

POST AUDIT DIVISION

LEGISLATIVE AUDIT REPORT

STATEWIDE FLEET COMMUTING

REPORT SUMMARY

1. State Entities did not Track the Commuting Use of State Vehicles for 75 Percent of Individuals.
2. State Agencies Are Not Properly Reporting the Taxable Fringe Benefit for Employees Using State Vehicles for Commuting.



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MAY 20, 2018
LEGISLATIVE AUDIT REPORT

STATEWIDE FLEET COMMUTING

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*State Agencies Are Not Properly Reporting the
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Introduction

In December 2016, the Legislative Auditor began releasing a series of reports concerning the State vehicle fleet. These reports have focused on issues concerning the inability to account for all state-owned vehicles, compliance with applicable W.Va. Code, underutilized vehicles, commuting and the associated taxable fringe benefit, and the reporting of proper fleet information to facilitate informed decision making regarding state vehicles. As a result of these reports, several agencies have made changes to their state vehicle fleet. The Division of Corrections (DOC) eliminated 45 vehicles from its vehicle fleet. The Executive branch subsequently announced a reduction of its fleet by 246 vehicles, including: 122 at the Division of Highways, 84 at the Division of Natural Resources, 35 vehicles at the Department of Environmental Protection, and 5 from the Governor's Office.

Another report was released by the Post Audit Division on April 16, 2017 that detailed the utilization of state vehicles for calendar year 2016. This report indicated 42 percent of the vehicles with mileage data were underutilized as defined by Legislative Rule Title 148 Series 3- 6.2.1, which requires vehicles to be utilized at a minimum of 1,100 miles per month. Exemptions are authorized, but state agencies were not requesting available exemptions to the rule when applicable.

The Fleet Management Office indicated that data for more vehicles would be available in the future due to a change in the data collection method. Given the availability of more data, the high number of under-utilized vehicles, and very few requested exemptions, the Legislative Auditor analyzed the available data for January 1, 2017 through June 30, 2017. This report was released November 12, 2017 and indicated over half the vehicles were underutilized, while exemptions requests had increased. Additionally, it was determined that West Virginia is in the minority of states that include commuting mileage in the calculation of a vehicles utilization rate.

As part of this continued effort to analyze the state vehicle fleet, the Legislative Auditor conducted an analysis of those vehicles used for commuting purposes, with commuting meaning individuals who use state vehicles to drive to and from their residence and their work location (commuting). The objective of this analysis was to determine the number of individuals using a state-owned vehicle to commute and the percentage of the total miles driven in state vehicles that resulted from commuting. The analysis covered the six-month period of January 1, 2017 through June 30, 2017. Due to limited corroborating evidence, the Legislative Auditor was unable to validate the data provided and has performed this analysis under the assumption that the individual agencies provided **all** of the requested data.

Issue 1: State Entities did not Track the Commuting Use of State Vehicles for 75 Percent of Individuals.

To evaluate commuting statewide, the Legislative Auditor requested that each agency with a fleet of state-owned vehicles provide information and mileage data regarding all individual employees who use a state-owned vehicle for commuting. Through an analysis of the responses, it was determined that **495 individuals used a State-owned vehicle to commute** during the six months covered in the analysis. Of the 495 individuals utilizing a state vehicle to commute, 220 individuals were from the Department of Transportation, and 128 were from the Department of Commerce, accounting for 80 percent of all state vehicles used for commuting. As indicated in the previous fleet audit report, released October 15, 2017, these departments had 2,181 vehicles and 797 vehicles, respectively, during the review period. A list of the number of individuals commuting and the total vehicles operated by each entity can be found in Table 1.

Entity	Total Vehicles	Commuters	Percentage
Transportation	2181	220	10.09%
Commerce	797	128	16.06%
DMAPS	1386	41	2.96%
Constitutional Officers	173	40	23.12%
DEP	362	38	10.50%
Higher Education Institutions	356	16	4.49%
Community and Technical Colleges	69	3	4.35%
PSC	36	5	13.89%
Veteran's Assistance	20	2	10.00%
Senior Services	7	1	14.29%
Revenue	<u>77</u>	<u>1</u>	<u>1.30%</u>
Total	<u>5464</u>	<u>495</u>	<u>9.06%</u>

Source: Legislative Auditor's analysis of agency-provided fleet data.

However, it was not possible to determine the percentage of miles driven for commuting because many State agencies do not track the usage data necessary to make such a determination. The inconsistency across State agencies in quality and quantity of available vehicle usage information is due, in part, to exemptions granted to, or assumed by, certain state agencies from the Department of Administration's Fleet Management rules. **Of the 495 individuals that used a state vehicle for commuting, entities were only able to provide mileage information for both business and non-business use for 123 of them (approximately 25 percent).**

For the remaining 372 individuals, the commuting information provided was limited to names of commuters and, for some of those, the number of days upon which the vehicles were used for commuting or the total miles an individual drove during the review period. In either case, the specific mileage for commuting was not separately tracked. The Department of Transportation, having the largest number of commuters (220), was only able to provide the names of the individuals who used the vehicles, but no other data.

For the 123 individuals for which agencies documented both business and non-business mileage, 71 were indicated to have zero miles for non-business use of the vehicle even though they were reported as being used for commuting. These include 41 at DMAPS, 29 at the Department of Agriculture, and one at the Department of Revenue.

For the remaining 52 commuters, the average individual drove 7,865 total miles over the scope of this review, with 2,309 of those miles for non-business purposes. This amounts to an average of approximately 30 percent of the total miles driven per vehicle being for non-business purposes. The individual with the largest percentage of non-business miles drove 7,570 miles out of 7,856 (96 percent) for non-business reasons. A breakdown by entity of total commuters and their respective averages, if available, can be found below.

Entity	Commuters	Avg. Total Miles	Avg. Nonbusiness Miles	Percentage
DOT	220	Not Provided	Not Provided	-
DEP	34	Not Provided	Not Provided	-
Veteran's Assistance	2	Not Provided	Not Provided	-
Shepherd	1	Not Provided	Not Provided	-
Fairmont State	6	Not Provided	0	-
Forestry	66	7,266	Not Provided	-
DNR	33	8,619	Not Provided	-
WVU	9	1,770	Not Provided	-
Bridge Valley	1	8168	Not Provided	-
DMAPS	41	8,597	0	0%
Agriculture	40	10,027	451	4.50%
MHST	29	6,982	2,626	37.61%
PSC	5	6,334	1,593	25.15%
Treasurer	4	9,131	3,558	38.97%
New River	1	10,590	432	4.08%
Senior Services	1	4,502	225	5.00%
WVU Parkersburg	1	3,323	2,100	63.20%
Revenue	1	3,276	0	0%

Source: Legislative Auditor's analysis of agency-provided fleet data.

The dearth of information for the remaining 372 individuals is seemingly the result of exemptions, either real or assumed, in the W.Va. State Code from the Fleet Management rules and regulations. The statute authorizing the Fleet Management Office and outlining its duties was located within Chapter 5A, Article 3, which is the same article of the West Virginia Code as the West Virginia Department of Administration's purchasing rules and agency exemptions from purchasing rules. Apparently, this has led to many agencies erroneously applying purchasing exemptions to Fleet Management rules and regulations.

The effect of this has been an inconsistency across State agencies in the amount and the quality of available fleet management data. This, in turn, has hindered the ability of the Fleet Management Office in fulfilling its mission of managing and overseeing the usage of State-owned vehicles. House Bill 4015, which completed legislation on March 7, 2018, removed the Fleet Management related Code from Chapter

5A, Article 3 and created Chapter 5A, Article 12, which should correct this issue and provide greater accuracy and oversight of the state vehicle fleet.

Additionally, there is currently no requirement for state entities to separately track both business and non-business miles. However, as previously reported, many states do not include commuting mileage in the calculation of a vehicle's utilization rate. Therefore, commuting mileage is tracked separately from business miles. These states include:

- Arizona
- Connecticut
- Florida
- Georgia
- Indiana
- Kentucky
- Louisiana
- Maryland
- Michigan
- Missouri
- Ohio
- Oklahoma
- Pennsylvania
- South Carolina
- Texas
- Virginia
- Wisconsin

Each of these states track the business and non-business miles of vehicles used for commuting via their respective vehicle mileage tracking form. States that do not separate business and non-business mileage typically require vehicle trip logs to track the overall use of the vehicle.

Although West Virginia does not currently require spending units to separate business mileage from non-business mileage, once all spending units are compiling the information as required in Chapter 5A Article 12, the non-business mileage could be discerned from the total mileage by simply adding a box to the state vehicle log sheets to denote an entry was for commuting.

Recommendation

- 1.1 *The Legislative Auditor recommends the Director of the Fleet Management Division include a method to denote commuting mileage for every state vehicle in the state vehicle log sheets when proposing legislative rules to comply with West Virginia Code Chapter 5A-12-5(4).*

Issue 2: State Agencies Are Not Properly Reporting the Taxable Fringe Benefit for Employees Using State Vehicles for Commuting.

According to Legislative Rule 148-3, the determination of the commuting value for the individuals commuting in state vehicles is to be determined at the spending unit level in accordance with *IRS Publication 15-B*. This publication indicates that “in most cases you must use the general valuation rule to value a fringe benefit.” The publication also indicates that the general valuation is the fair market value of the vehicle; however, there are special valuation rules that can apply to reduce the impact to taxable income including the commuting rule and the lease value rule.

The agency selection of which IRS rule to apply in calculating the taxable fringe benefit for commuting can drastically impact an employee’s taxes. When agencies use the commuting rule in calculating the taxable fringe benefit for commuting, employees are to report additional taxable income to the IRS in the amount of \$1.50 for each one-way commute (home to work), or \$3.00 per each round trip (home to work to home). Conversely, when using the lease value rule, the book value of the vehicle, the non-business miles driven, and the gasoline used for the vehicle during the tax period are used in calculating the taxable fringe benefit. The resulting additional taxable income reported for the employee can be significantly higher than the taxable income calculated by using the commuting rule, as depicted in the table that follows:

Table 3 Annual Taxable Fringe Benefit Comparison with 250 Work Days 2014 Jeep Grand Cherokee valued at \$33,594 over 4 years		
	Taxable Income - Lease Value Rule	Taxable Income-Commuting Rule
Total Miles	29,464	29,464
Non-business Miles	9,512	9,512
Lease Value	\$8,749.92	-
Allocated Lease	\$2,997.39	-
Gas Expense	\$523.16	-
Total Taxable Income	<u>\$3,520.55</u>	<u>\$750.00</u>

Source: Legislative Auditor’s calculations.

The commuting rule was indicated as the method used by the spending units to report the taxable fringe benefits for all except 18 individuals. Of these 18 individuals that did not use the commuting rule, 7 were using the lease value rule, and 2 individuals at Veteran’s Assistance were not reporting any taxable income. The remaining nine individuals are not required to calculate or report any taxable fringe benefit since their usage of a state-owned vehicle for commuting is required by their job (i.e., law enforcement). Since the impact to taxable income is greatly reduced for the employee, it appears utilizing the commuting rule has become the rule for claiming the commuting benefit as taxable income rather than the exception—even when all four of the requirements for its use are not met.

The four criteria that **must all be met** to substitute the commuting rule for the general valuation rule are as follows:

1. The vehicle is provided to an employee for use in business and for bona fide non-compensatory business reasons the employee is required to commute in the vehicle.
2. There is a written policy prohibiting the personal use of the vehicle for purposes other than for commuting or de minimis personal use.

3. The employee doesn't use the vehicle for personal use other than commuting and de minimis personal use.
4. The employee using the vehicle is not a control employee.

Although a significant majority of State entities apply the IRS commuting rule when calculating the taxable fringe benefit of using a State-owned vehicle for commuting, **231 of the 477 individuals do not qualify for its use. The key requirement not met by the spending units for most employees is that the employee be required to commute in the vehicle for bona fide non-compensatory business reasons.** All entities permitting individuals to commute in State-owned vehicles were asked if the employees were required to commute in the vehicle and 225 indicated they were not required. Thus, taxable income for these individuals is being under reported, which reduces the taxes owed by the employee.

Additionally, even though some individuals were required to commute in the vehicle, the IRS also stipulates the vehicle be provided for use in your trade or business. *IRS Publication 15-B* describes a vehicle being used in your trade or business as a vehicle with at least 50 percent of the vehicle's total annual mileage being directly related to performing your trade or business. There were **seven instances** where the mileage data provided for individuals utilizing the commuting rule indicated that **over 50 percent of the mileage was solely for home commuting or non-business use.**

Table 4 Breakdown of the Seven Individuals with Greater than 50 Percent Non-business Miles			
Entity	Non-business/Commuting miles	Miles driven	Percentage
Employee 1	7570	7856	96.36%
Employee 2	2801	3310	84.62%
Employee 3	8013	10368	77.29%
Employee 4	6293	9289	67.75%
Employee 5	5471	8982	60.91%
Employee 6	6190	11156	55.49%
Employee 7	4004	7562	52.95%

Source: Legislative Auditor's calculations.

Furthermore, a tax attorney that the Legislative Auditor engaged in 2009 provided the following guidance on this issue:

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 'regularly-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.

In these instances, it would appear the vehicles were not provided for use in business and required for bona fide non-compensatory business reasons. Thus, because these employees are using the commuting rule, the taxable income for these individuals is being under reported, which reduces the taxes owed by the employee.

Due to data limitations, the Legislative Auditor cannot calculate the correct value of the taxable fringe benefit that should have been applied to each employee’s W-2s as taxable income. However, it is likely that the value of this taxable fringe benefit, when calculated using the lease value rule, exceeds what it would have cost the State to reimburse mileage for these employees for their business miles. Therefore, if the lease value rule is used to calculate the taxable fringe benefit, it is not only more advantageous to the employee, but it may also be cheaper to the State to provide mileage reimbursement to employees in lieu of providing a commuting vehicle, in most cases. Table 5 shows the mileage reimbursement amounts that could have been paid to the seven employees in Table 4 above.

Table 5 Cost to the State of West Virginia for Reimbursement of Business Miles			
Entity	Business Miles	Mileage Reimbursement Rate	Amount
Employee 1	286	\$0.54/Mile	\$154.44
Employee 2	509		\$274.86
Employee 3	2355		\$1,260.90
Employee 4	2996		\$1,617.84
Employee 5	3511		\$1,895.94
Employee 6	4966		\$2,681.64
Employee 7	3558		\$1,921.32

Source: Legislative Auditor’s calculations.

It is the opinion of the Legislative Auditor that the seven instances noted in the table above not only preclude these employees from using the commuting rule to calculate their taxable fringe benefit associated with commuting in a state-owned vehicle, but also raises the question as to why these employees are permitted to commute at all. In most cases, the Legislative Auditor cannot see a “bona fide non-compensatory business reason” for a spending unit providing an employee with a passenger car that is driven over 50 percent of the miles for commuting. Furthermore, the Legislative Auditor can see **no justification** for providing an employee a state-owned vehicle that is only driven 3.6 percent of the time for business purposes.

Recommendation

- 2.1 *The Legislative Auditor recommends all state spending units cease use of the IRS Publication 15-B commuting rule valuation for taxable fringe benefits unless the act of commuting by the employee meets all the applicable criteria.*
- 2.2 *The Legislative Auditor recommends the West Virginia State Tax Department seek the assistance of the IRS and develop additional guidance to assist state spending units in choosing a method to calculate the taxable fringe benefit of individuals commuting in a state vehicle.*
- 2.3 *The Legislative Auditor recommends the West Virginia Legislature require all state spending units provide a document to the Fleet Management Office detailing the specific non-compensatory business reason for the assignment of a state vehicle to an employee on July 1 of each year. The Legislative Auditor further recommends the Fleet Management Office act solely as a repository of the newly requested document and the document be maintained digitally or otherwise for a period of three years.*



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

JOHN A. MYERS
CABINET SECRETARY

May 18, 2018

Mike Jones, Auditor
Post Audits Subcommittee
Legislative Auditor's Office
1900 Kanawha Blvd., East
Building 1, Room E-132
Charleston, West Virginia 25305-0610

Re: Post Audits Statewide Commuting Analysis

Dear Mr. Jones:

Thank you for the opportunity to provide a response to your draft report of Statewide Commuting Analysis. Below are the agency's responses to the recommendations in the report with discussion.

Recommendation 1.1: The Legislative Auditor recommends the Director of the Fleet Management Division include a method to denote commuting mileage for every state vehicle in the state vehicle log sheets when proposing legislative rules to comply with West Virginia Code Chapter §5A-12-5(4).

The Department of Administration was granted rulemaking authority in Chapter 5A, Article 12, and has drafted proposed legislative rules to execute the statutory directives in Article 12. The Department will include the requirement to record commuting miles in the "vehicle logs" to be kept by the drivers of state vehicles.

It should be noted that the report discusses "non-business miles" versus "business miles." Although "non-business miles" is not defined in the report, it is assumed that the use of the term "non-business miles" is the same as "personal miles" as defined by the Internal Revenue Service. The current legislative rule, 148 CSR 3, strictly prohibits personal use in state vehicles except for *de minimus* use.

Commuting miles are considered *business* miles by the IRS, however. Legislative rule 148 CSR 3 provides that it is the responsibility of the driver of the state vehicle to properly document and report to the agency payroll administrator any commuting miles incurred as a result of state vehicle use. The Fleet Management Office has no role in the reporting of or calculating a value of commuting miles to the IRS or to the agency's payroll administrator.

Mike Jones, Auditor
May 18, 2018
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Recommendation 2.1: The Legislative Auditor recommends all state spending units cease use of the IRS publication 15-B commuting rule valuation for taxable fringe benefits unless the act of commuting by the employee meets all the applicable criteria.

The Department of Administration has no role in the determination of whether individual employees meet the criteria for commuting miles, thus takes no position on this recommendation.

Recommendation 2.2: The Legislative Auditor recommends the West Virginia State Tax Division seek the assistance of the IRS to develop additional guidance to assist state spending units in choosing a method to calculate the taxable fringe benefit of the individuals commuting in a state vehicle.

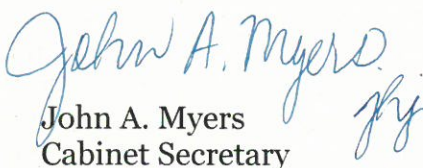
This recommendation has no impact on the Fleet Management Division, thus the agency has no comment.

Recommendation 2.3: The Legislative Auditor recommends the West Virginia Legislature require all state spending units to provide a document to the Fleet Management Office detailing the specific non-compensatory business reason for the assignment of a state vehicle to an employee on July 1 of each year. The Legislative Auditor further recommends the Fleet Management Division act solely as a repository of the newly requested document and the document be maintained digitally or otherwise for a period of three years.

The Fleet Management Division has no objection to the recommendation that the Division be a repository for information related to the business reason for the assignment of state vehicles to individual employees, so long as there are no enforcement responsibilities on the Division with respect to the information collected. The employer is best suited to make the determination as to whether an employee's job duties require the use of a state vehicle and whether commuting to and from the employee's workplace in a state vehicle is appropriate. The Fleet Management Division further recommends that spending unit that assigns employees a state vehicle also be required to maintain a copy of the document provided to the Fleet Management Division for the same time period.

Please do not hesitate to contact my office should you have any questions on any of the above. I look forward to continuing to work with your office on this topic.

Sincerely,


John A. Myers
Cabinet Secretary



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