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Employer's Tax Guide to Fringe Benefits

For Benefits Provided in 2005

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What's New

Cents-per-mile rule. The standard mileage rate you can use under the cents-per-mile rule to value the personal use of a vehicle you provide to an employee in 2005 is increased to 40.5 cents a mile. See *Cents-Per-Mile Rule* in section 3.

Employee stock options Section 251 of the American Jobs Creation Act of 2004 provides that wages for social security, Medicare, and federal unemployment taxes do not include remuneration from exercising an incentive stock option or an employee stock purchase plan option after October 22, 2004, or from any disposition of stock acquired by exercising such an option. Federal income tax withholding is not required on income from a disqualifying disposition of stock acquired by exercising an incentive stock option or an employee stock purchase plan option after October 22, 2004, or on income from any disposition of stock acquired by exercising an employee stock purchase plan option after October 22, 2004, equal to the discount portion of stock acquired by exercising the option. See *Employee Stock Options* in section 2.

Increase in qualified parking exclusion and commuter transportation benefit. For 2005, the monthly exclusion for qualified parking increases to $200 and the monthly exclusion for commuter highway vehicle transportation and transit passes increases to $105. See *Qualified Transportation Benefits* in section 2.

Introduction

This publication supplements Publication 15, (Circular E), Employer's Tax Guide, and Publication 15-A, Employer's Supplemental Tax Guide. It contains specialized and detailed information on the employment tax treatment of fringe benefits.

Comments and Suggestions. We welcome your comments about this publication and your suggestions for future editions. You can email us while visiting our website at *www.irs.gov*. You can write to us at the following address:

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1. Fringe Benefit Overview

A fringe benefit is a form of pay for the performance of services. For example, you provide an employee with a fringe benefit when you allow the employee to use a business vehicle to commute to and from work.

Performance of services. A person who performs services for you does not have to be your employee. A person may perform services for you as an independent contractor, partner, or director. Also, for fringe benefit purposes, treat a person who agrees not to perform services (such as under a covenant not to compete) as performing services.

Provider of benefit. You are the provider of a fringe benefit if it is provided for services performed for you. You may be the provider of the benefit even if it was actually furnished by another person. You are the provider of a fringe benefit your client or customer provides to your employee for services the employee performs for you.

Recipient of benefit. The person who performs services for you is the recipient of a fringe benefit provided for those services. That person may be the recipient even if the benefit is provided to someone who did not perform services for you. For example, your employee may be the recipient of a fringe benefit you provide to a member of the employee's family.

Are Fringe Benefits Taxable?

Any fringe benefit you provide is taxable and must be included in the recipient's pay unless the law specifically excludes it. Section 2 discusses the exclusions that apply to certain fringe benefits. Any benefit not excluded under the rules discussed in section 2 is taxable.

Including taxable benefits in pay. You must include in a recipient's pay the amount by which the value of a fringe benefit is more than the sum of the following amounts.

- Any amount the law excludes from pay.
- Any amount the recipient paid for the benefit.

The rules used to determine the value of a fringe benefit are discussed in section 3.

If the recipient of a taxable fringe benefit is your employee, the benefit is subject to employment taxes and must be reported on Form W-2, Wage and Tax Statement. However, you can use special rules to withhold, deposit, and report the employment taxes. These rules are discussed in section 4.

If the recipient of a taxable fringe benefit is not your employee, the benefit is not subject to employment taxes. However, you may have to report the benefit on one of the following information returns.

If the recipient receives the benefit as:	Use:
An independent contractor	Form 1099-MISC
A partner	Schedule K-1 (Form 1065)

For more information, see the instructions for the forms listed above.

Cafeteria Plans

A cafeteria plan, including a flexible spending arrangement, is a written plan that allows your employees to choose between receiving cash or taxable benefits instead of certain qualified benefits for which the law provides an exclusion from wages. If an employee chooses to receive a qualified benefit under the plan, the fact that the employee could have received cash or a taxable benefit instead will not make the qualified benefit taxable.

Generally, a cafeteria plan does not include any plan that offers a benefit that defers pay. However, a cafeteria plan can include a qualified 401(k) plan as a benefit. Also, certain life insurance plans maintained by educational institutions can be offered as a benefit even though they defer pay.

Qualified benefits. Qualified benefits include the following benefits discussed in section 2.

- Accident and health benefits (but not medical savings accounts or long-term care insurance).

- Adoption assistance.
- Dependent care assistance.
- Group-term life insurance coverage (including costs that cannot be excluded from wages).

Benefits not allowed. A cafeteria plan **cannot** include the following benefits discussed in section 2.

- Archer medical savings accounts. (See *Accident and Health Benefits.*)
- Athletic facilities.
- De minimis (minimal) benefits.
- Educational assistance.
- Employee discounts.
- Lodging on your business premises.
- Meals.
- Moving expense reimbursements.
- No-additional-cost services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

It also cannot include scholarships or fellowships (discussed in Publication 970, Tax Benefits for Education).

Employee. For these plans, treat the following individuals as employees.

- A current common-law employee (see section 2 in Publication 15, (Circular E), for more information).
- A full-time life insurance agent who is a current statutory employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder for this purpose is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power.

Plans that favor highly compensated employees. If your plan favors highly compensated employees as to eligibility to participate, contributions, or benefits, you must include in their wages the value of taxable benefits they could have selected. A plan you maintain under a collective bargaining agreement does not favor highly compensated employees.

A highly compensated employee for this purpose is any of the following employees.

1. An officer.
2. A shareholder who owns more than 5% of the voting power or value of all classes of the employer's stock.
3. An employee who is highly compensated based on the facts and circumstances.
4. A spouse or dependent of a person described in (1), (2), or (3).

Plans that favor key employees. If your plan favors key employees, you must include in their wages the value of taxable benefits they could have selected. A plan favors key employees if more than 25% of the total of the nontaxable benefits you provide for all employees under the plan go to key employees. However, a plan you maintain under a collective bargaining agreement does not favor key employees.

A key employee during 2005 is generally an employee who is either of the following.

1. An officer having annual pay of more than $135,000.
2. An employee who for 2005 was either of the following.
   a. A 5% owner of your business.
   b. A 1% owner of your business whose annual pay was more than $150,000.

More information. For more information about cafeteria plans, see section 125 of the Internal Revenue Code and its regulations.

2. Fringe Benefit Exclusion Rules

This section discusses the exclusion rules that apply to fringe benefits. These rules exclude all or part of the value of certain benefits from the recipient's pay.

The excluded benefits are not subject to federal income tax withholding. Also, in most cases, they are not subject to social security, Medicare, or federal unemployment (FUTA) tax and are not reported on Form W-2.

This section discusses the exclusion rules for the following fringe benefits.

- Accident and health benefits.
- Achievement awards.
- Adoption assistance.
- Archer medical savings accounts.
- Athletic facilities.
- De minimis (minimal) benefits.
- Dependent care assistance.
- Educational assistance.
- Employee discounts.
- Employee stock options.
- Group-term life insurance coverage.
- Health savings accounts.
- Lodging on your business premises.
- Meals.

- Moving expense reimbursements.
- No-additional-cost services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

See Table 2–1 for an overview of the employment tax treatment of these benefits.

Table 2–1. Special Rules for Various Types of Fringe Benefits
(For more information, see the full discussion in this section.)

	Treatment Under Employment Taxes		
Type of Fringe Benefit	**Income Tax Withholding**	**Social Security and Medicare**	**Federal Unemployment (FUTA)**
Accident and health benefits	Exempt[1,2], except for certain long-term care benefits	Exempt, except for certain payments to S corporation employees who are 2% shareholders.	Exempt
Achievement awards	Exempt[1] up to $1,600 ($400 for nonqualified awards).		
Adoption assistance	Exempt[1]	Taxable	Taxable
Athletic facilities	Exempt if substantially all use during the calendar year is by employees, their spouses, and their dependent children.		
De minimis (minimal) benefits	Exempt	Exempt	Exempt
Dependent care assistance	Exempt[3] up to certain limits, $5,000 ($2,500 for married employee filing separate return).		
Educational assistance	Exempt up to $5,250 of benefits each year. (See *Educational Assistance* on page 7.)		
Employee discounts	Exempt[4] up to certain limits. (See *Employee Discounts* on page 8.)		
Employee stock options	See *Employee Stock Options* on page 8.		
Group-term life insurance coverage	Exempt	Exempt[1,5] up to cost of $50,000 of coverage. (Special rules apply to former employees.)	Exempt
Lodging on your business premises	Exempt[1] if furnished for your convenience as a condition of employment.		
Meals	Exempt if furnished on your business premises for your convenience.		
	Exempt if de minimis.		
Moving expense reimbursements	Exempt[1] if expenses would be deductible if the employee had paid them.		
No-additional cost services	Exempt[4]	Exempt[4]	Exempt[4]
Transportation (commuting) benefits	Exempt[1] up to certain limits if for rides in a commuter highway vehicle ($105), transit passes ($105), or qualified parking ($200). (See *Transportation (Commuting Benefits)* on page 14.)		
	Exempt if de minimis.		
Tuition reduction	Exempt[4] if for undergraduate education (or graduate education if the employee performs teaching or research activities).		
Working condition benefits	Exempt	Exempt	Exempt

[1] Exemption does not apply to S corporation employees who are 2% shareholders. See page 3.
[2] Exemption does not apply to certain highly compensated employees under a self-insured plan that favors those employees.
[3] Exemption does not apply to certain highly compensated employees under a program that favors those employees.
[4] Exemption does not apply to certain highly compensated employees.
[5] Exemption does not apply to certain key employees under a plan that favors those employees.

Accident and Health Benefits

This exclusion applies to contributions you make to an accident or health plan for an employee, including the following.

- Contributions to the cost of accident or health insurance.
- Contributions to a separate trust or fund that directly or through insurance provides accident or health benefits.

- Contributions to Archer MSAs or health savings accounts (discussed in Publication 969, Health Savings Accounts and Other Tax-Favored Health Plans).

This exclusion also applies to payments you directly or indirectly make to an employee under an accident or health plan for employees that are either of the following.

- Payments or reimbursements of medical expenses.
- Payments for specific injuries or illnesses (such as the loss of the use of an arm or leg). The payments must be figured without regard to any period of absence from work.

Accident or health plan. This is an arrangement that provides benefits for your employees, their spouses, and their dependents in the event of personal injury or sickness. The plan may be insured or noninsured and does not need to be in writing.

Employee. For this exclusion, treat the following individuals as employees.

- A current common-law employee.
- A full-time life insurance agent who is a current statutory employee.
- A retired employee.
- A former employee you maintain coverage for based on the employment relationship.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a retired employee.
- For the exclusion of contributions to an accident or health plan, a leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power.

Exclusion from wages. You can generally exclude the value of accident or health benefits you provide to an employee from the employee's wages.

Exception for certain long-term care benefits. You cannot exclude contributions to the cost of long-term care insurance from an employee's wages subject to federal income tax withholding if the coverage is provided through a flexible spending or similar arrangement. This is a benefit program that reimburses specified expenses up to a maximum amount that is reasonably available to the employee and is less than five times the total cost of the insurance. However, you can exclude these contributions from the employee's wages subject to social security, Medicare, and federal unemployment (FUTA) taxes.

S corporation shareholders. Because you cannot treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the value of accident or health benefits you provide to the employee in the employee's wages subject to federal income tax withholding. However, you can exclude the value of these benefits (other than payments for specific injuries or illnesses) from the employee's wages subject to social security, Medicare, and FUTA taxes.

Exception for highly compensated employees. If your plan is a self-insured medical reimbursement plan that favors highly compensated employees, you must include all or part of the amounts you pay to these employees in their wages subject to federal income tax withholding. However, you can exclude these amounts (other than payments for specific injuries or illnesses) from the employee's wages subject to social security, Medicare, and FUTA taxes.

A self-insured plan is a plan that reimburses your employees for medical expenses not covered by an accident or health insurance policy.

A highly compensated employee for this exception is any of the following individuals.

- One of the five highest paid officers.
- An employee who owns (directly or indirectly) more than 10% in value of the employer's stock.
- An employee who is among the highest paid 25% of all employees (other than those who can be excluded from the plan).

For more information on this exception, see section 105(h) of the Internal Revenue Code and its regulations.

COBRA premiums. The exclusion for accident and health benefits applies to amounts you pay to maintain medical coverage for a former employee under the Combined Omnibus Budget Reconciliation Act of 1986 (COBRA). The exclusion applies regardless of the length of employment, whether you directly pay the premiums or reimburse the former employee for premiums paid, and whether the employee's separation is permanent or temporary.

Achievement Awards

This exclusion applies to the value of any tangible personal property you give to an employee as an award for either length of service or safety achievement. The exclusion does not apply to awards of cash, cash equivalents, gift certificates, or other intangible property such as vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, and other securities. The award must meet the requirements for employee achievement awards discussed in chapter 2 of Publication 535, Business Expenses.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former common-law employee you maintain coverage for in consideration of or based on an agreement relating to prior service as an employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a

year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power.

Exclusion from wages. You can generally exclude the value of achievement awards you give to an employee from the employee's wages if their cost is not more than the amount you can deduct as a business expense for the year. The excludable annual amount is $1,600 ($400 for awards that are not "qualified plan awards"). See chapter 2 of Publication 535 for more information on the limit on deductions for employee achievement awards.

CAUTION *To determine for 2005 whether an achievement award is a "qualified plan award" under the deduction rules described in Publication 535, treat any employee who received more than $95,000 in pay for 2004 as a highly compensated employee.*

If the cost of awards given to an employee is more than your allowable deduction, include in the employee's wages the larger of the following amounts.

- The part of the cost that is more than your allowable deduction (up to the value of the awards).
- The amount by which the value of the awards exceeds your allowable deduction.

Exclude the remaining value of the awards from the employee's wages.

Adoption Assistance

You must exclude all payments or reimbursements you make under an adoption assistance program for an employee's qualified adoption expenses from the employee's wages subject to federal income tax withholding. However, you cannot exclude these payments from wages subject to social security, Medicare, and federal unemployment (FUTA) taxes. For more information, see Publication 968, Tax Benefits for Adoption.

You must report all qualifying adoption expenses you paid or reimbursed under your adoption assistance program for each employee for the year in box 12 of the employee's Form W-2. Use Code "T" to identify this amount.

Employee. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power.

Athletic Facilities

You can exclude the value of an employee's use of an on-premises gym or other athletic facility you operate from an employee's wages if substantially all use of the facility during the calendar year is by your employees, their spouses, and their dependent children. For this purpose, an employee's dependent child is a child or stepchild who is the employee's dependent or who, if both parents are deceased, is age 24 or younger.

On-premises facility. The athletic facility must be located on premises you own or lease. It does not have to be located on your business premises. However, the exclusion does not apply to an athletic facility for residential use, such as athletic facilities that are part of a resort.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a former employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

De Minimis (Minimal) Benefits

You can exclude the value of a de minimis benefit you provide to an employee from the employee's wages. A de minimis benefit is any property or service you provide to an employee that has so little value (taking into account how frequently you provide similar benefits to your employees) that accounting for it would be unreasonable or administratively impracticable. Cash, no matter how little, is never excludable as a de minimis benefit, except for occasional meal money or transportation fare.

Examples of de minimis benefits include the following.

- Occasional personal use of a company copying machine if you sufficiently control its use so that at least 85% of its use is for business purposes.
- Holiday gifts, other than cash, with a low fair market value.
- Group-term life insurance payable on the death of an employee's spouse or dependent if the face amount is not more than $2,000.
- Meals. See *Meals* on page 11.
- Occasional parties or picnics for employees and their guests.
- Occasional tickets for entertainment or sporting events.
- Transportation fare. See *Transportation (Commuting) Benefits* on page 14.
- Occasional typing of personal letters by a company secretary.

Employee. For this exclusion, treat any recipient of a de minimis benefit as an employee.

Dependent Care Assistance

This exclusion applies to household and dependent care services you directly or indirectly pay for or provide to an employee under a dependent care assistance program that covers only your employees. The services must be for a qualifying person's care and must allow the employee to work. These requirements are basically the same as the tests the employee would have to meet to claim the dependent care credit if the employee paid for the services. For more information, see *Qualifying Person Test* and *Work-Related Expense Test* in Publication 503, Child and Dependent Care Expenses.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you are a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude the value of benefits you provide to an employee under a dependent care assistance program from the employee's wages if you reasonably believe that the employee can exclude the benefits from gross income.

An employee can generally exclude from gross income up to $5,000 of benefits received under a dependent care assistance program each year. This limit is reduced to $2,500 for married employees filing separate returns.

However, the exclusion cannot be more than the earned income of either:

- The employee, or
- The employee's spouse.

Special rules apply to determine the earned income of a spouse who is either a student or not able to care for himself or herself. For more information on the earned income limit, see Pub. 503.

Exception for highly compensated employees. You cannot exclude dependent care assistance from the wages of a highly compensated employee unless the benefits provided under the program do not favor highly compensated employees and the program meets the requirements described in section 129(d) of the Internal Revenue Code.

For this exclusion, a highly compensated employee for 2005 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $95,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Form W-2. Report the value of all dependent care assistance you provide to an employee under a dependent care assistance program in box 10 of the employee's Form W-2. Include any amounts you cannot exclude from the employee's wages in boxes 1, 3, and 5.

Educational Assistance

This exclusion applies to educational assistance you provide to employees under an educational assistance program. The exclusion also applies to graduate level courses.

Educational assistance means amounts you pay or incur for your employees' education expenses. These expenses generally include the cost of books, equipment, fees, supplies, and tuition. However, these expenses do not include the cost of a course or other education involving sports, games, or hobbies, unless the education:

- Has a reasonable relationship to your business, or
- Is required as part of a degree program.

Education expenses do not include the cost of tools or supplies (other than textbooks) your employee is allowed to keep at the end of the course. Nor do they include the cost of lodging, meals, or transportation.

Educational assistance program. An educational assistance program is a separate written plan that provides educational assistance only to your employees. The program qualifies only if all of the following tests are met.

- The program benefits employees who qualify under rules set up by you that do not favor highly compensated employees. To determine whether your program meets this test, do not consider employees excluded from your program who are covered by a collective bargaining agreement if there is evidence that educational assistance was a subject of good-faith bargaining.
- The program does not provide more than 5% of its benefits during the year for shareholders or owners. A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
- The program does not allow employees to choose to receive cash or other benefits that must be included in gross income instead of educational assistance.
- You give reasonable notice of the program to eligible employees.

Your program can cover former employees if their employment is the reason for the coverage.

For this exclusion, a highly compensated employee for 2005 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $95,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired, left on disability, or was laid off.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you are a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude up to $5,250 of educational assistance you provide to an employee under an educational assistance program from the employee's wages each year.

Assistance over $5,250. If you do not have an educational assistance plan, or you provide an employee with assistance exceeding $5,250, you can exclude the value of these benefits from wages if they are working condition benefits. Property or a service provided is a working condition benefit to the extent that if the employee paid for it, the amount paid would have been deductible as a business or depreciation expense. See *Working Condition Benefits,* on page 15.

Employee Discounts

This exclusion applies to a price reduction you give an employee on property or services you offer to customers in the ordinary course of the line of business in which the employee performs substantial services. However, it does not apply to discounts on real property or discounts on personal property of a kind commonly held for investment (such as stocks or bonds).

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of an employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

Exclusion from wages. You can generally exclude the value of an employee discount you provide an employee from the employee's wages, up to the following limits.

- For a discount on services, 20% of the price you charge nonemployee customers for the service.
- For a discount on merchandise or other property, your gross profit percentage times the price you charge nonemployee customers for the property.

Determine your gross profit percentage based on all property you offer to customers (including employee customers) and your experience during the tax year immediately before the tax year in which the discount is available. To figure your gross profit percentage, subtract the total cost of the property from the total sales price of the property and divide the result by the total sales price of the property.

Exception for highly compensated employees. You cannot exclude from the wages of a highly compensated employee any part of the value of a discount that is not available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

For this exclusion, a highly compensated employee for 2005 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $95,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Employee Stock Options

There are three kinds of stock options—incentive stock options, employee stock purchase plan options, and nonstatutory (nonqualified) stock options.

Wages for social security, Medicare, and federal unemployment taxes (FUTA) do not include remuneration resulting from the exercise after October 22, 2004, of an incentive stock option or an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option. The IRS will not apply these taxes to an exercise before October 23, 2004, of an incentive stock option or an employee stock purchase plan option, or to a disposition of stock acquired by such exercise.

Additionally, federal income tax withholding is not required on the income resulting from a disqualifying disposition of stock acquired by the exercise after October 22, 2004, of an incentive stock option or an employee stock purchase plan option, or on income equal to the discount portion of stock acquired by the exercise after October 22, 2004, of an employee stock purchase plan option resulting from any disposition of the stock. The IRS will not apply federal income tax withholding upon the disposition of stock acquired by the exercise before October 23, 2004, of an incentive stock option or an employee stock purchase plan option. However, the employer must report as income in box 1 of Form W-2, 1) the discount portion of stock acquired by the exercise of an employee stock purchase plan option upon disposition of the stock, and 2) the spread (between the exercise price and the fair market value of the stock at the time of exercise) upon a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option.

The spread on nonstatutory options normally is included in wages for income tax purposes when the options are exercised. (See Regulations section 1.83-7.) The spread on nonstatutory options is subject to social security, Medicare, FUTA, and federal income tax withholding at the time of exercise.

An employee who transfers his or her interest in nonstatutory stock options to the employee's former spouse incident to a divorce is not required to include an amount in gross income upon the transfer. The former spouse, rather than the employee, is required to include an amount in gross income when the former spouse exercises the stock options. See Revenue Ruling 2002-22 and Revenue Ruling 2004-60 for details. You can find Rev. Rul. 2002-22 on page 849 of Internal Revenue Bulletin 2002-19 at *www.irs.gov/pub/irs-irbs/irb02-19.pdf*. You can find Rev. Rul. 2004-60 on page 1051 of Internal Revenue Bulletin 2004-24 at *www.irs.gov/pub/irs-irbs/irb04-24.pdf*.

For more information about employee stock options, see sections 421, 422, and 423 of the Internal Revenue Code and the related regulations.

Group-Term Life Insurance Coverage

This exclusion applies to life insurance coverage that meets all the following conditions.

- It provides a general death benefit that is not included in income.
- You provide it to a group of employees. See *The 10-employee rule* below.
- It provides an amount of insurance to each employee based on a formula that prevents individual selection. This formula must use factors such as the employee's age, years of service, pay, or position.
- You provide it under a policy you directly or indirectly carry. Even if you do not pay any of the policy's cost, you are considered to carry it if you arrange for payment of its cost by your employees and charge at least one employee less than, and at least one other employee more than, the cost of his or her insurance. Determine the cost of the insurance, for this purpose, as explained under *Coverage over the limit* on page 10.

Group-term life insurance does not include the following insurance.

- Insurance that does not provide general death benefits, such as travel insurance or a policy providing only accidental death benefits.
- Life insurance on the life of your employee's spouse or dependent. However, you may be able to exclude the cost of this insurance from the employee's wages as a de minimis benefit. See *De Minimis (Minimal) Benefits* on page 6.
- Insurance provided under a policy that provides a permanent benefit (an economic value that extends beyond 1 policy year, such as paid-up or cash surrender value), unless certain requirements are met. See Regulations section 1.79-1 for details.

Employee. For this exclusion, treat the following individuals as employees.

1. A current common-law employee.
2. A full-time life insurance agent who is a current statutory employee.
3. An individual who was formerly your employee under (1) or (2), above.
4. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction and control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power.

The 10-employee rule. Generally, life insurance is not group-term life insurance unless you provide it to at least 10 full-time employees at some time during the year.

For this rule, count employees who choose not to receive the insurance unless, to receive it, they must contribute to the cost of benefits other than the group-term life insurance. For example, count an employee who could receive insurance by paying part of the cost, even if that employee chooses not to receive it. However, do not count an employee who must pay part or all of the cost of permanent benefits to get insurance, unless that employee chooses to receive it.

Exceptions. Even if you do not meet the 10-employee rule, two exceptions allow you to treat insurance as group-term life insurance.

Under the first exception, you do not have to meet the 10-employee rule if all the following conditions are met.

1. If evidence that the employee is insurable is required, it is limited to a medical questionnaire (completed by the employee) that does not require a physical.
2. You provide the insurance to all your full-time employees or, if the insurer requires the evidence mentioned in (1), to all full-time employees who provide evidence the insurer accepts.
3. You figure the coverage based on either a uniform percentage of pay or the insurer's coverage brackets that meet certain requirements. See Regulations section 1.79-1 for details.

Under the second exception, you do not have to meet the 10-employee rule if all the following conditions are met.

- You provide the insurance under a common plan covering your employees and the employees of at least one other employer who is not related to you.
- The insurance is restricted to, but mandatory for, all your employees who belong to, or are represented by, an organization (such as a union) that carries on substantial activities besides obtaining insurance.
- Evidence of whether an employee is insurable does not affect an employee's eligibility for insurance or the amount of insurance that employee gets.

To apply either exception, do not consider employees who were denied insurance for any of the following reasons.

- They were 65 or older.
- They customarily work 20 hours or less a week or 5 months or less in a calendar year.
- They have not been employed for the waiting period given in the policy. (This waiting period cannot be more than 6 months.)

Exclusion from wages. You can generally exclude the cost of up to $50,000 of group-term life insurance from the wages of an insured employee. You can exclude the same amount from the employee's wages when figuring social security and Medicare taxes. In addition, you do not have to withhold federal income tax or pay FUTA tax on any group-term life insurance you provide to an employee.

Coverage over the limit. You must include in your employee's wages subject to social security and Medicare taxes the cost of group-term life insurance that is more than the cost of $50,000 of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code C.

Figure the monthly cost of the insurance to include in the employee's wages by multiplying the number of thousands of dollars of insurance coverage over $50,000 (figured to the nearest $100) by the cost shown in the following table. Use the employee's age on the last day of the tax year. You must prorate the cost from the table if less than a full month of coverage is involved.

Cost Per $1,000 of Protection For 1 Month

Age	Cost
Under 25	$ .05
25 through 29	.06
30 through 34	.08
35 through 39	.09
40 through 44	.10
45 through 49	.15
50 through 54	.23
55 through 59	.43
60 through 64	.66
65 through 69	1.27
70 and older	2.06

You figure the total cost to include in the employee's wages by multiplying the monthly cost by the number of full months' coverage at that cost.

Example. Tom's employer provides him with group-term life insurance coverage of $200,000. Tom is 45 years old, is not a key employee, and pays $100 per year toward the cost of the insurance. Tom's employer must include $170 in his wages. The total cost of the insurance, $360 ($.15 × 200 × 12), is reduced by the cost of $50,000 of coverage, $90 ($.15 × 50 × 12), and by the $100 Tom pays for the insurance. The employer includes $170 in boxes 1, 3, and 5 of Tom's Form W-2. The employer also enters $170 in box 12 with code C.

Coverage for dependents. Group-term life insurance coverage paid by the employer for the spouse or dependents of an employee may be excludable from income as a de minimis fringe benefit (see page 6). The part of this coverage that the employee paid on an after-tax basis is also excludable from income. For this purpose, the cost is figured using the monthly cost table above.

Former employees. For group-term life insurance over $50,000 provided to former employees (including retirees), the former employees must pay the employee's share of social security and Medicare taxes with their income tax returns. You are not required to collect those taxes. Use the table above to determine the amount of social security and Medicare taxes owed by the former employee for coverage provided after separation from service. Report those uncollected amounts separately in box 12 on Form W-2 using codes M and N. See the Instructions for Forms W-2 and W-3.

Exception for key employees. Generally, if your group-term life insurance plan favors key employees as to participation or benefits, you must include the entire cost of the insurance in your key employees' wages. (This exception generally does not apply to church plans.) When figuring social security and Medicare taxes, you must also include the entire cost in the employees' wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you do not have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance you provide to an employee.

For this purpose, the cost of the insurance is the greater of the following amounts.

- The premiums you pay for the employee's insurance.
- The cost you figure using the table shown later under *Coverage over the limit.*

For this exclusion, a key employee during 2005 is an employee or former employee who is one of the following individuals. See section 416(i) for more information.

1. An officer having annual pay of more than $135,000.
2. An individual who for 2005 was either of the following.
   a. A 5% owner of your business.
   b. A 1% owner of your business whose annual pay was more than $150,000.

A former employee who was a key employee upon retirement or separation from service is also a key employee.

Your plan does not favor key employees as to participation if at least one of the following is true.

- It benefits at least 70% of your employees.
- At least 85% of the participating employees are not key employees.
- It benefits employees who qualify under a set of rules you set up that do not favor key employees.

Your plan meets this participation test if it is part of a cafeteria plan (discussed in section 1) and it meets the participation test for those plans.

When applying this test, do not consider employees who:

- Have not completed 3 years of service,
- Are part-time or seasonal,
- Are nonresident aliens who receive no U.S. source earned income from you, or
- Are not included in the plan but are in a unit of employees covered by a collective bargaining agreement, if the benefits provided under the plan were the subject of good-faith bargaining between you and employee representatives.

Your plan does not favor key employees as to benefits if all benefits available to participating key employees are also available to all other participating employees. Your plan does not favor key employees just because the amount of insurance you provide to your employees is uniformly related to their pay.

S corporation shareholders. Because you cannot treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the cost of all group-term life insurance coverage you provide the 2% shareholder in his or her wages. When figuring social security and Medicare taxes, you must also include the cost of this coverage in the 2% shareholder's wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you do not have to withhold federal income tax or pay federal unemployment tax on the cost of any group-term life insurance coverage you provide to the 2% shareholder.

Lodging on Your Business Premises

You can exclude the value of lodging you furnish to an employee from the employee's wages if it meets the following tests.

- It is furnished on your business premises.
- It is furnished for your convenience.
- The employee must accept it as a condition of employment.

Different tests may apply to lodging furnished by educational institutions. See section 119(d) of the Internal Revenue Code for details.

The exclusion does not apply if you allow your employee to choose to receive additional pay instead of lodging.

On your business premises. For this exclusion, your business premises is generally your employee's place of work. (For special rules that apply to lodging furnished in a camp located in a foreign country, see section 119(c) of the Internal Revenue Code and its regulations.)

For your convenience. Whether or not you furnish lodging for your convenience as an employer depends on all the facts and circumstances. You furnish the lodging to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the lodging is furnished as pay. However, a written statement that the lodging is furnished for your convenience is not sufficient.

Condition of employment. Lodging meets this test if you require your employees to accept the lodging because they need to live on your business premises to be able to properly perform their duties. Examples include employees who must be available at all times and employees who could not perform their required duties without being furnished the lodging.

It does not matter whether you must furnish the lodging as pay under the terms of an employment contract or a law fixing the terms of employment.

Example. A hospital gives Joan, an employee of the hospital, the choice of living at the hospital free of charge or living elsewhere and receiving a cash allowance in addition to her regular salary. If Joan chooses to live at the hospital, the hospital cannot exclude the value of the lodging from her wages because she is not required to live at the hospital to properly perform the duties of her employment.

S corporation shareholders. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power.

Meals

This section discusses the exclusion rules that apply to de minimis meals and meals on your business premises.

De Minimis Meals

This exclusion applies to any meal or meal money you provide to an employee if it has so little value (taking into account how frequently you provide meals to your employees) that accounting for it would be unreasonable or administratively impracticable. The exclusion applies, for example, to the following items.

- Coffee, doughnuts, or soft drinks.
- Occasional meals or meal money provided to enable an employee to work overtime. (However, the exclusion does not apply to meal money figured on the basis of hours worked.)
- Occasional parties or picnics for employees and their guests.

This exclusion also applies to meals you provide at an employer-operated eating facility for employees if the annual revenue from the facility equals or exceeds the direct costs of the facility. For this purpose, your revenue from providing a meal is considered equal to the facility's direct operating costs to provide that meal if its value can be excluded from an employee's wages as explained under *Meals on Your Business Premises* later.

TIP *If food or beverages you furnish to employees qualify as a de minimis benefit, you can deduct their full cost. The 50% limit on deductions for the cost of meals does not apply. The deduction limit on meals is discussed in chapter 2 of Publication 535.*

Employee. For this exclusion, treat any recipient of a de minimis meal as an employee.

Employer-operated eating facility for employees. An employer-operated eating facility for employees is an eating facility that meets all the following conditions.

- You own or lease the facility.
- You operate the facility. (You are considered to operate the eating facility if you have a contract with another to operate it.)
- The facility is on or near your business premises.
- You provide meals (food, drinks, and related services) at the facility during, or immediately before or after, the employee's workday.

Exclusion from wages. You can generally exclude the value of de minimis meals you provide to an employee from the employee's wages.

Exception for highly compensated employees. You cannot exclude from the wages of a highly compensated employee the value of a meal provided at an employer-operated eating facility that is not available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

For this exclusion, a highly compensated employee for 2005 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $95,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Meals on Your Business Premises

You can exclude the value of meals you furnish to an employee from the employee's wages if they meet the following tests.

- They are furnished on your business premises.
- They are furnished for your convenience.

This exclusion does not apply if you allow your employee to choose to receive additional pay instead of meals.

On your business premises. Generally, for this exclusion, the employee's place of work is your business premises.

For your convenience. Whether you furnish meals for your convenience as an employer depends on all the facts and circumstances. You furnish the meals to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the meals are furnished as pay. However, a written statement that the meals are furnished for your convenience is not sufficient.

Meals excluded for all employees if excluded for more than half. If more than half of your employees who are furnished meals on your business premises are furnished the meals for your convenience, you can treat all meals you furnish to employees on your business premises as furnished for your convenience.

Food service employees. Meals you furnish to a restaurant or other food service employee during, or immediately before or after, the employee's working hours are furnished for your convenience. For example, if a waitress works through the breakfast and lunch periods, you can exclude from her wages the value of the breakfast and lunch you furnish in your restaurant for each day she works.

Example. You operate a restaurant business. You furnish your employee, Carol, who is a waitress working 7 a.m. to 4 p.m., two meals during each workday. You encourage but do not require Carol to have her breakfast on the business premises before starting work. She must have her lunch on the premises. Since Carol is a food service employee and works during the normal breakfast and lunch periods, you can exclude from her wages the value of her breakfast and lunch.

If you also allow Carol to have meals on your business premises without charge on her days off, you cannot exclude the value of those meals from her wages.

Employees available for emergency calls. Meals you furnish during working hours so an employee will be available for emergency calls during the meal period are furnished for your convenience. You must be able to show these emergency calls have occurred or can reasonably be expected to occur.

Example. A hospital maintains a cafeteria on its premises where all of its 230 employees may get meals at no charge during their working hours. The hospital furnishes meals to have 120 employees available for emergencies. Each of these employees is, at times, called upon to perform services during the meal period. Although the hospital does not require these employees to remain on the premises, they rarely leave the hospital during their meal period. Since the hospital furnishes meals on its premises to its employees so that more than half of them are available for emergency calls during meal periods, the hospital can exclude the value of these meals from the wages of all of its employees.

Short meal periods. Meals you furnish during working hours are furnished for your convenience if the nature of your business restricts an employee to a short meal period (such as 30 or 45 minutes) and the employee cannot be expected to eat elsewhere in such a short time. For example, meals can qualify for this treatment if your peak work-load occurs during the normal lunch hour. However, they do not qualify if the reason for the short meal period is to allow the employee to leave earlier in the day.

Example. Frank is a bank teller who works from 9 a.m. to 5 p.m. The bank furnishes his lunch without charge in a cafeteria the bank maintains on its premises. The bank furnishes these meals to Frank to limit his lunch period to 30 minutes, since the bank's peak workload occurs during the normal lunch period. If Frank got his lunch elsewhere, it would take him much longer than 30 minutes and the bank strictly enforces the time limit. The bank can exclude the value of these meals from Frank's wages.

Proper meals not otherwise available. Meals you furnish during working hours are furnished for your convenience if the employee could not otherwise eat proper meals within a reasonable period of time. For example, meals can qualify for this treatment if there are insufficient eating facilities near the place of employment.

Meals after work hours. Meals you furnish to an employee immediately after working hours are furnished for your convenience if you would have furnished them during working hours for a substantial nonpay business reason but, because of the work duties, they were not eaten during working hours.

Meals you furnish to promote goodwill, boost morale, or attract prospective employees. Meals you furnish to promote goodwill, boost morale, or attract prospective employees are not considered furnished for your convenience. However, you may be able to exclude their value as discussed under *De Minimis Meals* on page 11.

Meals furnished on nonworkdays or with lodging. You generally cannot exclude from an employee's wages the value of meals you furnish on a day when the employee is not working. However, you can exclude these meals if they are furnished with lodging that is excluded from the employee's wages as discussed under *Lodging on Your Business Premises* on page 11.

Meals with a charge. The fact that you charge for the meals and that your employees may accept or decline the meals is not taken into account in determining whether or not meals are furnished for your convenience.

S corporation shareholder-employee. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power.

Moving Expense Reimbursements

This exclusion applies to any amount you directly or indirectly give an employee, (including services furnished in kind) as payment for, or reimbursement of, moving expenses. You must make the reimbursements under rules similar to those described in chapter 13 of Publication 535 for reimbursements of expenses for travel, meals, and entertainment under accountable plans.

The exclusion applies only to reimbursements of moving expenses that the employee could deduct if he or she had paid or incurred them without reimbursement. However, it does not apply if the employee actually deducted the expenses in a previous year.

Deductible moving expenses include only the reasonable expenses of:

- Moving household goods and personal effects from the former home to the new home, and
- Traveling (including lodging) from the former home to the new home.

CAUTION

Deductible moving expenses do not include any expenses for meals and must meet both the distance test and the time test. The distance test is met if the new job location is at least 50 miles farther from the employee's old home than the old job location was. The time test is met if the employee works at least 39 weeks during the first 12 months after arriving in the general area of the new job location.

For more information on deductible moving expenses, see Publication 521, Moving Expenses.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power.

Exclusion from wages. You can generally exclude qualifying moving expense reimbursements you provide to an employee from the employee's wages. If you paid the reimbursements directly to the employee, report the amount in box 12 of Form W-2 with the code P. Do not report payments to a third party for the employee's moving expenses or the value of moving services you provided in kind.

No-Additional-Cost Services

This exclusion applies to a service you provide to an employee if it does not cause you to incur any substantial additional costs. The service must be offered to customers in the ordinary course of the line of business in which the employee performs substantial services.

Generally, no-additional-cost services are excess capacity services, such as airline, bus, or train tickets; hotel rooms; or telephone services provided free or at a reduced price to employees working in those lines of business.

Substantial additional costs. To determine whether you incur substantial additional costs to provide a service to an employee, count any lost revenue as a cost. Do not reduce the costs you incur by any amount the employee pays for the service. You are considered to incur substantial additional costs if you or your employees spend a substantial amount of time in providing the service, even if the time spent would otherwise be “idle” or if the services are provided outside normal business hours.

Reciprocal agreements. A no-additional-cost service provided to your employee by an unrelated employer may qualify as a no-additional-cost service if all the following tests are met:

- The service is the same type of service generally provided to customers in both the line of business in which the employee works and the line of business in which the service is provided.
- You and the employer providing the service have a written reciprocal agreement under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer.
- Neither you nor the other employer incurs any substantial additional cost either in providing the service or because of the written agreement.

Employee. For this exclusion, treat the following individuals as employees.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
6. A partner who performs services for a partnership.

Treat services you provide to the spouse or dependent child of an employee as provided to the employee. For this fringe benefit, “dependent child” means any son, stepson, daughter, or stepdaughter who is a dependent of the employee, or both of whose parents have died and who has not reached age 25. Treat a child of divorced parents as a dependent of both parents.

Treat any use of air transportation by the parent of an employee as use by the employee. This rule does not apply to use by the parent of a person considered an employee because of item (3) above.

Exclusion from wages. You can generally exclude the value of a no-additional-cost service you provide to an employee from the employee’s wages.

Exception for highly compensated employees. You cannot exclude from the wages of a highly compensated employee the value of a no-additional-cost service that is not available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

For this exclusion, a highly compensated employee for 2005 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $95,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Retirement Planning Services

You may exclude from an employee’s wages the value of any retirement planning advice or information you provide to your employee or his or her spouse if you maintain a qualified retirement plan. In addition to employer plan advice and information, the services provided may include general advice and information on retirement. However, the exclusion does not apply to services for tax preparation, accounting, legal, or brokerage services.

Transportation (Commuting) Benefits

This section discusses exclusion rules that apply to benefits you provide to your employees for their personal transportation, such as commuting to and from work. These rules apply to the following transportation benefits.

- De minimis transportation benefits.
- Qualified transportation benefits.

Special rules that apply to demonstrator cars and qualified nonpersonal-use vehicles are discussed under *Working Condition Benefits* on page 15.

De Minimis Transportation Benefits

You can exclude the value of any de minimis transportation benefit you provide to an employee from the employee’s wages. A de minimis transportation benefit is any transportation benefit you provide to an employee if it has so little value (taking into account how frequently you provide transportation to your employees) that accounting for it would be unreasonable or administratively impracticable. For example, it applies to occasional transportation fare you give an employee because the employee is working overtime if the benefit is reasonable and is not based on hours worked.

Employee. For this exclusion, treat any recipient of a de minimis transportation benefit as an employee.

Qualified Transportation Benefits

This exclusion applies to the following benefits.

- A ride in a commuter highway vehicle between the employee's home and work place.
- A transit pass.
- Qualified parking.

The exclusion applies whether you provide only one or a combination of these benefits to your employees.

Qualified transportation benefits can be provided directly by you or through a bona fide reimbursement arrangement. However, cash reimbursements for transit passes qualify only if a voucher or a similar item that the employee can exchange only for a transit pass is not readily available for direct distribution by you to your employee. A voucher is readily available for direct distribution only if an employee can obtain it from a voucher provider that does not impose fare media charges or other restrictions that effectively prevent the employer from obtaining vouchers. See Regulations section 1.132-9 for more information.

You can exclude qualified transportation fringe benefits from an employee's wages even if you provide them in place of pay. For information about providing qualified transportation fringe benefits under a compensation reduction agreement, see Regulations section 1.132-9(b)(Q-11).

Commuter highway vehicle. A commuter highway vehicle is any highway vehicle that seats at least 6 adults (not including the driver). In addition, you must reasonably expect that at least 80% of the vehicle mileage will be for transporting employees between their homes and work place with employees occupying at least one-half the vehicle's seats (not including the driver's).

Transit pass. A transit pass is any pass, token, farecard, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate, one of the following.

- On mass transit.
- In a vehicle that seats at least 6 adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it.

Mass transit may be publicly or privately operated and includes bus, rail, or ferry.

Qualified parking. Qualified parking is parking you provide to your employees on or near your business premises. It includes parking on or near the location from which your employees commute to work using mass transit, commuter highway vehicles, or carpools. It does not include parking at or near your employee's home.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power.

Relation to other fringe benefits. You cannot exclude a qualified transportation benefit you provide to an employee under the de minimis or working condition benefit rules. However, if you provide a local transportation benefit other than by transit pass or commuter highway vehicle, or to a person other than an employee, you may be able to exclude all or part of the benefit under other fringe benefit rules (de minimis, working condition, etc.).

Exclusion from wages. You can generally exclude the value of transportation benefits that you provide to an employee during 2005 from the employee's wages up to the following limits.

- $105 per month for combined commuter highway vehicle transportation and transit passes.
- $200 per month for qualified parking.

Benefits more than the limit. If the value of a benefit for any month is more than its limit, include in the employee's wages the amount over the limit minus any amount the employee paid for the benefit. You cannot exclude the excess from the employee's wages as a de minimis transportation benefit.

More information. For more information on qualified transportation benefits, including van pools, and how to determine the value of parking, see Regulations section 1.132-9.

Tuition Reduction

An educational organization can exclude the value of a qualified tuition reduction it provides to an employee from the employee's wages.

A tuition reduction for undergraduate education generally qualifies for this exclusion if it is for the education of one of the following individuals.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A dependent child or spouse of any individual listed in (1) through (4) above.

A tuition reduction for graduate education qualifies for this exclusion only if it is for the education of a graduate student who performs teaching or research activities for the educational organization.

For more information on this exclusion, see Publication 970, Tax Benefits for Education.

Working Condition Benefits

This exclusion applies to property and services you provide to an employee so that the employee can perform his or her job. It applies to the extent the employee could deduct the cost of the property or services as a business expense or depreciation expense if he or she had paid for it. The employee must meet any substantiation requirements that apply to the deduction. Examples of working condition benefits include an employee's use of a company car for business and job-related education provided to an employee.

This exclusion also applies to a cash payment you provide for an employee's expenses for a specific or prearranged business activity for which a deduction is allowable to the employee. You must require the employee to verify that the payment is actually used for those expenses and to return any unused part of the payment.

For information on deductible employee business expenses, see *Unreimbursed Employee Expenses* in Publication 529, Miscellaneous Deductions.

The exclusion does not apply to the following items.

- A service or property provided under a flexible spending account in which you agree to provide the employee, over a time period, a certain level of unspecified noncash benefits with a predetermined cash value.
- A physical examination program you provide, even if mandatory.
- Any item to the extent the employee could deduct its cost as an expense for a trade or business other than your trade or business.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A partner who performs services for a partnership.
- A director of your company.
- An independent contractor who performs services for you.

Vehicle allocation rules. If you provide a car for an employee's use, the amount you can exclude as a working condition benefit is the amount that would be allowable as a deductible business expense if the employee paid for its use. That is, if the employee uses the car for both business and personal use, the value of the working condition benefit is the part determined to be for business use of the vehicle. See *Business use of your car* under *Personal Expenses* in chapter 1 of Publication 535. Also, see the special rules for certain demonstrator cars and qualified nonpersonal-use vehicles discussed below.

However, instead of excluding the value of the working condition benefit, you can include the entire annual lease value of the car in the employee's wages. The employee can then claim any deductible business expense for the car as an itemized deduction on his or her personal income tax return. This option is available only if you use the lease value rule (discussed in section 3) to value the benefit.

Demonstrator cars. All of the use of a demonstrator car by your full-time auto salesperson generally qualifies as a working condition benefit if the use is primarily to facilitate the services the salesperson provided for you and there are substantial restrictions on personal use. For more information and the definition of "full-time auto salesperson," see Regulations section 1.132-5(o).

Qualified nonpersonal-use vehicles. All of an employee's use of a qualified nonpersonal-use vehicle is a working condition benefit. A qualified nonpersonal-use vehicle is any vehicle the employee is not likely to use more than minimally for personal purposes because of its design. Qualified nonpersonal-use vehicles generally include all of the following vehicles.

- Clearly marked police and fire vehicles.
- Unmarked vehicles used by law enforcement officers if the use is officially authorized.
- An ambulance or hearse used for its specific purpose.
- Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.
- Delivery trucks with seating for the driver only, or the driver plus a folding jump seat.
- A passenger bus with a capacity of at least 20 passengers used for its specific purpose.
- School buses.
- Tractors and other special-purpose farm vehicles.

Pickup trucks. A pickup truck with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal-use vehicle if it has been specially modified so it is not likely to be used more than minimally for personal purposes. For example, a pickup truck qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and meets either of the following requirements.

1. It is equipped with at least one of the following items.
   a. A hydraulic lift gate.
   b. Permanent tanks or drums.
   c. Permanent side boards or panels that materially raise the level of the sides of the truck bed.
   d. Other heavy equipment (such as an electric generator, welder, boom, or crane used to tow automobiles and other vehicles).
2. It is used primarily to transport a particular type of load (other than over the public highways) in a construction, manufacturing, processing, farming, mining, drilling, timbering, or other similar operation for which it was specially designed or significantly modified.

Vans. A van with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal-use vehicle if it has been specially modified so it is not likely to be used more than minimally for personal purposes. For example, a van qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and has a seat for the driver only (or the driver and one other person) and either of the following items.

- Permanent shelving that fills most of the cargo area.
- An open cargo area and the van always carries merchandise, material, or equipment used in your trade, business, or function.

Education. Certain job-related education you provide to an employee may qualify for exclusion as a working condition benefit. To qualify, the education must meet the same requirements that would apply for determining whether the employee could deduct the expenses had the employee paid the expenses. The education must meet at least one of the following tests.

- The education is required by the employer or by law for the employee to keep his or her present salary, status, or job. The required education must serve a bona fide business purpose of the employer.
- The education maintains or improves skills needed in the job.

However, even if the education meets one or both of the above tests, it is not qualifying education if it:

- Is needed to meet the minimum educational requirements of the employee's present trade or business, or
- Is part of a program of study that will qualify the employee for a new trade or business.

Outplacement services. An employee's use of outplacement services qualifies as a working condition benefit if you provide the services to the employee on the basis of need and you get a substantial business benefit from the services distinct from the benefit you would get from the payment of additional wages. Substantial business benefits include promoting a positive business image, maintaining employee morale, and avoiding wrongful termination suits.

Outplacement services do not qualify as a working condition benefit if the employee can choose to receive cash or taxable benefits in place of the services. If you maintain a severance plan and permit employees to get outplacement services with reduced severance pay, include in the employee's wages the difference between the unreduced severance and the reduced severance payments.

Exclusion from wages. You can generally exclude the value of a working condition benefit you provide to an employee from the employee's wages.

Exception for independent contractors. You cannot exclude the value of parking or the use of consumer goods you provide in a product testing program from the compensation you pay to an independent contractor who performs services for you.

Exception for company directors. You cannot exclude the value of the use of consumer goods you provide in a product testing program from the compensation you pay to a director.

3. Fringe Benefit Valuation Rules

This section discusses the rules you must use to determine the value of a fringe benefit you provide to an employee. You must determine the value of any benefit you cannot exclude under the rules in section 2 or for which the amount you can exclude is limited. See *Including taxable benefits in pay* on page 2.

In most cases, you must use the general valuation rule to value a fringe benefit. However, you may be able to use a special valuation rule to determine the value of certain benefits.

This section does not discuss the special valuation rule used to value meals provided at an employer-operated eating facility for employees. For that rule, see Regulations section 1.61-21(j). This section also does not discuss the special valuation rules used to value the use of aircraft. For those rules, see Regulations sections 1.61-21(g) and (h).

General Valuation Rule

You must use the general valuation rule to determine the value of most fringe benefits. Under this rule, the value of a fringe benefit is its fair market value.

Fair market value. The fair market value (FMV) of a fringe benefit is the amount an employee would have to pay a third party in an arm's-length transaction to buy or lease the benefit. Determine this amount on the basis of all the facts and circumstances.

Neither the amount the employee considers to be the value of the fringe benefit nor the cost you incur to provide the benefit determines its FMV.

Employer-provided vehicles. In general, the FMV of an employer-provided vehicle is the amount the employee would have to pay a third party to lease the same or similar vehicle on the same or comparable terms in the geographic area where the employee uses the vehicle. A comparable lease term would be the amount of time the vehicle is available for the employee's use, such as a 1-year period.

Do not determine the FMV by multiplying a cents-per-mile rate times the number of miles driven unless the employee can prove the vehicle could have been leased on a cents-per-mile basis.

Cents-Per-Mile Rule

Under this rule, you determine the value of a vehicle you provide to an employee for personal use by multiplying the standard mileage rate by the total miles the employee drives the vehicle for personal purposes. Personal use is any use of the vehicle other than use in your trade or business. This amount must be included in the employee's wages or reimbursed by the employee. For 2005, the standard mileage rate is increased to 40.5 cents a mile.

You can use the cents-per-mile rule if either of the following requirements is met.

- You reasonably expect the vehicle to be regularly used in your trade or business throughout the calendar year (or for a shorter period during which you own or lease it).
- The vehicle meets the mileage test.

CAUTION

Maximum automobile value. *You cannot use the cents-per-mile rule for an automobile (any 4-wheeled vehicle, such as a car, pickup truck, or van) if its value when you first make it available to any employee for personal use is more than an amount determined by the IRS as the maximum automobile value for the year. For example, you cannot use the cents-per-mile rule for an automobile that you first made available to an employee in 2004 if its value at that time was more than $14,800. The maximum automobile value for 2005 will be published in a revenue procedure in the Internal Revenue Bulletin early in 2005. If you and the employee own or lease the automobile together, see Regulations section 1.61-21(e)(1)(iii)(B).*

Vehicle. For the cents-per-mile rule, a vehicle is any motorized wheeled vehicle, including an automobile, manufactured primarily for use on public streets, roads, and highways.

Regular use in your trade or business. A vehicle is regularly used in your trade or business if at least one of the following conditions is met.

- At least 50% of the vehicle's total annual mileage is for your trade or business.
- You sponsor a commuting pool that generally uses the vehicle each workday to drive at least three employees to and from work.
- The vehicle is regularly used in your trade or business on the basis of all of the facts and circumstances. Infrequent business use of the vehicle, such as for occasional trips to the airport or between your multiple business premises, is not regular use of the vehicle in your trade or business.

Mileage test. A vehicle meets the mileage test for a calendar year if both of the following requirements are met.

- The vehicle is actually driven at least 10,000 miles during the year. If you own or lease the vehicle only part of the year, reduce the 10,000 mile requirement proportionately.
- The vehicle is used during the year primarily by employees. Consider the vehicle used primarily by employees if they use it consistently for commuting. Do not treat the use of the vehicle by another individual whose use would be taxed to the employee as use by the employee.

For example, if only one employee uses a vehicle during the calendar year and that employee drives the vehicle at least 10,000 miles in that year, the vehicle meets the mileage test even if all miles driven by the employee are personal.

Consistency requirements. If you use the cents-per-mile rule, the following requirements apply.

- You must begin using the cents-per-mile rule on the first day you make the vehicle available to any employee for personal use. However, if you use the commuting rule below when you first make the vehicle available to any employee for personal use, you can change to the cents-per-mile rule on the first day for which you do not use the commuting rule.
- You must use the cents-per-mile rule for all later years in which you make the vehicle available to any employee and the vehicle qualifies, except that you can use the commuting rule for any year during which use of the vehicle qualifies. However, if the vehicle does not qualify for the cents-per-mile rule during a later year, you can use for that year and thereafter any other rule for which the vehicle then qualifies.
- You must continue to use the cents-per-mile rule if you provide a replacement vehicle to the employee and your primary reason for the replacement is to reduce federal taxes.

Items included in cents-per-mile rate. The cents-per-mile rate includes the value of maintenance and insurance for the vehicle. Do not reduce the rate by the value of any service included in the rate that you did not provide. (You can take into account the services actually provided for the vehicle by using the *General Valuation Rule* on page 17.)

For miles driven in the United States, its territories and possessions, Canada, and Mexico, the cents-per-mile rate includes the value of fuel you provide. If you do not provide fuel, you can reduce the rate by no more than 5.5 cents.

For special rules that apply to fuel you provide for miles driven outside the United States, Canada, and Mexico, see Regulations section 1.61-21(e)(3)(ii)(B).

The value of any other service you provide for a vehicle is not included in the cents-per-mile rate. Use the general valuation rule to value these services.

Commuting Rule

Under this rule, you determine the value of a vehicle you provide to an employee for commuting use by multiplying each one-way commute (that is, from home to work or from work to home) by $1.50. If more than one employee commutes in the vehicle, this value applies to each employee. This amount must be included in the employee's wages or reimbursed by the employee.

You can use the commuting rule if all the following requirements are met.

- You provide the vehicle to an employee for use in your trade or business and, for bona fide noncompensatory business reasons, you require the employee to commute in the vehicle. You will be treated as if you had met this requirement if the vehicle is generally used each workday to carry at least three employees to and from work in an employer-sponsored commuting pool.

- You establish a written policy under which you do not allow the employee to use the vehicle for personal purposes other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home). Personal use of a vehicle is all use that is not for your trade or business.
- The employee does not use the vehicle for personal purposes other than commuting and de minimis personal use.
- If this vehicle is an automobile (any four-wheeled vehicle, such as a car, pickup truck, or van), the employee who uses it for commuting is not a control employee. See *Control employee* below.

Vehicle. For this rule, a vehicle is any motorized wheeled vehicle, including an automobile manufactured primarily for use on public streets, roads, and highways.

Control employee. A control employee of a nongovernment employer for 2005 is generally any of the following employees.

- A board or shareholder-appointed, confirmed, or elected officer whose pay is $85,000 or more.
- A director.
- An employee whose pay is $170,000 or more.
- An employee who owns a 1% or more equity, capital, or profits interest in your business.

A control employee for a government employer for 2005 is either of the following.

- A government employee whose compensation is equal to or exceeds Federal Government Executive Level V. (See the Office of Personnel Management website at *www.opm.gov/oca/payrates/index.asp* for 2005 compensation information.)
- An elected official.

Highly compensated employee alternative. Instead of using the preceding definition, you can choose to define a control employee as any highly compensated employee. A highly compensated employee for 2005 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $95,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Lease Value Rule

Under this rule, you determine the value of an automobile you provide to an employee by using its annual lease value. For an automobile provided only part of the year, use either its prorated annual lease value or its daily lease value.

If the automobile is used by the employee in your business, you generally reduce the lease value by the amount that is excluded from the employee's wages as a working condition benefit. However, you can choose to include the entire lease value in the employee's wages. See *Vehicle allocation rules* on page 16.

Automobile. For this rule, an automobile is any four-wheeled vehicle (such as a car, pickup truck, or van) manufactured primarily for use on public streets, roads, and highways.

Consistency requirements. If you use the lease value rule, the following requirements apply.

1. You must begin using this rule on the first day you make the automobile available to any employee for personal use. However, the following exceptions apply.
   a. If you use the commuting rule (discussed earlier) when you first make the automobile available to any employee for personal use, you can change to the lease value rule on the first day for which you do not use the commuting rule.
   b. If you use the cents-per-mile rule (discussed earlier) when you first make the automobile available to any employee for personal use, you can change to the lease value rule on the first day on which the automobile no longer qualifies for the cents-per-mile rule.
2. You must use this rule for all later years in which you make the automobile available to any employee, except that you can use the commuting rule for any year during which use of the automobile qualifies.
3. You must continue to use this rule if you provide a replacement automobile to the employee and your primary reason for the replacement is to reduce federal taxes.

Annual Lease Value

Generally, you figure the annual lease value of an automobile as follows.

1. Determine the fair market value (FMV) of the automobile on the first date it is available to any employee for personal use.
2. Using the following *Annual Lease Value Table,* read down column (1) until you come to the dollar range within which the FMV of the automobile falls. Then read across to column (2) to find the annual lease value.

Annual Lease Value Table

(1) Automobile FMV	(2) Annual Lease Value
$ 0 to 999	$ 600
1,000 to 1,999	850

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

For automobiles with a FMV of more than $59,999, the annual lease value equals (.25 × the FMV of the automobile) + $500.

FMV. The FMV of an automobile is the amount a person would pay to buy it from a third party in an arm's-length transaction in the area in which the automobile is bought or leased. That amount includes all purchase expenses, such as sales tax and title fees.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(5)(v). If you and the employee own or lease the automobile together, see Regulations section 1.61-21(d)(2)(ii).

You do not have to include the value of a telephone or any specialized equipment added to, or carried in, the automobile if the equipment is necessary for your business. However, include the value of specialized equipment if the employee to whom the automobile is available uses the specialized equipment in a trade or business other than yours.

Neither the amount the employee considers to be the value of the benefit nor your cost for either buying or leasing the automobile determines its FMV. However, see *Safe-harbor value,* next.

Safe-harbor value. You may be able to use a safe-harbor value as the FMV. For an automobile you bought at arm's length, the safe-harbor value is your cost, including tax, title, and other purchase expenses. You cannot have been the manufacturer of the automobile.

For an automobile you lease, you can use any of the following as the safe-harbor value.

- The manufacturer's invoice price (including options) plus 4%.
- The manufacturer's suggested retail price minus 8% (including sales tax, title, and other expenses of purchase).
- The retail value of the automobile reported by a nationally recognized pricing source if that retail value is reasonable for the automobile.

Items included in annual lease value table. Each annual lease value in the table includes the value of maintenance and insurance for the automobile. Do not reduce the annual lease value by the value of any of these services that you did not provide. For example, do not reduce the annual lease value by the value of a maintenance service contract or insurance you did not provide. (You can take into account the services actually provided for the automobile by using the general valuation rule discussed earlier.)

Items not included. The annual lease value does not include the value of fuel you provide to an employee for personal use, regardless of whether you provide it, reimburse its cost, or have it charged to you. You must include the value of the fuel separately in the employee's wages. You can value fuel you provided at FMV or at 5.5 cents per mile for all miles driven by the employee. However, you cannot value at 5.5 cents per mile fuel you provide for miles driven outside the United States (including its possessions and territories), Canada, and Mexico.

If you reimburse an employee for the cost of fuel, or have it charged to you, you generally value the fuel at the amount you reimburse, or the amount charged to you if it was bought at arm's length.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(3)(ii)(D).

If you provide any service other than maintenance and insurance for an automobile, you must add the FMV of that service to the annual lease value of the automobile to figure the value of the benefit.

4-year lease term. The annual lease values in the table are based on a 4-year lease term. These values will generally stay the same for the period that begins with the first date you use this rule for the automobile and ends on December 31 of the fourth full calendar year following that date.

Figure the annual lease value for each later 4-year period by determining the FMV of the automobile on January 1 of the first year of the later 4-year period and selecting the amount in column (2) of the table that corresponds to the appropriate dollar range in column (1).

Using the special accounting rule. If you use the special accounting rule for fringe benefits discussed in section 4, you can figure the annual lease value for each later 4-year period at the beginning of the special accounting period that starts immediately before the January 1 date described in the previous paragraph.

For example, assume that you use the special accounting rule and that, beginning on November 1, 2004, the special accounting period is November 1 to October 31. You elected to use the lease value rule as of January 1, 2005. You can refigure the annual lease value on November 1, 2008, rather than on January 1, 2009.

Transferring an automobile from one employee to another. Unless the primary purpose of the transfer is to reduce federal taxes, you can refigure the annual lease value based on the FMV of the automobile on January 1 of the calendar year of transfer.

However, if you use the special accounting rule for fringe benefits discussed in section 4, you can refigure the annual lease value (based on the FMV of the automobile) at the beginning of the special accounting period in which the transfer occurs.

Prorated Annual Lease Value

If you provide an automobile to an employee for a continuous period of 30 or more days but less than an entire calendar year, you can prorate the annual lease value. Figure the prorated annual lease value by multiplying the annual lease value by a fraction, using the number of days of availability as the numerator and 365 as the denominator.

If you provide an automobile continuously for at least 30 days, but the period covers 2 calendar years (2 special accounting periods if you are using the special accounting rule for fringe benefits discussed in section 4), you can use the prorated annual lease value or the daily lease value.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(6).

If an automobile is unavailable to the employee because of his or her personal reasons (for example, if the employee is on vacation), you cannot take into account the periods of unavailability when you use a prorated annual lease value.

CAUTION *You cannot use a prorated annual lease value if the reduction of federal tax is the main reason the automobile is unavailable.*

Daily Lease Value

If you provide an automobile to an employee for a continuous period of less than 30 days, use the daily lease value to figure its value. Figure the daily lease value by multiplying the annual lease value by a fraction, using four times the number of days of availability as the numerator and 365 as the denominator.

However, you can apply a prorated annual lease value for a period of continuous availability of less than 30 days by treating the automobile as if it had been available for 30 days. Use a prorated annual lease value if it would result in a lower valuation than applying the daily lease value to the shorter period of availability.

Unsafe Conditions Commuting Rule

Under this rule, the value of commuting transportation you provide to a qualified employee solely because of unsafe conditions is $1.50 for a one-way commute (that is, from home to work or from work to home). This amount must be included in the employee's wages or reimbursed by the employee.

You can use the unsafe conditions commuting rule if all of the following requirements are met.

- The employee would ordinarily walk or use public transportation for commuting.
- You have a written policy under which you do not provide the transportation for personal purposes other than commuting because of unsafe conditions.
- The employee does not use the transportation for personal purposes other than commuting because of unsafe conditions.

These requirements must be met on a trip-by-trip basis.

Commuting transportation. This is transportation to or from work using any motorized wheeled vehicle (including an automobile) manufactured for use on public streets, roads, and highways. You or the employee must buy the transportation from a party that is not related to you. If the employee buys it, you must reimburse the employee for its cost (for example, cab fare) under a bona fide reimbursement arrangement.

Qualified employee. A qualified employee for 2005 is one who:

- Performs services during the year,
- Is paid on an hourly basis,
- Is not claimed under section 213(a)(1) of the Fair Labor Standards Act of 1938 (as amended) to be exempt from the minimum wage and maximum hour provisions,
- Is within a classification for which you actually pay, or have specified in writing that you will pay, overtime pay of at least one and one-half times the regular rate provided in section 207 of the 1938 Act, and
- Receives pay of not more than $95,000 during the year.

However, an employee is not considered a qualified employee if you do not comply with the recordkeeping requirements concerning the employee's wages, hours, and other conditions and practices of employment under section 211(c) of the 1938 Act and the related regulations.

Unsafe conditions. Unsafe conditions exist if, under the facts and circumstances, a reasonable person would consider it unsafe for the employee to walk or use public transportation at the time of day the employee must commute. One factor indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or home at the time of day the employee commutes.

4. Rules for Withholding, Depositing, and Reporting

Use the following guidelines for withholding, depositing, and reporting taxable noncash fringe benefits. For additional information on how to withhold on fringe benefits, see Publication 15 (Circular E), section 5.

Valuation of fringe benefits. Generally, you must determine the value of noncash fringe benefits no later than January 31 of the next year. Before January 31, you may reasonably estimate the value of the fringe benefits for purposes of withholding and depositing on time.

Choice of period for withholding, depositing, and reporting. For employment tax and withholding purposes, you can treat fringe benefits (including personal use of employer-provided highway motor vehicles) as paid on a pay period, quarter, semiannual, annual, or other basis. But the benefits must be treated as paid no less frequently than annually. You do not have to choose the same period for all employees. You can withhold more frequently for some employees than for others.

You can change the period as often as you like as long as you treat all of the benefits provided in a calendar year as paid no later than December 31 of the calendar year.

You can also treat the value of a single fringe benefit as paid on one or more dates in the same calendar year, even if the employee receives the entire benefit at one time. For example, if your employee receives a fringe benefit valued at $1,000 in one pay period during 2005, you can treat it as made in four payments of $250, each in a different pay period of 2005. You do not have to notify the IRS of the use of the periods discussed above.

Transfer of property. The above choice for reporting and withholding does not apply to a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property. For this kind of fringe benefit, you must use the actual date the property was transferred to the employee.

Withholding and depositing taxes. You can add the value of fringe benefits to regular wages for a payroll period and figure income tax withholding on the total. Or you can withhold federal income tax on the value of fringe benefits at the flat 25% rate that applies to supplemental wages. See section 7 in Publication 15 (Circular E) for the flat rate (35%) when supplemental wage payments to an individual exceed $1,000,000 during the year.

You must withhold the applicable income, social security, and Medicare taxes on the date or dates you chose to treat the benefits as paid. Deposit the amounts withheld as discussed in section 11 of Publication 15 (Circular E).

Amount of deposit. To estimate the amount of income tax withholding and employment taxes and to deposit them on time, make a reasonable estimate of the value of the fringe benefits provided on the date or dates you chose to treat the benefits as paid. Determine the estimated deposit by figuring the amount you would have had to deposit if you had paid cash wages equal to the estimated value of the fringe benefits and withheld taxes from those cash wages. Even if you do not know which employee will receive the fringe benefit on the date the deposit is due, you should follow this procedure.

If you underestimate the value of the fringe benefits and deposit less than the amount you would have had to deposit if the applicable taxes had been withheld, you may be subject to a penalty.

If you overestimate the value of the fringe benefit and overdeposit, you can either claim a refund or have the overpayment applied to your next Form 941.

If you deposited the required amount of taxes but withheld a lesser amount from the employee, you can recover from the employee the social security, Medicare, or income taxes you deposited on the employee's behalf and included on the employee's Form W-2. However, you must recover the income taxes before April 1 of the following year.

Paying your employee's share of social security and Medicare taxes. If you choose to pay your employee's social security and Medicare taxes on fringe benefits without deducting them from his or her pay, you must include the amount of the payments in the employee's income. Also, if your employee leaves your employment and you have unpaid and uncollected taxes for noncash benefits, you are still liable for those taxes. You must add the uncollected employee share of social security and Medicare tax to the employee's wages. Follow the procedure discussed under *Employee's Portion of Taxes Paid By Employer* in section 7 of Publication 15-A. Do not use withheld federal income tax to pay the social security and Medicare tax.

Special accounting rule. You can treat the value of benefits provided during the last 2 months of the calendar year, or any shorter period within the last 2 months, as paid in the next year. Thus, the value of benefits actually provided in the last 2 months of 2004 could be treated as provided in 2005 together with the value of benefits provided in the first 10 months of 2005. This does not mean that all benefits treated as paid during the last 2 months of a calendar year can be deferred until the next year. Only the value of benefits actually provided during the last 2 months of the calendar year can be treated as paid in the next calendar year.

Limitation. The special accounting rule cannot be used, however, for a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property.

Conformity rules. Use of the special accounting rule is optional. You can use the rule for some fringe benefits but not others. The period of use need not be the same for each fringe benefit. However, if you use the rule for a particular fringe benefit, you must use it for all employees who receive that benefit.

If you use the special accounting rule, your employee also must use it for the same period you use it. But your employee cannot use the special accounting rule unless you do.

You do not have to notify the IRS if you use the special accounting rule. You may also, for appropriate reasons, change the period for which you use the rule without notifying the IRS. But you must report the income and deposit the withheld taxes as required for the changed period.

Special rules for highway motor vehicles. If an employee uses the employer's vehicle for personal purposes, the value of that use must be determined by the employer and included in the employee's wages. The value of the personal use must be based on fair market value or determined by using one of the following three special valuation rules.

- The automobile lease valuation rule.
- The vehicle cents-per-mile rule.
- The commuting valuation rule (for commuting use only).

Election not to withhold income tax. You can choose not to withhold income tax on the value of an employee's personal use of a highway motor vehicle you provided. You do not have to make this choice for all employees. You can withhold income tax from the wages of some employees but not others. You must, however, withhold the applicable social security and Medicare taxes on such benefits.

You can choose not to withhold income tax on an employee's personal use of a highway motor vehicle by:

- Notifying the employee as described below that you choose not to withhold and
- Including the value of the benefits in boxes 1, 3, 5, and 14 on a timely furnished Form W-2. For use of a separate statement in lieu of using box 14, see the Instructions for Forms W-2 and W-3.

The notice must be in writing and must be provided to the employee by January 31 of the election year or within 30 days after a vehicle is first provided to the employee, whichever is later. This notice must be provided in a manner reasonably expected to come to the attention of the affected employee. For example, the notice may be mailed to the employee, included with a paycheck, or posted where the employee could reasonably be expected to see it. You can also change your election not to withhold at any time by notifying the employee in the same manner.

Amount to report on Forms 941 and W-2. The actual value of fringe benefits provided during a calendar year (or other period as explained under *Special accounting rule* on page 22) must be determined by January 31 of the following year. You must report the actual value on Forms 941 and W-2. If you choose, you can use a separate Form W-2 for fringe benefits and any other benefit information.

Include the value of the fringe benefit in box 1 of Form W-2. Also include it in boxes 3 and 5, if applicable. You may show the total value of the fringe benefits provided in the calendar year or other period in box 14 of Form W-2. However, if you provided your employee with the use of a highway motor vehicle and included 100% of its annual lease value in the employee's income, you must also report it separately in box 14 or provide it in a separate statement to the employee so that the employee can compute the value of any business use of the vehicle.

If you use the special accounting rule, you must notify the affected employees of the period in which you used it. You must give this notice at or near the date you give the Form W-2, but not earlier than with the employee's last paycheck of the calendar year.

How To Get Forms and Publications

Internet. You can access the IRS website 24 hours a day, 7 days a week at *www.irs.gov* to:

- Download forms, instructions, and publications,
- See answers to frequently asked tax questions,
- Search publications on-line by topic or keyword,
- Send us comments or request help by email, and
- Sign up to receive local and national tax news by email.

CD-ROM. Order Publication 1796, Federal Tax Products on CD-ROM, and get:

- Current year forms, instructions, and publications,
- Prior year forms, instructions, and publications,
- Frequently requested tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping, and
- Internal Revenue Bulletins.

Buy the CD-ROM on the Internet at *www.irs.gov/cdorders* from the National Technical Information Service (NTIS) for $22 (no handling fee) or call 1-877-CDFORMS (1-877-233-6767) toll free to buy the CD-ROM for $22 (plus a $5 handling fee).

By phone and in person. You can order forms and publications 24 hours a day, 7 days a week, by calling 1-800-TAX-FORM (1-800-829-3676). You can also get most forms and publications at your local IRS office.

By fax. You can receive forms and publications by fax by calling 703-368-9694 using the phone attached to your fax machine. Follow the directions from the prompts. When you order forms, enter the catalog number of the form you need. The items will be faxed to you.

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To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.

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