

(8) *Examples.* The following examples illustrate the provisions of paragraph (k)(3) and (6) of this section:

Example 1. Detective C, who is a “law enforcement officer” employed by a state police department, headquartered in city M, is provided with an unmarked vehicle (equipped with radio communication) for use during off-duty hours because C must be able to communicate with headquarters and be available for duty at any time (for example, to report to a surveillance or crime site). The police department generally has officially authorized personal use of the vehicle by C but has prohibited use of the vehicle for recreational purposes or for personal purposes outside the state. Thus, C’s use of the vehicle for commuting between headquarters or a surveillance site and home and for personal errands is authorized personal use as described in paragraph (k)(6)(i) of this section. With respect to these authorized uses, the vehicle is not subject to the substantiation requirements of section 274(d) and the value of these uses is not included in C’s gross income.

Example 2. Detective T is a “law enforcement officer” employed by city M. T is authorized to make arrests only within M’s city limits. T, along with all other officers on the force, is ordinarily on duty for eight hours each work day and on call during the other sixteen hours. T is provided with the use of a clearly marked police vehicle in which T is required to commute to his home in city M. The police department’s official policy regarding marked police vehicles prohibits personal use (other than commuting) of the vehicles outside the city limits. When not using the vehicle on the job, T uses the vehicle only for commuting, personal errands on the way between work and home, and personal errands within city M. All use of the vehicle by T conforms to the requirements of paragraph (k)(3) of this section. Therefore, the value of that use is excluded from T’s gross income as a working condition fringe and the vehicle is not subject to the substantiation requirements of section 274(d).

(l) *Definitions.* For purposes of section 274(d) and this section, the terms *automobile* and *vehicle* have the same meanings as prescribed in § 1.61-21(d)(1)(ii) and § 1.61-21(e)(2), respectively. Also, for purposes of section 274(d) and this section, the terms *employer*, “*employee*,” and *personal use* have the same meanings as prescribed in § 1.274-6T(e).

(m) *Effective date.* Section 274(d), as amended by the Tax Reform Act of 1984 and Public Law 99-44, and this section (except as provided in paragraph (d)(2)

and (3) of this section) apply with respect to taxable years beginning after December 31, 1985. Section 274(d) and this section apply to any deduction or credit claimed in a taxable year beginning after December 31, 1985, with respect to any listed property, regardless of the taxable year in which the property was placed in service. However, except as provided in § 1.132-5(h) with respect to qualified nonpersonal use vehicles, the substantiation requirements of section 274(d) and this section do not apply to the determination of an employee’s working condition fringe exclusion or to the determination under § 1.162-25(b) of an employee’s deduction before the date that those requirements apply, under this paragraph (m), to the employer, if the employer is taxable. Paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002.

[T.D. 8061, 50 FR 46014, Nov. 6, 1985; as amended by T.D. 8063, 50 FR 52312, Dec. 23, 1985; T.D. 8276, 54 FR 51027, Dec. 12, 1989; T.D. 8451, 57 FR 57669, Dec. 7, 1992; T.D. 8601, 60 FR 36995, July 19, 1995; T.D. 8715, 62 FR 13990, Mar. 25, 1997; T.D. 8864, 65 FR 4123, Jan. 26, 2000; T.D. 9020, 67 FR 68513, Nov. 12, 2002; T.D. 9020, 67 FR 72273, Dec. 4, 2002; T.D. 9064, July 1, 2003]

§ 1.274-6 Expenditures deductible without regard to trade or business or other income producing activity.

The provisions of §§ 1.274-1 through 1.274-5, inclusive, do not apply to any deduction allowable to the taxpayer without regard to its connection with the taxpayer’s trade or business or other income producing activity. Examples of such items are interest, taxes such as real property taxes, and casualty losses. Thus, if a taxpayer owned a fishing camp, the taxpayer could still deduct mortgage interest and real property taxes in full even if deductions for its use are not allowable under section 274(a) and § 1.274-2. In the case of a taxpayer which is not an individual, the provisions of this section shall be applied as if it were an individual. Thus, if a corporation sustains a casualty loss on an entertainment facility used in its trade or business, it

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could deduct the loss even though deductions for the use of the facility are not allowable.

[T.D. 8051, 50 FR 36576, Sept. 9, 1985]

§ 1.274-6T Substantiation with respect to certain types of listed property for taxable years beginning after 1985 (temporary).

(a) *Written policy statements as to vehicles*—(1) *In general.* Two types of written policy statements satisfying the conditions described in paragraph (a)(2) and (3) of this section, if initiated and kept by an employer to implement a policy of no personal use, or no personal use except for commuting, of a vehicle provided by the employer, qualify as sufficient evidence corroborating the taxpayer's own statement and therefore will satisfy the employer's substantiation requirements under section 274(d). Therefore, the employee need not keep a separate set of records for purposes of the employer's substantiation requirements under section 274(d) with respect to use of a vehicle satisfying these written policy statement rules. A written policy statement adopted by a governmental unit as to employee use of its vehicles is eligible for these exceptions to the section 274(d) substantiation rules. Thus, a resolution of a city council or a provision of state law or a state constitution would qualify as a written policy statement, as long as the conditions described in paragraph (a)(2) and (3) of this section are met.

(2) *Vehicles not used for personal purposes*—(i) *Employers.* A policy statement that prohibits personal use by an employee satisfies an employer's substantiation requirements under section 274(d) if all the following conditions are met—

(A) 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,

(B) When the vehicle is not used in the employer's trade or business, it is kept on the employer's business premises, unless it is temporarily located elsewhere, for example, for maintenance or because of a mechanical failure,

(C) No employee using the vehicle lives at the employer's business premises,

(D) Under a written policy of the employer, neither an employee, nor any individual whose use would be taxable to the employee, may use the vehicle for personal purposes, except for de minimis personal use (such as a stop for lunch between two business deliveries), and

(E) The employer reasonably believes that, except for de minimis use, neither the employee, nor any individual whose use would be taxable to the employee, uses the vehicle for any personal purpose.

There must also be evidence that would enable the Commissioner to determine whether the use of the vehicle meets the preceding five conditions.

(ii) *Employees.* An employee, in lieu of substantiating the business/investment use of an employer-provided vehicle under § 1.274-5T, may treat all use of the vehicle as business/investment use if the following conditions are met—

(A) 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,

(B) When the vehicle is not used in the employer's trade or business, it is kept on the employer's business premises, unless it is temporarily located elsewhere, for example, for maintenance or because of a mechanical failure,

(C) No employee using the vehicle lives at the employer's business premises,

(D) Under a written policy of the employer, neither the employee, nor any individual whose use would be taxable to the employee, may use the vehicle for personal purposes, except for de minimis personal use (such as a stop for lunch between two business deliveries), and

(E) Except for de minimis personal use, neither the employee, nor any individual whose use would be taxable to the employee, uses the vehicle for any personal purpose.

There must also be evidence that would enable the Commissioner to determine whether the use of the vehicle meets the preceding five conditions.