehicles.

Response: As soon as this office was made aware that a commuting value may be applicable, that value was figured in accordance with the table contained in DOA's Legislative Rule, Title 148, Series 3, State Owned Vehicles. Applicable payroll deductions commenced July 1, 2008.

If additional information is needed or I can be of further assistance, please don't hesitate to give me a call at 304-558-2930. Thank you.

Sincerely yours,

Barbara S. Wimer
Administrative Services Manager

STATE OF WEST VIRGINIA
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
DIVISION OF CORRECTIONS

West Virginia
Division of Corrections

JOE MANCHIN, III
GOVERNOR

JIM RUBENSTEIN
COMMISSIONER

JAMES W. SPEARS
SECRETARY

Office of the Commissioner
112 California Avenue-State Capitol Complex
Building 4, Room 300
Charleston, WV 25305-0280
(304) 558-8045 Telephone - (304) 558-8048 Fax

October 6, 2009

Ms. Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
State Capitol Complex
Charleston, WV 25305-0610

Dear Ms. Sneed:

We are providing this response in connection with your September 24th meeting at our office concerning the findings of the statewide vehicle usage audit. We have reviewed the draft of the report, and are in agreement with your findings. We have communicated the findings with the Commissioner of Corrections and on his behalf assure you that appropriate steps have been taken or are being implemented to address the findings.

The individuals that use a state vehicle to commute daily are now using the Commuting Value Method as outlined in Title 148, Series 3, Section 9.4.2. A log system is being implemented to differentiate between commuting vs. business vehicle usage as outlined in Title 148, Series 3, Section 11.4.

If we can provide anymore information feel free to contact us.

Barbara Fish

Barbara Fish
Director of Administration

M.V. Coleman
Director of Security

cc: Commissioner
Deputy Commissioner
Assistant Commissioner
File

Joe Manchin III
Governor

C.R. Dye
Director/State Forester

DIVISION OF FORESTRY
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0180
(304) 558-2788 FAX (304) 558-0143
www.wvforestry.com

October 2, 2009

To: Stacy L. Sneed, CPA, CICA
Director
Legislative Post Audit Division

From: Steve Meester, Assistant Director
WV Division of Forestry

RE: Response to special report on statewide vehicle use

Ms. Sneed,

In response to finding 5 in the special report on statewide vehicle use which states in part "Since we could not determine if the Division of Forestry's vehicles were exempt from reporting, we recommend they obtain an opinion of the IRS to determine if the vehicles are considered "qualified nonpersonal use" vehicles."

RESPONSE: The Division of Forestry will seek to obtain an opinion of the IRS to determine if the Division's vehicles are "qualified nonpersonal use" vehicles.

Thank you.

WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • (304) 558-0444

Joe Manchin III
Governor

October 6, 2009

TO: **Aaron Allred, Legislative Auditor**
Legislative Post Audit Division

From: **Paul A. Mattox, Jr., P. E.**
Secretary of Transportation/
Commissioner of Highways

Paul A. Mattox, Jr.

Thru: **Danny Ellis**
Business Manager

Danny Ellis

Subject: **<u>StatewideVehicle Use Response</u>**

As requested in the Special Report of Statewide Vehicle Use, please find the Division of Highways' (DOH) response to Finding #2 listed below.

<u>Finding #2 – Recommendation</u> – We recommend that the State spending units comply with U.S. Code Title 26 – Internal Revenue Code and/or the DOA's Legislative Rule, Title 148, Series 3, *State Owned Vehicles*, by maintaining complete mileage records for all State vehicles used for business and personal purposes and properly report the commuting value assigned to employees who commute in State owned vehicles.

<u>Response</u>: The DOH has strict policy and procedural guidelines for vehicle assignments and use. The DOH is exempt from the Department of Administration's Title 148, Series 3 policy however; we believe we are in compliance with the policy more than many of the agencies under the DOA policy. The DOH references sections 9.4, *Determining Commuting Value,* and sections 9.4.1, computation, and 9.4.2, *Temporarily Assigned Vehicles,* to determine the amount of taxes applicable to employees.

According to IRS Regulation 15-B, *Employer's Tax Guide to Fringe Benefits* the DOH is in compliance by using the $1.50 for each one-way commute and implementation of a policy restricting personal use without the requirement of reporting mileage. The DOH does not currently report daily mileage of its fleet vehicles, and to mandate that requirement would place an undue hindrance on the vehicle assignees, particularly during emergency situations, as well as require an additional reporting level for the Agency.

The Secretary of Transportation makes vehicle assignments according to the needs of the Agency and in support of the Agency's mission. DOH assigned vehicles are exclusively assigned to agency staff that are required to frequently conduct business operations at different locations and agency staff which are 'on call' 24 – 7 in the event of emergencies.

The Division of Highways understands the Agency is subject to follow any Legislative-mandated code relating to taxable fringe benefits and the Agency will make the necessary changes to our policies meeting State Code as related to taxable fringe benefits requirements.

If you require additional information, please feel free to contact Mr. Danny Ellis, Business Manager, at (304) 558-2811.

PAM:Ev

STATE OF WEST VIRGINIA
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY
DIVISION OF HOMELAND SECURITY
AND EMERGENCY MANAGEMENT
Building 1, Room EB-80
1900 Kanawha Blvd., East
Charleston, West Virginia 25305-0360
Telephone: (304) 558-5380 Fax: (304) 344-4538

JOE MANCHIN III
GOVERNOR

JAMES W. SPEARS
CABINET SECRETARY

JIMMY J. GIANATO
DIRECTOR

October 7, 2009

Ms. Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
State Capitol Complex
Charleston, WV 25305-0610

Dear Ms Sneed:

Thank you for the opportunity to respond and comment on the findings presented to the Division of Homeland Security and Emergency Management as stated in the *State of West Virginia Special Report of Statewide Vehicle Use, January 1, 2008 – December 31, 2008.*

Finding 2: State spending units did not keep adequate mileage records detailing the use of their State vehicles; therefore, they improperly valued the commuting value of State vehicles in accordance with U.S. Code Title 26 – Internal Revenue Code and the DOA's Legislative Rule, Title 148, Series 3, State Owned Vehicles.

Response: Due to the round-the-clock homeland security and emergency response function and responsibilities of this division and the division director, the vehicle has been treated as an emergency, unmarked vehicle and therefore not subject to the mileage records requirements. Therefore, we were also unaware that a separate State Owned Vehicle Log was necessary to help in showing Commuting Value. A log has been placed in the vehicle until such time as the vehicle is marked.

Finding 5: Spending units did not report the commuting value of State vehicles to their employees in accordance with IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits or the DOA's Legislative Rule Title 148, Series 3, State Owned Vehicles.

Response: As soon as this agency was informed of the requirement during a meeting at DMAPS on October 5, 2009 that a commuting value may be applicable, that value was figured in accordance with the table contained in DOA's Legislative Rule, Title 148, Series 3, State Owned Vehicles. Applicable payroll deductions have been requested to commence October 16, 2009. In addition, this agency has contacted the IRS for additional guidance on this issue.

If additional information is needed or I can be of further assistance, please don't hesitate to contact me at 304-558-5380.

Thank you.

Sincerely yours,

Jimmy Gianato
Director

JG:ds

State of West Virginia
OFFICE OF THE CABINET SECRETARY
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
State Capitol Complex
Bldg. 6, Room B122
Charleston, West Virginia 25305
Telephone (304) 558-2930
Facsimile (304) 558-6221

JOE MANCHIN III
GOVERNOR

JAMES W. SPEARS
CABINET SECRETARY
STATE HOMELAND SECURITY ADVISOR

JAN 25 2006

MEMORANDUM

To: Jimmy Gianato, Director
WV Division of Homeland Security and Emergency Management (WVDHSEM)

Terry L. Miller, Homeland Security State Administrative Agency (HS SAA) POC and Acting Director of the Regional Response Team (RRT) program

From: Jim Spears, Cabinet Secretary JWS

Date: 23 January 06

Re: Authorization for full-time use of state-owned vehicles

The events of the last few months ... Hurricanes Katrina and Rita, and most recently with the Aracoma and Sago Mine disasters, have shown that this Department must be prepared to respond immediately to a wide variety of emergencies. Indeed, with the Upshur County tragedy occurring on a State/Federal designated holiday, several within the DMAPS leadership had to respond quickly from home.

Accordingly, pursuant to the authority vested in me as Cabinet Secretary in West Virginia Code §5F-2-1, et seq., and in accordance with provisions contained in West Virginia Code §6-7-8, by this memorandum, I am directing the Director of WVDHSEM to assemble the most appropriate communications systems package that will provide adequate communication capability for DMAPS leadership to communicate effectively during an emergency.

Further, I am authorizing and directing the Director of WVDHSEM and the SAA POC and Acting Director of the RRT program to ensure that this communications package be installed as soon as possible in the state vehicles assigned to me and to each of them. Since the nature and performance of the duties and responsibilities of these officials of the DMAPS leadership requires such, in addition to myself, I further permit and authorize the full-time use of these state-owned vehicles by both Directors.

Per the request of the Governor's Chief of Staff, Larry Puccio, a similar communications package will be installed in his vehicle. Details for such should be worked directly with Mr. Puccio's office.

CC: Larry Puccio, Chief of Staff
Joe Martin, Deputy Chief of Staff

STATE OF WEST VIRGINIA
DEPARTMENT OF MILITARY AFFAIRS & PUBLIC SAFETY
DIVISION OF JUVENILE SERVICES
DALE HUMPHREYS, DIRECTOR

JOE MANCHIN III
GOVERNOR

JAMES W. SPEARS
CABINET SECRETARY

OFFICE OF THE DIRECTOR
1200 Quarrier Street
Charleston, WV 25301
Tel: (304) 558-9800 Fax: (304) 558-6032

September 28, 2009

Ms. Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
State Capitol Complex
Charleston WV 25305-0610

Dear Ms. Sneed;

The Division is in receipt of the draft of the special report on statewide vehicle usage for the period January 1, 2008 through December 31, 2008. The Division of Juvenile Services has attempted to comply with the rules and regulations regarding use of state vehicles.

We would like to thank you and your team for pointing out the errors in our efforts. The Division of Juvenile Services acknowledges the issues mentioned in the report and we have taken the appropriate actions to correct those issues.

Once again, thank you for the information contained in your report. Please notify us of any issues which may affect our current policies and procedures.

Sincerely

Bruce Blackhurst

Bruce Blackhurst
Assistant Director
Budget and Finance
Division of Juvenile Services

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three • Room 317
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TDD (800) 742-6991 • (800) 642-9066

Joe Manchin III
Governor

October 6, 2009

TO: Aaron Allred, Legislative Auditor
Legislative Post Audit Division

FROM: Joe E. Miller, Commissioner
Division of Motor Vehicles

APPROVED: Paul A. Mattox, Jr., P. E.
Secretary of Transportation/
Commissioner of Highways

SUBJECT: Statewide Vehicle Use Response

As requested in the Special Report of Statewide Vehicle Use, please find the Division of Motor Vehicles' response to Finding #2 listed below.

Finding #2 – Recommendation – We recommend that the State spending units comply with U.S. Code Title 26 – Internal Revenue Code and/or the DOA's Legislative Rule, Title 148, Series 3, *State Owned Vehicles*, by maintaining complete mileage records for all State vehicles used for business and personal purposes and properly report the commuting value assigned to employees who commute in State owned vehicles.

The Division of Motor Vehicles has a strict policy and procedural guidelines for vehicle assignments and use. The DMV believes we are in compliance with the Department of Administration's Title 148, Series 3 policy. The DMV has never been advised by the Department of Administration that we were not in compliance with this policy. The DMV references sections 9.4 Determining Commuting Value and sections 9.4.1 and 9.4.2 from the policy to determine the amount of taxes applicable to employees.

According to IRS Regulation 15-B the DMV is in compliance by using the $1.50 for each one-way commute and implementation of a policy restricting personal use without the requirement of reporting mileage. The DMV does not currently report daily mileage of its fleet vehicles but does require each driver to submit a monthly vehicle report that includes the total amount of miles driven for the month. To mandate a daily mileage requirement would place an undue hardship on the vehicle assignees as well as require an additional reporting level for the Agency.

The Commissioner of Motor Vehicles makes vehicle assignments according to the needs of the Agency and in support of the Agency's mission. DMV assigned vehicles are exclusively assigned to agency staff that are required to frequently conduct business operations at different locations and agency staff which are on call.

The Division of Motor Vehicles understands the Agency is subject to follow any Legislative-mandated code relating to taxable fringe benefits and the Agency will make the necessary changes to our policies meeting State Code as related to taxable fringe benefits requirements.

Paul A. Mattox, Jr.

Paul A. Mattox, Jr., Cabinet Secretary

Joe E. Miller

Joe E. Miller, Commissioner

DIVISION OF NATURAL RESOURCES
324 4th Avenue, Room 342
South Charleston, WV 25303-1228
Alternate Telephone (304) 747-6300
Fax (304) 558-2768
TDD (304) 558-1439
TDD 1-800-354-6087

Joe Manchin III
Governor

Frank Jezioro
Director

October 8, 2009

Ms. Lori Elliott, CPA, Auditor III
Legislative Post Audit Division
1900 Kanawha Blvd East
Building 1, W 329
Charleston, WV 25305

Dear Ms. Elliott:

This is in response to the Legislative Audit Special Report of Statewide Vehicle Use for the period of January 2008 – December 2008.

The West Virginia Division of Natural Resources respectfully offers a different opinion with Finding # 5 which states "Spending units did not report the commuting value of the State Vehicles to their employees in accordance with IRS Publication 15-B Employer's Tax Guide to Fringe Benefits or the DOA's Legislative Rule Title 148, Series 3 State Owned Vehicles". The WV DNR was noted as having 29 vehicles who did not report commuting value.

The Agency did not require the employees to complete the form. These vehicles were operated by employees who are "on call" for the agency 24/7 to respond to emergency situations such as fish kills, problem bears and possible dam failures. They carry weapons and immobilization drugs for use on animals. They may also have water sampling equipment. All the vehicles are equipped with special two-way radio systems for communication with other emergency personnel and law enforcement agencies.

The Agency respectfully requests that you remove the finding of the 29 vehicles from the report.

Sincerely,

Frank Jezioro

Frank Jezioro
Director

FJ/cit/ef

WEST VIRGINIA™
PUBLIC BROADCASTING

September 28, 2009

Ms. Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
State Capitol Complex
Charleston, WV 25305-0610

Dear Ms. Sneed:

We have reviewed the draft of the Legislative Post Audit, Special Report of Statewide Vehicle Use for the period January 1, 2008 –December 31, 2008.

We will comply with the recommendations of the Post Audit Committee as it relates to Finding #2, keeping adequate mileage records detailing the use of a commuting State Vehicle, of the Special Report that pertains to the West Virginia Educational Broadcasting Authority.

Please contact us if you desire any additional information.

Sincerely,

Dennis Adkins

Dennis Adkins
Executive Director

David K. Hendrickson
Chair

Brian Noland
Chancellor

West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard East, Suite 700
Charleston, WV 25301
(304) 558-0699
www.hepc.wvnet.edu

MEMORANDUM

TO: Lori Beth Elliott, CPA

FROM: Richard Donovan, Terry Hess, and Ashley Schumaker

DATE: September 30, 2009

RE: Response to DRAFT Special Report of Statewide Vehicle Use

---

We have carefully reviewed the DRAFT Special Report of Statewide Vehicle Use for the Period January 1, 2008 to December 1, 2008 prepared by the Office of the Legislative Auditor. Please find below the agency's response to the finding related to the Higher Education Policy Commission.

Finding 2

The business and personal usage of the vehicle was tracked through the use of calendar appointments and maintenance records in addition to calculating the commuting mileage. However, the agency acknowledges that a detailed log accounting for every mile was not maintained from January 1, 2008 through December 1, 2008. Effective immediately, a "state owned vehicle log" will be utilized to maintain adequate mileage records including separate records for business and personal mileage.

Please advise regarding questions or comments concerning any of the above.

NEW RIVER
Community and Technical College
Central Administration

September 25 2009

Ms. Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
State Capitol Complex
Charleston, WV 25305-0610

Dear Ms. Sneed:

Enclosed please find the following:

- Responses from New River Community and Technical College to Findings 2 and 5 of the Special Report of Statewide Vehicle Use.
- Representation letter

Please let me know if you need additional information.

Sincerely,

Larry E. Barnhill

Larry E. Barnhill
Vice President for Finance and Administration

www.newriver.edu

Central Administration	Beckley Campus	Bluefield Campus	Greenbrier Valley Campus	Nicholas County Campus
221 George Street, Suite 2	167 Dye Drive	219 Rock Street	101 Church Street	6101 Webster Road
Beckley, WV 25801	Beckley, WV 25801	Bluefield, WV 24701	Lewisburg, WV 24901	Summersville, WV 26651
304.929.5472	304.255.5812	304.327.4071	304.647.6560	304.872.1236
304.929.5478 Fax	304.255.5889 Fax	304.327.4072 Fax	304.647.6561 Fax	304.872.3587 Fax

Finding 2 State spending units did not keep adequate mileage records.

- We noted 28 out of 28 State spending units (100%) had employees who commuted in State vehicles and did not maintain adequate mileage records. In accordance with the DOA's Legislative Rule, Title 148, Series 3, the operator of a vehicle must submit a "State Owned Vehicle Log" to substantiate the mileage. Also, according to the Taxable Fringe Benefit Guide created by the IRS Office of Federal, State, and Local Governments, the substantiation requirements for an employer-provided vehicle is to separate records for business and personal mileage.

<u>Auditor's Recommendation</u>

We recommend State spending units comply with U.S. Code Title 26 – Internal Revenue Code and/or the DOA's Legislative Rule Title 148, Series 3, *State Owned Vehicles,* by maintaining complete mileage records for all State vehicles used for business and personal purposes.

<u>Spending Unit's Response</u>

New River Community and Technical College agrees with the recommendation. Although procedures were in place to maintain mileage on vehicles but records were not completed in all cases for all vehicles. College procedures have been modified to comply with the recommendation and to reinforce this log requirement.

Finding 5 **Spending units did not report the commuting value of their State vehicles in accordance with IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits* or the DOA's Legislative Rule Title 148, Series 3, *State Owned Vehicles.***

- Based on the information gathered from the spending units, we noted that 13 out of 28 spending units (46%) did not report the commuting value of assigned State vehicles to their employees as a taxable fringe benefit. Seven of the 13 spending units had employees who commuted in State vehicles and these spending units **were required to report the commuting value as a taxable fringe benefit to their employees in accordance with Title 148, Series 3 of the DOA's Legislative Rule and IRS Publication 15-B.** However, six of the 13 spending units were exempt from Title 148, Series 3 of the DOA's Legislative Rule. These spending units **were required by U.S. Code Title 26 – Internal Revenue Code to report the value of commuting in a State owned vehicle as a taxable fringe benefit to their employees.**

<u>Auditor's Recommendation</u>

We recommend these 13 spending units comply with the DOA's Legislative Rule Title 148, Series 3, and IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefit,* and report the commuting value for the employees who commute in State owned vehicles as a taxable fringe benefit.

<u>Spending Unit's Response</u>

New River Community and Technical College agrees with the recommendation. Procedures have been modified to record the commuting value as recommended.

State of West Virginia
Joe Manchin III
Governor

Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

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October 8, 2009

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0844

Dear Ms. Sneed:

This letter is in response to the Legislative Post Audit Division's findings and recommendations contained in the *Special Report of Statewide Vehicle Use* provided to this office during the exit meeting conducted on September 29, 2009.

In reference to your findings and recommendations, we provide the following:

<u>State spending units did not keep adequate mileage records.</u>

Finding 2: The Governor's Office was one of 28 State spending units that did not keep adequate mileage records detailing the use of our State vehicle; therefore, we improperly valued the commuting value of State vehicles in accordance with U.S. Code Title 26 – Internal Revenue Code and the DOA's Legislative Rule, Title 148, Series 3, State Owned Vehicles.

Legislative Auditor's Recommendations: We recommend State spending units comply with U.S. Code Title 26 –Internal Revenue Code and/or the DOA's Legislative Rule Title 148, Series 3 *State Owned Vehicles*, by maintaining complete mileage records for all State vehicles used for business and personal purposes.

Response: Employees of the Governor's Office who have been assigned State vehicles for use that may include incidental personal usage, will maintain a detailed mileage record of both personal and business use for the purpose of properly reporting the commuting value assigned to employees who commute in State owned vehicles.

Thank you for bringing this matter to our attention. Please feel free to contact this office at (304) 558-2000 if you need more information or further clarification.

Sincerely,

Cynthia M. Smith
Cynthia M. Smith
Administrative Manager

State of West Virginia
Joe Manchin III, Governor

WV Office of Miners' Health, Safety & Training
Ronald L. Wooten, Director
1615 Washington Street East • Charleston, West Virginia • 25311-2126
Telephone 304-558-1425 • Fax 304-558-1282
www.wvminesafety.org

October 2, 2009

Ms. Lori B. Elliott, CPA
Auditor –in-Charge
Legislative Post Audit Division
Building 1, Room W-329

Ms. Sneed,

Thank you for the opportunity to respond to each of the findings in your report on state vehicle use.

Finding #2

(1) State Spending units did not keep adequate mileage records detailing the use of their vehicles in accordance with U.S. Code Title 26 – Internal Revenue Code and the DOA's Legislative Rule, Title 148, Series 3, State Owned Vehicles.

RESPONSE:

Detailed mileage logs will be completed by all employees that are assigned a state vehicle.

Finding #5

(2) Spending Units did not report the commuting value of their state owned vehicles in accordance with the DOA's Legislative Rule Title 148, Series 3, State Owned Vehicles, or Publication 15-B, Employer's Tax Guide to fringe benefits, published by the IRS.

RESPONSE:

This will be recorded quarterly to make sure all commuting value forms are turned in when someone retires or resigns their position for the period they were employed.

Finding #6

(3) State spending units reported the commuting value of their state owned vehicles as a fringe benefit to their employees past the December 31 deadline as stated in Publication 15-B, Employer's Tax Guide to fringe benefits, published by the IRS.

RESPONSE:

This will be recorded quarterly to make sure all commuting value forms are turned in and reported properly at year end.

Finding #7

(4) Employees may have used State vehicle for less than 50% business use.

RESPONSE:

Business use of vehicles will be monitored and those who have less than 50% business use of their vehicles we will adjust the commuting valuation method as set forth in IRS Publication 15-B.

Sincerely,

Thomas McClure, Administrator

State of West Virginia
OFFICE OF THE STATE TREASURER
CHARLESTON, WV 25305

JOHN D. PERDUE
STATE TREASURER

PAUL W. HILL
ASSISTANT STATE TREASURER

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304-558-5000
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WWW.WVSTO.COM

Memorandum

To: Stacy Sneed, CPA, CICA
Director
Legislative Post Audit Division

From: Blair Taylor
Deputy Treasurer
State Treasurer's Office

Date: October 7, 2009

Re: Response to the Special Report of Statewide Vehicle Use for Calendar year 2008

Finding 2 State spending units did not keep adequate mileage records detailing the use of their state vehicles; therefore they improperly valued the commuting value of State vehicles in accordance with U.S. Code Title 26 – Internal Revenue Code and the DOA's Legislative Rule, Title 148, Series 3, State Owned Vehicles.

The State Treasurer's Office agrees and will comply with the provisions of the U.S. Code Title 26 – Internal Revenue Code. The State Treasurer's Office will also comply with Title 148, Series 3, State Owned Vehicles at such time Title 148, Series 3 complies with U.S. Code Title 26 Internal Revenue Code as recommended in the August 11, 2009, from the Legislative Post Audit Division to the Joint Committee on Government and Finance – Post Audit Subcommittee Members.

Finding 5 Spending Units did not report the commuting value of State vehicles to their employees in accordance with IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits* or the DOA's Legislative Rule Title 148, Series 3, *State Owned Vehicles*.

The State Treasurer's Office has three employees that require the commuting value reported to the IRS. For the audit period, two employees used the Commuting Rule as specified in the Internal Revenue Service Publication 15-B, Section 3. Fringe Benefit Valuation Rules and the fringe benefit was properly reported to the IRS.

The State Treasurer's Office agrees for one of its employees the commuting value was not reported during the audit period. Starting in calendar year 2009, the State Treasurer's Office will comply with the provisions of the Internal Revenue Service Publication 15-B, Section 3. Fringe Benefit Valuation Rules. The State Treasurer's Office will use the Lease Value Rule to report 100% of the Annual Lease Value and the fuel costs to the agency for the use of the vehicle. It will be the control employee's responsibility to take itemized deductions for any substantiated business use on Form 1040, Schedule A in any tax year.

Finding 8 Spending units reported the commuting value of State vehicles for their employees when it was not required by IRS Publication 15-B, Employer's *Tax Guide to Fringe Benefits*.

The State Treasurer's Office will comply with the finding. Starting in calendar year, the Office will not report to the IRS fringe benefits for the three employees affected by this finding.

Public Service Commission
Of West Virginia

201 Brooks Street, P. O. Box 812
Charleston, West Virginia 25323

Phone: (304) 340-0300
FAX: (304) 340-0325

October 1, 2009

Ms. Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
State Capitol Complex
Charleston, WV 25305-0610

Dear Ms. Sneed:

The Public Service Commission of West Virginia responds to findings 2 and 5 in the "State of West Virginia Special Report of Statewide Vehicle Use":

Finding 2: State spending units did not keep adequate mileage records.

Response: The Public Service Commission has reduced its commuting vehicles from the 11 vehicles noted in this report to 7 vehicles. As you and I agreed, three of these remaining vehicles and their drivers qualify as "qualified nonpersonal-use vehicles". The other four vehicles are driven by employees who have emergency response responsibilities. These employees will begin maintaining a vehicle mileage log so that a commuting value can be calculated and included in their pay as a fringe benefit.

Finding 5: Spending units did not report the commuting value of their State vehicles in accordance with IRS Publication 15-8, Employer's Tax Guide to Fringe Benefits or the DOA's Legislative Rule Title 148, Series 3, State Owned Vehicles.

Response: The Public Service Commission will comply with this finding for the Commission's employees who drive a commuting vehicle.

If you require any additional information from the Public Service Commission, please feel free to give me a call.

Sincerely,

David Kovarik

David Kovarik
Director, Administration Division
Phone: 304-340-0356
Email: dkovarik@psc.state.wv.us

DK:s

cc: Michael Albert, Chairman

School Building Authority of West Virginia
Dr. Mark A. Manchin, Executive Director

2300 Kanawha Boulevard, East • Charleston, West Virginia 25311-2306 • Office Number (304) 558-2541 • FAX Number (304) 558-2539

MEMORANDUM

TO: Ethelbert Scott, Jr., CPA
Lori Beth Elliott, CPA

FROM: Dr. Mark A. Manchin
Executive Director

SUBJECT: Special Report of Statewide Vehicle Use

DATE: September 28, 2009

Pursuant to our September 28, 2009 meeting, the School Building Authority agrees to comply with the recommendations as contained in the Preliminary Special Report of Statewide Vehicle Use.

Beginning October 1, 2009, mileage/usage logs will be maintained to document all travel with the currently owned state vehicle. Where commuting is applicable, the SBA agrees to utilize the IRS recommended amounts. Quarterly mileage reconciliations will be performed. Taxable income will be adjusted, as necessary, to account for personal use of the vehicle.

If you have any questions, please do not hesitate to contact me.

MAM:MB

mblashford/leg audit response 092909.doc

Southern West Virginia Community and Technical College

September 30, 2009

Ms. Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
State Capital Complex
Charleston, WV 25305-0610

Dear Mr. Sneed

We have read the special report on statewide vehicle use for period January 1, 2008 through December 31, 2008. We agree with the section labeled Findings 2 which states that:

> "State spending units did not keep adequate mileage records detailing the use of their State vehicles; therefore, they improperly valued the commuting value of State vehicles in accordance with U.S. Code Title 26- Internal Revenue Code and the DOA's legislative Rule, Title 148, Series 3, State Owned Vehicles. "

We agree with the findings and in the future we will keep adequate records that detail the use of our State vehicles.

Sincerely,

Samuel Litteral
Chief Financial Officer

www.southern.wvnet.edu

"Southern is an EOE, ADA, AA Institution"

DISTRICT OFFICE
PO Box 2900
Mount Gay, WV 25637
Phone: 304-792-7160
Fax: 304-792-7046

LOGAN CAMPUS
PO Box 2900
Mount Gay, WV 25637
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1601Armory Drive
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Phone: 304-235-6046
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3505 Daniel Boone Parkway
Danville,WV 25053
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81 Lincoln Panther
Hamlin,WV 25523
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Fax: 304-824-2339

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Fax: 304-294-8534

State of West Virginia

Office of the State Auditor
1900 Kanawha Boulevard, East
State Capitol Complex, Building 1, Room W-100
Charleston, West Virginia 25305

Glen B. Gainer III
State Auditor

Telephone: (304) 558-2251
FAX: (304) 558-5200
www.wvsao.gov

September 28, 2009

Ms. Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Ms. Sneed:

In regard to your special report entitled "Statewide Vehicle Use" which was the subject of an exit interview in my office on Friday, September 25, 2009, we offer the following responses to those findings in the report which referenced my office as follows:

Finding 2 – State spending units did not keep adequate mileage records detailing the use of their State vehicles; therefore, they improperly valued the commuting value of State vehicles in accordance with U.S. Code Title 26 – Internal Revenue Code and the DOA's Legislative Rule, Title 148, Series 3, *State Owned Vehicle.*

Agency Response – We will comply with the recommendations in your special report.

Finding 8 – Spending units reported the commuting value of State vehicles for their employees when it was not required by IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*.

Agency Response – We will comply with the recommendations in your special report.

In closing, thank you for the opportunity to review the draft of the special report and provide comment thereto. If we may be of further assistance, do not hesitate to contact us at (304) 558-2251.

Sincerely,

Glen B. Gainer III
State Auditor

GBGIII;MS:cc

WEST VIRGINIA SCHOOL OF OSTEOPATHIC MEDICINE

West Virginia School of Osteopathic Medicine

Response to Recommendations of the Special Report of Statewide Vehicle Use

October 8, 2009

By: Larry J. Ware, Vice President for Finance and Administration

Finding No. 2 State spending units did not keep adequate mileage records.

Auditor's Recommendation

We recommend State spending units comply with U.S. Code Title 26 – Internal Revenue Code and /or the DOA's Legislative Rule Title 148, Series 3, State Owned Vehicles, by maintaining complete mileage records for all State vehicles used for business and personal purposes.

Spending Unit's response

We concur. The campus will modify its existing record-keeping to comply with the requirements of U.S. Code Title 26 – Internal Revenue Code.

Finding No. 7 Employees may have used State Vehicles for less than 50% business use.

Auditor's Recommendation

We recommend State spending units review the use of their State Vehicles to determine if all State vehicles are being used for at least 50% business purposes. Also, we recommend State spending units re-evaluate the commuting valuation methods set forth in IRS Publication 15-B on a case-by-case basis to ensure the correct valuation method is being used to report the commuting value of State vehicles. Lastly, we recommend State spending units assess the need for employees to drive State vehicles if they are used for less than 50% business purposes.

Spending Unit's Response

We concur. The agency will continue to use its existing valuation method which is in accordance with IRS Publication 15-B. It will perform an annual review to determine if assigned vehicles are being used at least 50% for business purposes and make an assessment of its need.

WEST VIRGINIA STATE POLICE

725 Jefferson Road
South Charleston, West Virginia 25309-1698
wvstatepolice.com

October 01, 2009

Joe Manchin III
Governor

Colonel T. S. Pack
Superintendent

Stacey L. Sneed, CPA,CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd E.
Charleston, WV 25305-0844

Ref: Response to audit of commuting in State Owned Vehicles

To Whom It May Concern:

This letter is in response to the audit of the use of state owned vehicles under the control of the West Virginia State Police. The vehicles in question are operated by our civilian personnel who serve in a support position (radio technicians, mechanics, and maintenance) who are subject to call out from their residence in the case of a mechanical failure to our police cruisers, communications failure at one of our radio towers, or an emergency at one of our facilities.

After reviewing the report provided to us by your office, I will attempt to respond to the areas of concern discovered by the audit .

FINDING # 2: ***State spending units did not keep adequate mileage records detailing the use of their State vehicles; therefore, they improperly valued the commuting value of State vehicles in accordance with U.S. Code Title 26-Internal Revenue Code and the DOA's Legislative Rule, Title 148, Series 3, State Owned Vehicles.***

OUR RESPONSE: We concur with the findings of this report. Our agency in fact had provided a commuting form reflecting the number of trips traveled between the residence of the driver and their office, however it did not reflect the mileage. Since this inadequacy has been brought to our attention, our agency will develop a new form that requires the employee to adequately record mileage that would be considered personal computing mileage, as well as a method to differentiate between miles used to commute to and from work, and those miles accumulated where the employee is utilizing the vehicle to transport tools or respond to a work site located away from their assigned work place (radio tower site, off site facility, disabled vehicle along the roadway etc..)

<u>FINDING # 5:</u> ***Spending units did not report the commuting value of State Vehicles to their employees in accordance with the IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits or the DOA's Legislative Rule Title 148, Series 3, State Owned Vehicles.***

<u>OUR RESPONSE:</u> We concur with the findings of this report. Once we have our new form in place documenting the type of mileage driven by each employee (personal verses work related), we can then determine the proper valuation method from Section 3 of Publication 15-B as to how we require the affected employees to report the mileage accumulated on their assigned vehicle.

<u>FINDING #7:</u> ***Employees may have used State vehicles for less than 50% business use.***

<u>OUR RESPONSE:</u> We concur with the findings of this report. We believe that once we are able to adequately document the mileage driven for personal use, verses the amount the vehicles are used to respond to areas where the employee is called out to correct an immediate need, we can then properly report and withhold as taxable income the benefit that the effected employees receive from being allowed to utilize a state owned vehicle to commute to their residences.

Hopefully I was able to address the concerns that were brought to our attention in this report. Please feel free to contact Major K.J. Foreman or myself if you have additional questions or concerns.

Sincerely,

RL Pursley

1st Sgt. R.L. Pursley
Fleet Administrator/Procurement Director
WV State Police

Cc: LTC B.A. Sloan
Major K.J. Foreman

Parkersburg
West Virginia University

Business Services, Purchasing

Date September 29, 2009

To: Sabrina Dotson, Legislative Post Audit Division

From: Wayne Riley, Chief Procurement Officer, WVUP

Subject: Special Report of Statewide Vehicle Use

As per our teleconference this date the following information is provided.

WVUP was found to not be complying with Finding #2 in the report – Keeping adequate mileage records detailing the use of State vehicles.

Effective immediately the vehicle audited will now have a log book that details all use. Special attention will be made to ensure that the mileage log clearly indentifies that mileage which is personal use and that mileage which is business mileage. We understand that the daily commute by our campus president will be listed as personal use, whereas official business trips will be listed as business mileage.

It was noted in the teleconference that we incorrectly were using the State mileage rate instead of the federal rate. When preparing our tax documents this year we will begin using the federal rate.

I would also like to take this opportunity to update the Spending Unit contact list. For WVUP the contact list should be:

Christopher Clifford
Chief Financial Officer
(304) 424-8224
Christopher.clifford@mail.wvu.edu

Wayne Riley
Chief Procurement Officer
(304) 424-8263
wayne.riley@mail.wvu.edu

Cc: (1) President Gnage
(2) CFO

APPENDIX B

TAX ATTORNEY OPINION

M E M O R A N D U M

Privileged & Confidential

TO: Aaron Allred,
Legislative Auditor

FROM: Charles O. Lorensen

DATE: August 3, 2009

RE: Federal Tax Issue; Employer-Provided Vehicles

You asked me to address federal income and employment tax treatment of providing automobiles to State employees under certain circumstances. First, you request that I provide general guidance concerning the "commuting valuation rule" of accounting for an employee's personal use of State-owned automobiles.[1] Second, you ask whether the "commuting valuation rule" may apply to a vehicle used by an elected official.

General Background and Tax Stakes

Section 61(a)(1) of the Internal Revenue Code of 1986, as amended ("Code"), provides the general rule that gross income means all income from whatever source derived including the value of fringe benefits provided as compensation for services. However, Code § 132(a)(3) provides an exception to the general rule: gross income does not include any fringe benefit which qualifies as a "working condition fringe." The *term working condition fringe* means 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 Code § 162, relating to ordinary and necessary business expenses.

Code § 262 provides that no deduction is allowed for *personal expenses*. Income Tax Regulation ("Regulation") § 1.262-1(b)(5) states: "The taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses." Thus, if an employer provides a personal use automobile to an employee to be used in the employer's business, and that employee also uses that automobile to commute to and from the place of business, the value of the commuting use of the automobile is generally *not* excludable as a working condition fringe and the

[1] This memorandum does not address "nonpersonal-use vehicles" including clearly marked police and fire vehicles, unmarked vehicles used by law enforcement officers if the use is officially authorized, an ambulance or hearse used for its specific purpose, certain large cargo vehicles, delivery trucks with seating for the driver only, large capacity passenger buses, school buses, and tractors and other special-purpose farm vehicles.

employer must include an amount attributable to the value of the commuting in the employee's gross income.[2]

Employer-Provided Vehicle Valuation Rules

Regulation § 1.61-21 provides a general valuation rule and three "special" valuation rules with respect to an employer-provided vehicle. If a special rule does not apply, Regulation § 1.61-21(b)(4) provides: "In general, that value equals the amount that an individual would have to pay in an arm's-length transaction to lease the same or comparable vehicle on the same or comparable conditions in the geographic area in which the vehicle is available for use."

Regulation §§ 1.61-21(d), (e) and (f) provide relief from the general comparable-arms-length-lease-value rule in the form of three separate "special" valuation rules. The first special valuation rule provides for an "annual lease value" of a vehicle determined by reference to a standardized table based on the market value of the vehicle (determined when the vehicle is first available for personal use). Regulation § 1.61-21(d). The personal use value is determined by the proportion of miles for personal purposes (including commuting) versus total miles during the year. (Pro-rata rules are available for part-years and a vehicle-by-vehicle consistency rule is provided.)

The second special valuation rule is the cents-per-mile valuation rule, which provides that, if the employer either (1) "reasonably expects [that a vehicle] will be regularly used in the employer's trade or business throughout the calendar year" *or* (2) the vehicle satisfies a mileage rule requirement,[3] then the value of the benefit provided the employee is determined by multiplying the standard mileage rate by the total miles the employee drives the vehicle for personal purposes. Regulation § 1.61-21(e). Whether an employer "reasonably expects" the vehicle to "be regularly used in the employer's trade or business" is made based on facts or circumstances, two safe-harbors are provided: (1) at least 50% of the vehicle's total miles are for the employer's business or (2) the vehicle is generally used each workday to for certain employer-sponsored-pool-commuting purposes. The cents-per-mile valuation rule also limits the vehicle value on the date it is first made available. The cents-per-mile rate (and the vehicle value limit) is set periodically by official announcements published by the Internal Revenue Service. *See, e.g.*, Rev. Proc. 1009-12, 2009-3 I.R.B. 321 and Rev. Proc. 2008-72, 2008-50 I.R.B. 1286.

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[2] The amount includible in the employee's gross income affects not only the employee's reportable gross income for income tax purposes, but also affects the base of the employee's and employer's federal employment taxes.

[3] A vehicle satisfies the mileage rule if it is *both* (A) actually driven at least 10,000 miles in that year *and* (B) use of the vehicle is primarily by employees, even if all miles driven by employees are personal.

The Commuting Valuation Rule

The third and final special valuation rule is known as the "commuting valuation rule," pursuant to which the deemed value of the commuting use of an employer-provided vehicle is fixed at $1.50 per one-way commute for each employee who commutes in the vehicle. Regulation § 1.61-21(f). For the commuting valuation rule to apply, the employer and employee must meet each of the following five requirements:

> (i) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business;
> (ii) For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle;
> (iii) The employer has established a written policy under which neither the employee, nor any individual whose use would be taxable to the employee, may 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);
> (iv) Except for *de minimis* personal use, the employee does not use the vehicle for any personal purpose other than commuting; and
> (v) The employee required to use the vehicle for commuting is not a *control employee* of the employer….

Research does not reveal significant published authority or additional guidance concerning the application of the commuting valuation rule to specific facts, although one published opinion supports the Internal Revenue Service's insistence on a taxpayers' strict compliance with the special valuation rules in the employer-provided-vehicle context to avoid application of the general rule in Regulation 1.61-21(b). *BMW of North America, Inc. v. United States*, 39 F. Supp. 2d 445 (D. N.J. 1998); *see also* IRS Informational Letter INFO 2008-0031 (9/26/2008). Accordingly, it is imperative for an employer that provides vehicles to employees to be prepared to substantiate utilization of the commuting special rule by demonstrable compliance with each of the five elements set forth in the Regulation quoted above.

Specifically, a State agency, as the employer providing vehicles to employees, to rely upon the commuting valuation rule, should address each of the following elements in a written policy statement[4]:

---

[4] In addition to complying with the substantive requirements of satisfying the commuting value rule, the Internal Revenue Service, under the auspices of the Code § 274(d) substantiation rules, requires an employer, including a governmental employer, to adopt written policy statements as to vehicles not used for personal purposes other than commuting. Regulation § 1.274-6T(a)(3) requires an employer using the commuter valuation rule to adopt a such a written policy to substantiate the proposed tax treatment

1. The State agency should establish that the vehicle is provided to the employee for use in connection with the State's official business and is, in fact, used for the State's official business. Insofar as an employee's commute from home to a State office is considered *personal use* and not official State business, the agency should be prepared to establish that the vehicle is in fact used by the employee to whom the vehicle is issued for substantial activities comprising official State business (other than the employee's commute to work). While this element sets forth a "facts-and-circumstances" inquiry, I believe that the safe practice in this regard would be for the agency to assure (and retain sufficient records evidencing) that at least 50% of the vehicle's total miles are for the agency's business.[5]

2. A State agency should establish and be prepared to articulate bona fide noncompensatory business reasons pursuant to which the employee is *required* to commute to and/or from work in the vehicle. This element is particularly difficult to establish with certainty as to why an employee's commuting vehicle is *required* to be State-supplied, there being no significant guidance in the form of case law or authoritative pronouncements by the Internal Revenue Service.

3. The State agency must have established a written policy under which no one may use the vehicle for personal purposes other than commuting or *de minimis* personal use. This element is clear cut and compliance can be demonstrably verified by the written policy.

4. The State agency must be able to establish that the employee does not *in fact* use the vehicle for any personal purpose other than commuting. Presumably, a simple but documented compliance program with appropriate accountability would suffice.

5. The State agency must establish that the affected employee is not a *control employee*. The control employee element is discussed more fully below.

If the affected State agency cannot establish each of these elements, the use of the commuting valuation rule appears to be inappropriate.

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[5] The "at least 50%" standard is found in a safe-harbor Regulation § 1.61-21(e)(1)(iv), provided in relation to the "regularly-used-in-the-employer's-trade-or-business" element set forth in the cents-per-mile valuation rule, The separate (but related) commuting valuation rule contains a comparable "used-in-the-employer's-trade-or-business" element. I believe that the mileage threshold for the commuter valuation rule would be *at least as high* as the mileage threshold used in connection with the less taxpayer-friendly cents-per-mile valuation rule. Reading the Regulation sections as a whole, one would be hard pressed to argue for a less stringent mileage threshold to determine whether a vehicle is sufficiently used in the employer's business in seeking to qualify for the commuting valuation rule.

Commuting Valuation Rule for Elected Officials

For purposes of the commuting valuation rule, a “control employee” (who is prohibited from using/benefiting from the special rule) of a government employee is any (i) elected official or (ii) employee whose compensation equals or exceeds the compensation paid to a Federal Government employee holding a position at Executive Level V. However, instead of applying the foregoing sentence in determining who constitutes a “control employee”, an employer may elect to treat all “highly compensated” employees (as defined in Regulation § 1.132-8(f)) as control employees.

Accordingly, assuming the appropriate *employer* so elects, an elected official may be excluded as a control employee (and may otherwise be eligible for using the commuting valuation rule if all other elements are satisfied) if the elected official is not “highly compensated” as defined in the applicable regulation.[6] Note that this regulation has a generally lower compensation threshold for “highly compensated” in comparison with other definitions of that term in the Code and Regulations. If an elected official’s compensation exceeds $73,500 in 2009, that official is in any event (irrespective of whether the official is in the “top-paid group” of employees) considered a control employee and that official is not eligible for the commuting valuation rule.

Circular 230 Notice

Pursuant to United States Treasury Circular 230, we hereby inform you that unless we have specifically stated to the contrary in writing, any advice we provide in this memorandum concerning federal tax issues or submissions is not intended or written to be used, and cannot be used, to avoid federal tax penalties. Moreover, this communication is not intended or written to support the promotion or marketing of any transaction or matter it addresses.

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[6] Regulation § 1.132-8(f) provides in relevant part:

> A highly compensated employee of any employer is any employee who, during the year or the preceding year…
>
> (ii) Received compensation from the employer in excess of $75,000, [or]
>
> (iii) Received compensation from the employer in excess of $50,000 and was in the top-paid group of employees for such year, or
>
> (iv) Was at any time an officer and received compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) [of the Code] for such year. [The 2009 415(c)(1)(A) number is $49,000, so 150% of that amount is $73,500. *See* Notice 2008-102, 2008-45 I.R.B. 1106.]
>
> For purposes of determining whether an employee is a highly compensated employee, the rules of sections 414 (q), (s), and (t) [of the Code] apply.

STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Stacy L. Sneed, CPA, CICA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 14th day of October 2009.

Stacy L. Sneed

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Department of Administration; Governor; Attorney General; State Auditor; State Treasurer; Department of Military Affairs and Public Safety; Department of Revenue; Bluefield State College; Coal Heritage Highway Authority; Commission on Special Investigations; Department of Agriculture; Department of Environmental Protection; Division of Corrections; Division of Forestry; Department of Health & Human Resources; Division of Highways; Division of Juvenile Services; Division of Motor Vehicles; Division of Natural Resources; Educational Broadcasting Authority; Higher Education Policy Commission; Homeland Security & Emergency Management; Division of Miner's Health, Safety, & Training; New River Community & Technical College; Public Service Commission; School Building Authority; Southern WV Community & Technical College; WV School of Osteopathic Medicine; State Police; and West Virginia University Parkersburg.