



## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 10043]

RIN 1545-BQ83

### Substantiation Requirements and Qualified Nonpersonal Use Vehicles

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

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

**DATES:** *Effective date:* These final regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Applicability date:* §1.274-5(k)(2)(ii)(S), (k)(7), (k)(9)(v) and references to §1.274-5(k)(9) in §1.132-5(h) apply to taxable years ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Caden at (202) 317-4774 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority**

These final regulations are issued under the authority granted to the Secretary of the Treasury or his delegate (Secretary) by sections 274(p), 132(o), and 7805(a) of the Internal Revenue Code (Code). Section 274(p) provides the Secretary with an express grant of authority to prescribe such regulations as the Secretary may deem necessary to carry out the purposes of that section. Section 132(o) provides the Secretary with an express grant of authority to prescribe such regulations as may be necessary or appropriate to carry out the purposes of that section. Section 7805(a) authorizes the Secretary to prescribe all needful rules and regulations for the enforcement of the Code.

## **Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 132 and 274. In general, section 274 limits or disallows deductions for certain expenditures that otherwise would be allowable under chapter 1 of the Code, primarily under section 162(a), which allows a deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

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

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

The current regulations also define qualified nonpersonal use vehicles as including unmarked law enforcement vehicles owned or leased by Federal, State, county, or local governmental agencies or departments that officially authorize the business and personal use of the vehicle by law enforcement officers whom they employ, provided any personal use is incidental to law enforcement functions. See §1.274-5(k)(2)(ii)(R) and (k)(6). The current regulations define law enforcement officers as individuals who are employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension or detention of persons for those crimes), who are authorized by law to carry firearms, execute search warrants, and to make arrests (other than merely a citizen’s arrest), and who regularly carry firearms (except when it is not possible to do so because of the requirements of undercover work). See §1.274-5(k)(6)(ii). Unmarked law enforcement vehicles allow law enforcement officers to

operate inconspicuously, e.g., so that they can conduct these duties while performing undercover work.

The current regulations do not include unmarked vehicles used by firefighters, members of rescue squads, or ambulance crews in the definition of qualified nonpersonal use vehicles. Historically, firefighters and rescue squad and ambulance crew members were provided with vehicles that had markings to indicate their status as emergency response vehicles. More recently, however, the IRS and Treasury Department have become aware that some governmental units are assigning these emergency responders unmarked vehicles due to increased incidents of harassment of first responders and vandalism of clearly marked fire and emergency vehicles and equipment.

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

On December 3, 2024, a notice of proposed rulemaking (NPRM) (REG-106595-22) was published in the **Federal Register** (89 FR 95727) that proposed amending §1.274-5(k)(2)(ii) to add unmarked vehicles used by firefighters, members of rescue squads, or ambulance crews to the list of qualified nonpersonal use vehicles that are

exempt from the substantiation requirements of section 274(d). The NPRM also proposed amending §1.274-5(k) to add a new §1.274-5(k)(7) providing definitions for the terms “unmarked firefighter, rescue squad or ambulance crew vehicles”, “firefighter,” and “member of a rescue squad or ambulance crew,” and proposed adding §1.274-5(k)(9)(v) (*Example 5*) illustrating the new provision. Finally, the NPRM proposed making conforming amendments to §§1.132-1(g) and 1.132-5(h)(1).

No public hearing was requested or held. Three comments responding to the NRPM were received. All comments were considered and are available for public inspection and copying at <http://www.regulations.gov> or upon request. The public comments are discussed in the **Summary of Comments section** of this preamble.

### **Summary of Comments**

One commenter provided comments on issues that are unrelated to the Code or tax administration in general and therefore are outside the scope of these regulations. Another commenter expressed appreciation that firefighters and members of rescue squads and ambulance crews were being granted the same tax treatment as other first responders who use qualified nonpersonal use vehicles. The commenter noted the need for fire department personnel who maintain 24-hour response capacity to use unmarked vehicles to travel inconspicuously for security purposes and reduce the risk of harassment and vehicle damage. The commenter further noted that including unmarked nonpersonal use vehicles used by firefighters, members of rescue squads, or ambulance crews on the list of qualified nonpersonal use vehicles will ensure that those who respond to emergencies in specially equipped unmarked vehicles will be able to continue to do so without unreasonable financial burden.

Another commenter asked what the proposed rule would cost in terms of lost tax revenue. These regulations will not have a significant economic impact and are not subject to review under section 6(b) of Executive Order 12866. Accordingly, the

Treasury Department and the IRS have not conducted an analysis of the revenue impact of the rule.

The Treasury Department and the IRS requested comments on whether the definitions of “unmarked firefighter, rescue squad or ambulance crew vehicles,” “firefighter,” and “member of a rescue squad or ambulance crew,” are sufficient to accomplish the intended purpose of the proposed regulations or whether any of them might lead to potential abuse. No comments were received regarding these definitions.

After consideration of the comments, these final regulations adopt all the provisions of the proposed regulations with some minor, non-substantive changes to certain provisions.

## **Special Analyses**

### *I. Regulatory Planning and Review—Economic Analysis*

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

### *II. Paperwork Reduction Act*

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

### *III. Regulatory Flexibility Act*

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

final regulations would apply only to employers that utilize unmarked firefighter, rescue squad, or ambulance vehicles and therefore would affect a relatively small number of entities. In addition, these final regulations would not affect employment tax reporting or require any additional substantiation. Rather, these final regulations exempt affected entities from substantiation requirements and for this reason do not add any economic burden to affected entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. The Treasury Department and the IRS did not receive any comments on any impact these final regulations would have on small entities.

#### *IV. Section 7805(f)*

Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comment was received.

#### *V. Unfunded Mandates Reform Act*

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

#### *VI. Executive Order 13132: Federalism*

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

the Executive order. These final regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

### **Drafting Information**

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

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1--INCOME TAXES**

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(g) \* \* \* In addition, references to § 1.274-5(k)(9) in § 1.132-5(h) are applicable as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**§1.132-5 [Amended]**

**Par. 3.** Section 1.132-5 is amended by, in paragraph (h)(1), removing the text “§ 1.274-5(k)(3) through (8)” and adding the text “§ 1.274-5(k)(3) through (9)” in its place, and removing the text “paragraphs (k)(3) through (8)” and adding the text “§ 1.274-5(k)(3) through (9)” in its place.

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

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

The additions and revision read as follows:

**§1.274-5 Substantiation requirements.**

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

(ii) \* \* \*

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

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

(9) \* \* \*

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

\* \* \* \* \*

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

**Frank J. Bisignano,**

*Chief Executive Officer.*

**Approved:** February 17, 2026.

**Kenneth J. Kies,**

*Assistant Secretary of the Treasury (Tax Policy).*

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