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IRS regulations on personal use of city-owned vehicles: Complying with the final 1989 rules

By Mark Pullen, MTAS Legal Consultant

On July 6, 1989, the Internal Revenue Service (IRS) published final regulations on the *Taxation of Fringe Benefits*, including taxation on personal use of a city-owned vehicle. The following explanations summarize the rules and advise cities on how to follow them.

General Rule

The personal use of a city-owned vehicle is taxable to the employee. "Personal use" includes commuting, local, and out-of-town travel. Employees are expected to complete records to substantiate both business and personal miles driven in city-owned vehicles.

Definitions

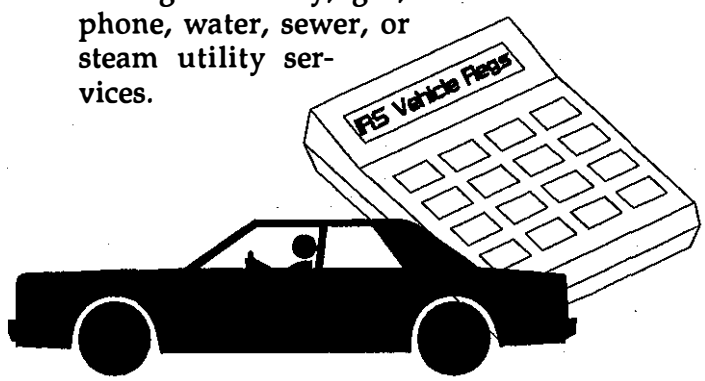
Automobile - Any four-wheeled vehicle manufactured primarily for public streets, roads, and highways.

Clearly marked police and fire vehicle - A vehicle owned or leased by a city that's required to be commuted in by a police officer or firefighter who's on-call when not working. The vehicle is considered clearly marked if: "through a painted insignia or words it is readily apparent the vehicle is a police or fire vehicle." Government license plates **WON'T** satisfy this requirement.

Law enforcement officer - An individual who's employed on a full-time basis by a city and is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension and detention of persons for such crimes); who's authorized by law to carry firearms, execute search warrants, and to make arrests (other than merely a citizen's arrest); and who regularly carries firearms (except when it's impossible to do so because of the requirements of undercover work). The term "law enforcement officer" may include an arson investigator who also meets the requirements of this definition.

Qualified specialized utility repair truck - Any truck (not including a van or pickup truck) specifically designed to carry heavy tools, testing equipment, or parts if:

- it's unlikely the truck will be driven more than a minimal amount for personal purposes because of shelves, racks, or other permanent interior construction installed to carry and store heavy items.
- the city requires the employee to drive the truck home to be able to respond in emergency situations or for restoring or maintaining electricity, gas, telephone, water, sewer, or steam utility services.



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Qualified non-personal use pickup truck - A pickup truck with a loaded gross vehicle weight (GVW) not more than 14,000 pounds if it's clearly marked with permanently affixed decals or special painting, and is:

- equipped with at least one of the following: a hydraulic-lift gate, permanently installed tanks or drums, permanently installed sideboards or panels raising the sides of the truck bed, or permanently installed heavy equipment, such as an electric generator, welder, boom, or crane used to tow vehicles.
- used primarily for transporting a particular type of load, not over public highways, in connection with a construction, manufacturing, processing, farming, mining, drilling, timbering, or other similar operation, and has been specially designed or modified to a significant degree for such uses.

Qualified non-personal use van - A van with a loaded GVW not more than 14,000 pounds that's clearly marked with permanently affixed decals or with special painting, and has a seat for only the driver and one other person, and has either permanent shelving that fills most of the cargo area or the cargo area is open and the van is constantly driven to carry material or equipment used by the city.

Control employee - An elected official or a city employee whose compensation equals or exceeds the compensation paid to a federal government employee holding a position at Executive Level V (currently $115,000).

Record-keeping Procedures

Record-keeping Requirements - The standard for record keeping is that there be "adequate records or sufficient evidence" to support any credit or deduction claimed for business use of a city-owned vehicle. Examples of acceptable substantiation would be account books, diaries, vehicle logs, receipts, bills, trip sheets, expense forms, or statements from disinterested witnesses. These records must substantiate the time, date, place, purpose, and travel cost, and are more helpful when logged at the time the vehicle was used or shortly thereafter. Oral substantiation will be difficult to support and isn't recommended.

Record keeping or meeting substantiation requirements is extremely important because if the employee doesn't do his own substantiation to meet the requirements, he's presumed to have driven the car for his own use and that value will be included as income for tax purposes.

Exceptions To Record-keeping Requirements - If a city government has a written policy that vehicles can't be used for personal purposes except for commuting, the substantiation requirement is satisfied if the following conditions are met:

- The city-owned vehicle is provided for general uses by one or more employees.
- The city requires the employee to commute to or from work in the vehicle.
- The city reasonably believes the employee doesn't operate the city-owned vehicle for anything other than commuting.
- The city accounts for the commuting by including the value of the benefit in the employee's gross pay.
- There is sufficient evidence that would enable the IRS to determine whether the use of the vehicle met the four preceding conditions.

If the employer has such a written policy concerning the use of a vehicle, the employee doesn't have to substantiate or keep any further records. A resolution of a municipal governing body or state law provision will satisfy the policy requirement.

The previous exceptions to record keeping are in conjunction with the commuter valuation rule, discussed later. Another exception to the record-keeping requirement is when the city has a written policy mandating that the city-owned vehicle be driven entirely for city business with only incidental personal use, such as stopping for lunch when in the field. The IRS also requires the city to keep the vehicle on the employer's premises when not in use, and that no employee live on those premises. The employer must also reasonably believe the vehicle isn't driven for personal purposes and have proper documentation to show these requirements are being met. If these conditions are met, the vehicle is a working condition fringe benefit entirely exempt from employee's tax liability.

Yet a third exemption from record-keeping requirements is met when the city-owned vehicle is used entirely for personal purposes. In a few cases, a city may provide a mayor or manager/administrator with full personal use of a city-owned vehicle, considered part of the employee's compensation. If so, the city is exempt from record-keeping requirements, but the employee must maintain records to substantiate business use to support deductions claimed for income tax purposes filed on IRS Form 2106.

Vehicles Exempt from Record Keeping and Taxation - City-owned vehicles used only for city business and kept on city property are exempt from record keeping and taxation. However, due to their very nature, the following vehicles are exempt from both the record-keeping and taxation requirements:

- clearly marked police and fire vehicles.
- unmarked law enforcement vehicles when used for authorized purposes and operated by a full-time, certified law enforcement officer.
- delivery trucks with seating for only one driver, or only the driver and a folding jump seat.
- flatbed trucks.
- cargo carriers with more than 14,000 pounds GVW.
- school and passenger buses with more than a 20-person capacity.
- ambulances.
- hearses.
- bucket trucks.
- cranes and derricks.
- fork lifts.
- cement mixers.
- dump trucks.
- garbage trucks.
- specialized utility-repair vehicles.
- tractors.
- certain pickup trucks and vans not more than 14,000 GVW.

The new regulations clarify the exception allowed for pickup trucks and light vans used by many municipal public works and utility operations. Pickup trucks and vans must be clearly marked with permanently affixed decals, special painting, or other advertising. Pickup trucks have to be equipped with one of the following:

- a hydraulic-lift tailgate.
- permanently installed tanks or drums.
- permanently installed sideboards or panels raising the sides of the truck bed.
- permanently installed heavy equipment such as a welder, electric generator, boom, or crane.

Vans must have a seat only for the driver and possibly a jump seat for one other person. Vans must also have either permanent shelving installed, or an open cargo area with the van constantly used to carry material or equipment for city purposes, i.e. public works maintenance and repair, utility maintenance and repair. It's clear in the final regulations that pickup trucks without one of the options listed above won't be exempt.

For further clarification on record-keeping exemptions, see IRS regulation 1.274-5T(K).

Valuation Rules and Regulations

Valuation of Personal Use of City-Owned Vehicles - There are three special valuation rules that can be used to determine the value of vehicle use: annual lease value (ALV), vehicle cents-per-mile, and commuting value. It's worth noting that under all these formulas only mileage is the measure of business use of a vehicle. Simply writing down expenses isn't going to allow the employee credit or deduction for business use. The same value rule doesn't have to be applied to all employees, and the commuting value rule can't be applied to certain employees.

Annual Lease Value Rule - This rule may be applied when a city-owned vehicle can be driven for more than commuting. Once the rule is adopted for a vehicle, it must be used unless the commuting value rule can be substituted. It may only be applied to automobiles and is a four-step process.

1. Establish the vehicle's fair market value (FMV) from the date it's first made available for personal use. If the city owns the vehicle, the purchase price (including sales tax and title fees) is the FMV. The FMV of a leased vehicle is either the retail value reported by a nationally recognized pricing source or the

manufacturer's suggested retail price less 8 percent. The FMV of any vehicle provided to an employee prior to Jan. 1, 1985, is determined as of Jan. 1 of the first year the ALV rule is applied to the vehicle. Once the FMV is established, the table on page 5 can be used to establish the ALV. This ALV is to be used for a four-year period. Here's an example: An employee is provided with a vehicle with a FMV of $17,500. Using the table, the ALV is $4,850.

2. Calculate the difference between personal and business mileage to create a fraction representing business use. The difference between the total miles and the personal miles driven by the employee is the numerator. The denominator is the total miles driven by the employee. Example: An employee drove 10,000 miles, 2,000 of which were personal use.

Numerator: 10,000 - 2,000 = 8,000 business miles
Denominator: 10,000 total miles driven.
Fraction: $\frac{8,000}{10,000}$

3. Determine the value of business use by multiplying the ALV by the mileage fraction. Example:
   ALV x mileage fraction
   $4,850 x $\frac{8,000}{10,000}$ = 3,880

4. Calculate the value of the benefit to be included in the gross pay of the employee by subtracting the business use from the ALV. Example:
   ALV - business use
   $4,850 - $3,880 = $970

The ALV includes maintenance and insurance, but not gasoline. If the city pays for gasoline used to drive personal miles, the cost must be added to the value of the vehicle benefit included in the employee's gross income. The gasoline value is an additional 5.5 cents per mile. In the example, this would add $110 to the $970 figure, for a total of $1,080.

ALV may be prorated when the car is furnished to an employee for more than 30 days but less than a year. Example: Employee drives car with ALV of $5,600 for 333 days. Multiply value by days used and divide by days in the year to find that $5,096 is taxable. Even if the usage carries into the next calendar year, proration may be used. Proration can't be done if the car is unavailable to the employee due to personal reasons, i.e. vacation. It must still be considered available to the employee and taxed as such.

If the car is equipped with a car phone, it won't be taxed since it's considered an office phone. Likewise, the cost of special equipment needed by the employer is excluded from valuation.

The ALV rule is explained in IRS regulation 1.61-21(d).

Vehicle Cents Per Mile - This rule allows the value of personal use to be calculated by multiplying the number of personal miles driven by the standard IRS mileage allowance. Presently, the rate is 28 cents per mile. This standard rate includes gasoline, insurance, and maintenance. If the employer doesn't supply gasoline, the rate may be lowered by no more than 5.5 cents per mile for a total of 22.5 cents per mile.

The cents-per-mile method can be used if the vehicle is regularly operated for government purposes or is driven at least 10,000 miles a year. Regular use for government purposes is satisfied if at least 50 percent of the vehicle's total mileage is for government business, or the vehicle is generally driven each workday to take at least three employees to and from work in a city-sponsored commuting vehicle pool.

The cents-per-mile rule may be used for vehicles whose FMV is not more than $12,800 for vehicles placed in service before Jan. 1, 1989, and $12,000 adjusted by the vehicle price inflation adjustment for vehicles placed in service in and after 1989. The adjustment for inflation is the percentage the Consumer Price Index for All Urban Consumers automobile component of the preceding October exceeds the Consumer Price Index automobile component of October 1987. Once adopted, both the city and the employee must use this valuation technique for all subsequent periods in which the vehicle qualifies for the rule, unless it can be placed under the commuting valuation method. Employees must still comply with the record-keeping requirements described above.

ANNUAL LEASE VALUE TABLE

Automobile Fair Market Value	Annual Lease Value	Automobile Fair Market Value	Annual Lease Value
0 - 999	800	22,000 - 22,999	6,100
1,000 - 1,999	850	23,000 - 23,999	6,350
2,000 - 2,999	1,100	24,000 - 24,999	6,600
3,000 - 3,999	1,350	25,000 - 25,999	6,850
4,000 - 4,999	1,600	26,000 - 27,999	7,250
5,000 - 5,999	1,850	28,000 - 29,999	7,750
6,000 - 6,999	2,100	30,000 - 31,999	8,250
7,000 - 7,999	2,350	32,000 - 33,999	8,750
8,000 - 8,999	2,600	34,000 - 35,999	9,250
9,000 - 9,999	2,850	36,000 - 37,999	9,750
10,000 - 10,999	3,100	38,000 - 39,999	10,250
11,000 - 11,999	3,350	40,000 - 41,999	10,750
12,000 - 12,999	3,600	42,000 - 43,999	11,250
13,000 - 13,999	3,850	44,000 - 45,999	11,750
14,000 - 14,999	4,100	46,000 - 47,999	12,250
15,000 - 15,999	4,350	48,000 - 49,999	12,750
16,000 - 16,999	4,600	50,000 - 51,999	13,250
17,000 - 17,999	4,850	52,000 - 53,999	13,750
18,000 - 18,999	5,100	54,000 - 55,999	14,250
19,000 - 19,999	5,350	56,000 - 57,999	14,570
20,000 - 20,999	5,600	58,000 - 59,999	15,250
21,000 - 21,999	5,850		

Example: Standard mileage rate. Employee drives 20,000 personal miles and 35,000 business miles. The IRS standard allowance is 28 cents per mile.

Amount of benefit to be included in gross income is:

20,000 miles x .28 = $5,600 total personal benefit

For further clarification on the cents-per-mile rule, see IRS regulation 1.61-21(e).

Commuting Valuation Rule - Under this rule found in IRS regulation 1.61-21(f), a flat $1.50 each way ($3 round trip) can be charged to employees if the following criteria are met:

- The vehicle is used for city business only.
- The city requires the employee to commute to or from work in the vehicle.
- The city has a written policy prohibiting personal use other than commuting and certain minimal personal purposes, and the employee isn't allowed to drive the vehicle for any other reason.
- The employee using the vehicle isn't a "control employee."

A "control employee" is an elected official or an appointed employee whose compensation exceeds the compensation for a federal government employee holding a position at Executive Level V. The current annual pay at this level is $115,000. As the federal pay level increases, the pay level for a "control employee" obviously will increase.

If more than one employee commutes between home and work in a city-owned vehicle, each passenger is charged $1.50 each way.

Revaluation - The ALV under this rule must be recalculated every four years. The four-year period is determined from the date the special valuation rule is applied by the city to Dec. 31 of the fourth full calendar year following that date. Each subsequent four-year period for the vehicle runs from Jan. 1 to Dec. 31 of the fourth year.

For vehicles that are being revalued, or were provided to employees prior to Jan. 1, 1985, the FMV is the value as reported by a nationally recognized pricing source as of the date the vehicle is first available for use by the employee.

Fleet Average Valuation Rule - If a city has a fleet of 20 or more vehicles, and the vehicles are regularly driven for government business, a special fleet average rule may be used for calculating the ALV of the fleet. This rule may be used only if no vehicle in the fleet has a FMV in excess of $16,500, as adjusted by the automobile price inflation adjustment. The regular business use requirement and price inflation adjustment are the same as the cents-per-mile rule. A city may establish separate fleets for lesser or more expensive vehicles as long as the regular business and $16,500 value requirements are met. Under this rule, if gasoline is provided by the city, it may be valued at 5.5 cents per mile if determining actual fuel costs would impose an unreasonable administrative burden.

A potential problem with fleet average valuation is that it's an average. Employees who have lower-scale vehicles can wind up subsidizing those who have newer or more upscale vehicles. Fleet average can still be used if the employee has access to any car in the fleet, not just one.

Notification Requirements - Cities are required to notify their employees of:

- the special valuation rule or rules the city intends to use.
- the substantiation requirements to be used by the city.
- the effect of failing to comply with substantiation requirements.

The notice of these requirements must be made in a manner reasonably expected to come to the attention of affected employees (i.e., through memos directly sent to those affected or in employee paychecks).

Notification regarding changes in the method of valuing these benefits must be made to employees by Jan. 31 of the calendar year to which the valuation rules apply or within 30 days after the benefit is first provided to the employee. If the city decides not to change the method from year to year, there's no need to notify employees every year. Notification is only required when the valuation method is changed.

Tax Rules

Withholding Requirements - City employers have the option not to withhold income taxes (but they must withhold social security taxes) on the value of an employee's personal use of a city-owned vehicle, if the city meets two criteria:

1. The city employee must be notified of the decision not to withhold by Jan. 31 of the taxable year.
2. The city must include the value of the employee's personal use of the city-owned vehicle in the gross pay recorded on the employee's W-2 form at the end of the year. Social security taxes, **which must be withheld,** and income taxes, which **may** be withheld, can be withheld and remitted on a pay period, quarterly, semiannual, or annual basis.

Credits and Deductions - Taxpayers claiming credit or deductions in relation to employer-provided vehicles must provide the following on their tax returns:

1. total mileage,
2. business mileage,
3. commuting mileage,
4. other personal mileage,
5. percentage of business use,
6. date placed in service,
7. use of other vehicles,
8. after-work use,
9. whether evidence is available to support the business use of the vehicle, and
10. whether such evidence is written.

Acknowledgments

A special note of thanks to Marie Murphy, former legal specialist with the County Technical Assistance Service, who developed the sample forms contained in this report.

Sample Forms

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RESOLUTION TO ADOPT CITY-OWNED VEHICLE USE POLICIES FOR (Name of Municipality)

WHEREAS, in certain circumstances it is beneficial to the city and to the public that vehicles owned or leased by the city be used by employees for commuting to assist in scheduling, response time, manning, storage, and to prevent vandalism of such vehicles in the various city offices and departments; and

WHEREAS, the Internal Revenue Service requires certain affirmative policies by local governments to enable record-keeping and valuation rules be utilized.

NOW, THEREFORE, BE IT RESOLVED by the (name of governing body) of the (name of the municipality), that:

SECTION 1. Employees and officials of the (name of city) are prohibited from using city-owned vehicles for personal use, except for commuting when authorized to do so by the (name of governing body) or a designated official for bona fide non-compensatory reasons in the conduct of city business and for de minimis personal use, such as stops for meals taken in the course of employment or on the way to and from home that does not materially increase the number of miles a vehicle is driven.

SECTION 2. City vehicles shall be used for official city business and shall be made available for use in connection with city business.

SECTION 3. City-owned vehicles not being used for commuting purposes or after normal business shall be secured on city-owned property unless temporarily located elsewhere, such as for maintenance.

This resolution shall take effect upon adoption, the general welfare requiring it. The (title of public official) shall transmit a copy of this resolution to all city employees for immediate implementation.

Dated this ____day of _____, 19_____.

APPROVED: ATTEST:

_____ _____

Mayor Recorder

NOTIFICATION TO EMPLOYEES OF ELECTION TO USE SPECIAL COMMUTING VALUATION RULE FOR COMMUTING IN CITY VEHICLES

Date: (This date should be prior to Jan. 31, 199_, for the 199_ tax year or within 30 days of providing the vehicle to the employee.)

For the tax year _____ and subsequent tax years (unless notice of another election is provided to employees), the special commuting valuation rule will value your personal commuting in a city-owned vehicle. This special rule allows each one-way commute to be valued at $1.50 for inclusion in your gross income. To use this rule, substantiation is required by the Internal Revenue Service (IRS) to show the following:

1. Commuting from home to work or work to home is the only permissible personal use of the vehicle. It is against the policies of this office for you to use your city vehicle for any other purpose, except for *de minimis* personal use as defined in the IRS Code and the regulations issued thereto. This notice hereby constitutes the written policy of this office to that effect.

2. You are required to commute in the assigned vehicle for the following non-compensatory reason:

   _____

   _____

   _____

   (A reason should be stated, such as to safely store the vehicle to prevent vandalism or to enable direct response to an emergency.)

3. You in fact use the vehicle for any personal use other than commuting. A statement will be required (monthly, weekly, biweekly, or other) stating that the city vehicle has not been driven for any personal use other than commuting or a *de minimis* personal use as referenced above, the number of commutes per reporting period, the mileage for each commute, and the total number of vehicle miles.

4. The IRS must be satisfied that the vehicle is used for city business. This should be substantiated by showing that the total miles for commuting is less than 50 percent of the miles the vehicle is in use during each reporting period.

Persons other than the driver who commute in the vehicle should file the necessary reporting document showing the total number of commutes, and any additional mileage in the commute not included in the driver's route home. Each commute shall be valued at $1.50 in the non-driving employee's gross income.

Failure to comply with substantiation requirements can result in disallowing the special valuation rule and including the fair market value of the vehicle use in the employee's gross income, with deductions only for the portions that the employee can substantiate as business use.

COMMUTING VALUE RULE EMPLOYEE USE STATEMENT

For Use With the Commuting Valuation Rule

Number of one-way commutes using a city-owned vehicle:_____

Month/Week/Report Period:_____

For drivers, number of miles in each one-way commute:_____

For persons commuting other than the driver, the additional mileage required based on your commuting in the vehicle:

For drivers, the total number of miles driven in the city vehicle during the reporting period:

I hereby certify that I have not used a city-owned vehicle for any personal purpose other than commuting or a *de minimis* use and that the above statement is accurate.

_____
Employee's Signature

_____
Date

Computation:

Number of one-way commutes: _____

x $1.50

Taxable benefit: _____

NOTIFICATION TO EMPLOYEES OF ELECTION TO USE CENTS-PER-MILE VALUATION RULE FOR PERSONAL USE OF A CITY-OWNED VEHICLE

Date: (This date should be prior to Jan. 31, 199_ , for the 199_ tax year or within 30 days of providing the vehicle to the employee.)

For the tax year _____ and subsequent tax years (unless notice of another election is provided to employees), the special cents-per-mile valuation rule will value your personal use of a city-owned vehicle. This special rule allows each mile of personal use to be valued at the acceptable standard mileage rate for inclusion in your gross income. To use this rule, substantiation is required by the Internal Revenue Service to show the following:

Persons other than the driver of the vehicle who commute in the vehicle should file the necessary reporting document showing the total number of personal miles, and also show which personal miles were shared with other employees and which are for the employee's sole personal benefit. Personal usage of each vehicle will be valued based on the facts and circumstances of each employee's personal use percentage in the non-driving employee's gross income.

Failure to comply with substantiation requirements can result in disallowing the special valuation rule and including the fair market value of the vehicle use in the employee's gross income, with deductions only for the portions that the employee can substantiate as business use.

CENTS-PER-MILE RULE EMPLOYEE USE STATEMENT

For Use With the Cents-Per-Mile Valuation Rule

Number of one-way commutes using a city-owned vehicle:_____

Month/Week/Reporting Period:_____

For drivers, number of miles in each one-way commute:_____

For persons commuting other than the driver, the additional mileage required based on your commuting in the vehicle:

For drivers, the total number of miles driven in the city vehicle during the reporting period:

Total number of commutes in vehicle:_____

Mileage for each commute:_____

I hereby certify that I have not used a city-owned vehicle for any personal use other than commuting or a de minimis use and that the above statement is accurate.

_____
Employee's Signature

_____
Date

Computation:

Number of commutes _____ x _____ Number of miles per commute = _____ total miles

Total miles _____ x .28 = _____(A)

Total equals taxation fringe benefit:_____

NOTIFICATION TO EMPLOYEES OF ELECTION TO USE THE ANNUAL LEASE VALUATION RULE FOR PERSONAL USE OF CITY-OWNED VEHICLE

Date: (This date should be prior to Jan. 31, 199_, for the 199_ tax year or within 30 days of providing the vehicle to the employee.)

For the tax year _____ and subsequent tax years (unless notice of another election is provided to employees), the special lease valuation rule will value your personal use of a city-owned vehicle. This special rule allows each mile of personal use to be valued at the acceptable standard mileage rate for inclusion in your gross income. To use this rule, substantiation is required by the Internal Revenue Service to show the following:

1. Dates vehicle was available to the employee.
2. Personal miles driven in vehicle.
3. Business miles driven in vehicle.
4. Total mileage on vehicle.

Persons other than the driver of the vehicle who have personal use of the vehicle should file the necessary reporting document showing the total number of personal miles, and also which personal miles were shared with other employees and which are for the employee's sole personal benefit. Personal usage of each vehicle will be valued based on the facts and circumstances of each employee's personal use percentage in the non-driving employee's gross income.

Failure to comply with substantiation requirements can result in disallowing the special valuation rule and including the fair market value of the vehicle use in the employee's gross income, with deductions only for the portions that the employee can substantiate as business use.

ANNUAL LEASE VALUE RULE EMPLOYEE USE STATEMENT

Week/Month/Reporting Period of:_____

Ending mileage: _____

Less: Beginning mileage: _____

Total Mileage:_____
(This amount should be used as the total (T) for the city's report.)

Personal Miles:_____
(If the only personal use is commuting, this may be obtained by multiplying the number of commutes times the miles in a normal commute.)

_____ x _____ = _____
No. of commutes No. of miles No. of personal miles

I hereby certify that the above statement accurately reflects my mileage during use of my city-owned vehicle, and that I have not driven such vehicle for any unreported personal use. I further certify that the attached mileage log accurately reflects the mileage, dates, and use of the city-owned vehicle.

_____
Employee's Signature

_____
Date

The University of Tennessee
Municipal Technical Advisory Service
600 Henley Street
Suite 120
Knoxville, Tennessee 37996-4105

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Authorization No. 814-1050-00.001-94

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