

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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Memorandum

To: Joint Committee on Government and Finance – Post Audit Subcommittee Members

From: Aaron Allred, Legislative Auditor
Stacy L. Sneed, Director, Legislative Post Audit Division *SS*
Ethelbert Scott, Jr., Legislative Post Audit Manager
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Date: August 11, 2009

Subject: Title 148, Series 3 of the Department of Administration's Legislative Rule does not parallel Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published by the U.S. Department of Treasury, Internal Revenue Service (IRS) under U.S. Code Title 26

During our research for a special report on Statewide vehicle usage, we discovered that Title 148, Series 3 of the Department of Administration's Legislative Rule does not accurately reflect the reporting requirements for the commuting value of State owned vehicles as prescribed in Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published by the IRS under U.S. Code Title 26. This rule attempts to duplicate the IRS requirements for reporting the commuting value of an employer provided vehicle using the "Commuting Valuation Rule." However, there is not enough information in Title 148, Series 3 to completely and correctly explain the reporting rules required by the IRS. In addition, if the IRS laws were to change, the Title would not reflect these changes.

When we present our complete report in October, it will detail how some State spending units are in compliance with Title 148, Series 3 but not in compliance with IRS regulations. For this reason, we believe that State rules should not incorporate Federal laws; instead, State rules should only make reference to Federal laws, rules, and regulations as needed.

According to the State Register, the Department of Administration has a proposed rule to amend parts of Title 148, Series 3 currently in the rule making process. We recommend they adjust this proposed rule to make reference to Federal laws related to reporting the commuting value of State vehicles.