



# OFFICE OF THE STATE AUDITOR



November 17, 2017

DIANNE E. RAY, CPA  
STATE AUDITOR

## COMMUTING USE OF STATE-OWNED VEHICLES (NOVEMBER 2016) – STATUS REPORT

Members of the Legislative Audit Committee:

Attached is the status report from the Department of Personnel & Administration (Department) on the implementation of recommendations contained in the Office of the State Auditor's (OSA) *Commuting Use of State-Owned Vehicles* performance audit.

The Department reports that two recommendations have been implemented and another five recommendations have been partially implemented. The Department has revised its anticipated implementation date for most recommendations to November 2018.

### OSA REVIEW OF DOCUMENTATION

As part of the status report process, we requested and received supporting documentation for each recommendation that the Department reported as having been implemented or partially implemented. Specifically, we reviewed the following documentation:

- House Bill 17-1296 Session Law

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80203

303.869.2800

- Letter from the Department dated November 2017 rescinding a May 2011 waiver it had given to one agency related to employee reimbursement for commuting

Based on our review, the supporting documentation substantiates the Department's reported implementation status.



## COLORADO

Office of the State Controller

Department of Personnel  
& Administration

1525 Sherman St.  
Denver, CO 80203

November 15, 2017

Dianne E. Ray, CPA  
State Auditor  
Colorado Office of the  
State Auditor  
1525 Sherman St., 7<sup>th</sup> Floor  
Denver, CO 80203

Dear Auditor Ray:

In response to your request, we have prepared an updated status report regarding the implementation of audit recommendations contained in the November 2016 *Commuting Use of State-Owned Vehicles Performance Audit*. The attached report provides a brief explanation of the actions taken by the Department of Personnel & Administration to implement each recommendation.

If you have any questions, please do not hesitate to contact me at (303) 866-3765 or by email at [bob.jaros@state.co.us](mailto:bob.jaros@state.co.us).

Sincerely,

A handwritten signature in blue ink that reads 'Robert Jaros'.

Robert Jaros, CPA, MBA, JD  
Colorado State Controller

Cc: June Taylor  
Kara Veitch  
Richard Lee  
Scott Edwards  
Adam Mobley  
Rene Ahl  
Jeffrey Lee



# AUDIT RECOMMENDATION STATUS REPORT

**AUDIT NAME: Commuting Use of State-Owned Vehicles**

**AUDIT NUMBER: 1560P**

**DEPARTMENT: Personnel & Administration**

**DATE OF STATUS REPORT: 11/15/2017**

## SUMMARY INFORMATION

Rec. Number	Agency's Response	Original Implementation Date	Implementation Status	Revised Implementation Date (If applicable)
1	Agree	May 2017	Partially Implemented	November 2018
2	Agree	May 2017	Implemented and Ongoing	June 2017
3a	Agree	September 2017	Not Implemented	November 2018
3b	Agree	September 2017	Not Implemented	November 2018
3c	Agree	September 2017	Not Implemented	November 2018
3d	Agree	September 2017	Not Implemented	November 2018
3e	Agree	September 2017	Not Implemented	November 2018
4	Agree	September 2017	Partially Implemented	November 2018
5a	Agree	September 2017	Not Implemented	November 2018
5b	Agree	September 2017	Not Implemented	November 2018
5c	Agree	September 2017	Not Implemented	November 2018
5d	Agree	September 2017	Not Implemented	November 2018
5e	Agree	September 2017	Not Implemented	November 2018
5f	Agree	September 2017	Not Implemented	November 2018
6	Agree	September 2017	Not Implemented	November 2018
7	Agree	September 2017	Not Implemented	November 2018
8	Agree	September 2017	Partially Implemented	November 2018
9a	Agree	September 2017	Not Implemented	November 2018
9b	Agree	September 2017	Partially Implemented	November 2018
9c	Agree	September 2017	Partially Implemented	November 2018
10	Agree	January 2017	Implemented	November 2017

## DETAIL OF IMPLEMENTATION STATUS

### **Recommendation No. 1:**

The Department of Personnel & Administration should work with stakeholders to recommend key factors to determine eligibility for commuting that would promote efficient and effective state business and work with the General Assembly on statutory changes, as needed.

#### **Current Implementation Status for Rec. 1: Partially Implemented**

##### **Agency's Update:**

HB17-1296 was signed into law on June 2, 2017. This bill clarified the criteria and requirements for the assignment of state-owned vehicles to agencies and employees. Authorization will only occur when the specific criteria outlined in the bill has been met. The Department will be promulgating rules regarding additional criteria. The anticipated date for new rules to be implemented is November 2018.

The Department has prepared a project plan that includes tasks and due dates for these tasks. Major tasks include developing a database to link employees with State vehicles, filling in required data in the database, validating the data, identifying various models for State-assigned vehicles, comparing these models with IRS regulations, determining the appropriate taxability of these models, reviewing the Department's taxability interpretation with each agency, seeking and receiving guidance from the IRS where the Department and agency disagree, filing rules and conducting hearings for both fiscal rules and state fleet rules, and issuing final rules. The project plan is based on best estimates by the Department at this time. Because the Department has never undertaken such project, actual time to issue the final rules may be earlier or later than the projected timing of November 2018.

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### **Recommendation No. 2:**

The Department of Personnel & Administration (Department) should work with the General Assembly, and stakeholders as appropriate, to clarify the role the General Assembly intends the Department to have with respect to commuters and non-commuters throughout the State. The Department should work with the General Assembly on legislative changes so that statute accurately and clearly reflects its role.

#### **Current Implementation Status for Rec. 2: Implemented and Ongoing**

##### **Agency's Update:**

Similar to Recommendation #1, HB17-1296 addresses this issue. The bill clarifies the roles and responsibilities of agencies and the Department

of Personnel Administration (DPA). DPA is currently conducting a state-wide review of the fleet and commuter programs and will adjust rules and guidance accordingly once completed.

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### **Recommendation No. 3:**

As long as current statutory requirements remain in effect, the Department of Personnel & Administration should improve its oversight of commuters and non-commuters and management of data related to them by:

- A. Developing guidance for how agencies should demonstrate compliance with the commuting authorization requirements.

#### **Current Implementation Status for Rec. 3a: Not Implemented**

##### **Agency's Update:**

Once DPA completes a statewide review of the fleet and commuter programs, DPA will be creating new rules, guidance and forms as needed. The department anticipates completing the fact-finding portion of the review by March 2018 and issuing new rules by November 2018. All requirements will be communicated to agencies directly and made available online.

- B. Collecting sufficient information to review agency commuting authorizations.

#### **Current Implementation Status for Rec. 3b: Not Implemented**

##### **Agency's Update:**

A database is currently being created to send to all participating agencies. The database will house all relevant information for vehicles and assigned employees for each agency. Once the database is initially completed, DPA will work on creating a monthly process for updating the database for both vehicles and employees. This will be an iterative process until DPA finalizes rule in November 2018.

- C. Implementing a review and verification process that fulfills its statutory responsibilities.

#### **Current Implementation Status for Rec. 3c: Not Implemented**

##### **Agency's Update:**

Once DPA completes its fact-finding for agency commuting authorizations, DPA will seek a private letter ruling from the IRS for open questions, and, after the IRS sends its response, DPA will finalize rules and guidance pertaining to the fleet and commuting programs. This will include finalizing the review and verification processes (November 2018).

- D. Collecting and maintaining information about employees with take-home vehicles.

**Current Implementation Status for Rec. 3d:** Not Implemented

**Agency's Update:**

DPA will be able to collect and maintain information on both employees and vehicles through a combination of the up-and-coming HRWorks implementation, CARS, and the Fleet/Commuter database that will be completed (and maintained) by November 2018. Initial collection of data has already begun and our methods will continue to be refined as we progress.

- E. Revising the definition of commuting in rules to eliminate ambiguity about whether use of a state-owned vehicle for commuting is allowed if it has not been formally required and whether the employee has to use the state-owned vehicle each day in order to be a commuter.

**Current Implementation Status for Rec. 3e:** Not Implemented

**Agency's Update:**

New rules and guidance will be issued once DPA's initial fact-finding is completed (March 2018) and the private letter ruling from the IRS has been received (July 2018). Effective date for new rules and guidance will be November 2018.

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**Recommendation No. 4:**

The Department of Personnel & Administration should work with the Office of the Attorney General to seek legal advice about the applicability of commuting requirements outlined in Section 24-30-1113, C.R.S., to the Judicial Branch, communicate the results of this to the Judicial Branch, and modify its policies and procedures as needed.

**Current Implementation Status for Rec. 4:** Partially Implemented

**Agency's Update:**

The Attorney General advised the State Controller that Section 24-30-1113, C.R.S. does not apply to the Judicial Branch. Section 1 of the statute provides in part, "...'state agency' does not include any state institution of higher education, the Auraria higher education center, or the legislative or judicial branches of state government." HB 17-1296 further clarified this point. DPA will be providing technical guidance to Judicial once the review process has been completed (November 2018).

## **Recommendation No. 5:**

The Department of Personnel & Administration (Department) should work with the Office of the Attorney General, or tax specialists as appropriate, to assess the State's compliance with Internal Revenue Service (IRS) requirements for reporting employees' vehicle fringe benefits. At a minimum, this should include:

- A. Assessing whether the policy for valuing commuting fringe benefits based on a standard number of days (i.e., 20 days per month), regardless of the actual number of days commuted, can substitute for information from the employee about the actual number of days commuted, and if not, revising Department rules and State Fiscal Rules to require agencies to collect information from employees on the number of days commuted and use the information for valuing the employee's commuting fringe benefit.

**Current Implementation Status for Rec. 5a:** Not Implemented

### **Agency's Update:**

Recommendation #5a-e will be addressed in DPA's request for a private letter ruling from the IRS and IRS' response (July 2018). DPA will adjust rules and guidance accordingly based on the IRS letter (November 2018).

- B. Determining a method for valuing commuting fringe benefits for control employees that is in compliance with the IRS (e.g., using the lease value rule or cents-per-mile rule) and updating Department rules, State Fiscal Rules, and other guidance accordingly.

**Current Implementation Status for Rec. 5b:** Not Implemented

### **Agency's Update:**

Recommendation #5a-e will be addressed in DPA's request for a private letter ruling from the IRS and IRS' response (July 2018). DPA will adjust rules and guidance accordingly based on the IRS letter (November 2018).

- C. Assessing whether the State collects sufficient information from non-commuters to substantiate their business use of state-owned vehicles for valuing vehicle fringe benefits and making any necessary changes to Department rules, State Fiscal Rules, and other guidance accordingly.

**Current Implementation Status for Rec. 5c:** Not Implemented

### **Agency's Update:**

Recommendation #5a-e will be addressed in DPA's request for a private letter ruling from the IRS and IRS' response (July 2018). DPA will adjust rules and guidance accordingly based on the IRS letter (November 2018).

- D. Revising Department rules to ensure the definition of “de minimis” use of a state-owned vehicle is consistent with IRS requirements and specify that any personal use of a state-owned vehicle that is more than “de minimis” use is valued as a taxable fringe benefit.

**Current Implementation Status for Rec. 5d:** Not Implemented

**Agency’s Update:**

Recommendation #5a-e will be addressed in DPA’s request for a private letter ruling from the IRS and IRS’ response (July 2018). DPA will adjust rules and guidance accordingly based on the IRS letter (November 2018).

- E. Ensuring that the State’s requirements for qualified non-personal use vehicle exemptions are in line with those of the IRS, such as specifying that law enforcement using unmarked vehicles need to regularly carry firearms, and be authorized to execute search warrants and to make arrests, and the commuting use needs to be incident to law enforcement functions, and providing a citation in Department rules and/or State Fiscal Rules for the IRS definitions related to qualified non-personal use vehicles.

**Current Implementation Status for Rec. 5e:** Not Implemented

**Agency’s Update:**

Recommendation #5a-e will be addressed in DPA’s request for a private letter ruling from the IRS and IRS’ response (July 2018). DPA will adjust rules and guidance accordingly based on the IRS letter (November 2018).

- F. Sharing any revised rules or guidance with the Judicial and Legislative Branches and the State’s institutions of higher education so that they can revise their requirements and processes as each determines is necessary.

**Current Implementation Status for Rec. 5f:** Not Implemented

**Agency’s Update:**

In line with Recommendation #4, DPA will share any revised rules or technical guidance with the Judicial and Legislative branches, as well as with the Institutions of Higher Education.

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**Recommendation No. 6:**

The Department of Personnel & Administration (Department) should assess whether its waiver approved in March 2016 allowing all peace officers at one agency to be exempt commuters is compliant with Internal Revenue Service (IRS) requirements. If the Department determines the waiver is not compliant with IRS requires, the Department should amend or rescind the waiver.

## **Current Implementation Status for Rec. 6: Not Implemented**

### **Agency's Update:**

DPA is currently reviewing the waiver and will be assessing all related peace officers and vehicles individually. If it is determined the waiver is no longer applicable, it will be rescinded at that time.

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## **Recommendation No. 7:**

The Department of Personnel & Administration should work with agencies to review the vehicle fringe benefits of employees with take-home vehicles in Calendar Year 2015 and report any necessary corrections to W-2s to employees and the Internal Revenue Service.

## **Current Implementation Status for Rec. 7: Not Implemented**

### **Agency's Update:**

Recommendation #7 will be addressed once DPA completes its data collection, receives a private letter ruling from the IRS, and issues new rules (November 2018). DPA will assess the logistics of gathering prior year information and the appropriate calculations for correcting W-2s at that time.

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## **Recommendation No. 8:**

The Department of Personnel & Administration should assess (1) whether reimbursement should be set at the value of the commuting fringe benefit according to Internal Revenue Service (IRS) regulations and (2) which employees should be exempt from reimbursement, and work with the General Assembly as needed on any statutory change.

## **Current Implementation Status for Rec. 8: Partially Implemented**

### **Agency's Update:**

HB17-1296 removes the reimbursement option for employees. DPA will evaluate if any refunds need to be issued to employees during the internal review process (November 2018). All future methods for commuting taxation will be in compliance with one the three IRS methods (Commuter, Mileage, Lease-Value).

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## **Recommendation No. 9:**

As long as the State's reimbursement policies continue in their current form, the Department of Personnel & Administration (Department) should improve its

communication with agencies to help ensure that the State collects reimbursements in accordance with applicable requirements by:

- A. Revising its website, the commuting authorization form, and/or Department rules to clearly communicate (1) the minimum reimbursement amount, (2) the standard reimbursement rate, (3) the control employee reimbursement rate, and (4) the compensation level for determining whether a commuter is a control employee.

**Current Implementation Status for Rec. 9a:** Not Implemented

**Agency's Update:**

HB17-1296 removes the reimbursement option for employees. All reference to reimbursement will be removed from the website, forms, and rules during the review process. New communications (websites, forms, and emails) will be made available alongside the issuance of new rules and guidance (November 2018).

- B. Revising State Fiscal Rules to reflect requirements of commuting in state-owned vehicles, eliminate the reference to imputing income for authorized commuters in Rule 2-8, or specify where current commuting requirements can be found.

**Current Implementation Status for Rec. 9b:** Partially Implemented

**Agency's Update:**

HB17-1296 removes the reimbursement option for employees. DPA is in the process of reviewing and revising the State Fiscal Rules to clarify the methods used in calculating commuting fringe benefits. New rules will be issued in November 2018.

- C. Revising Central Payroll year end guidance to reflect current requirements of commuting in state-owned vehicles or specify where current information can be found.

**Current Implementation Status for Rec. 9c:** Partially Implemented

**Agency's Update:**

HB17-1296 removes the reimbursement option for employees. Central Payroll will be updating year-end guidance and quarterly reminders during the review process and will keep agencies advised of any changes. CY17 guidance will be sent in November 2017 and will include updated temporary guidance for commuting rule until entire review is completed. New communications will be sent at that time (November 2018).

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**Recommendation No. 10:**

The Department of Personnel & Administration should rescind its approval of a May 2011 waiver for one agency to allow its commuters to reimburse for less than 20 days per month.

**Current Implementation Status for Rec. 10:** Implemented

**Agency's Update:**

HB17-1296 removes the reimbursement option for employees. In addition, DPA has rescinded the waiver as of November 2017.

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