



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

August 17, 2000

Number: **INFO 2000-0256**  
Release Date: 12/29/2000  
UIL: 132.10-00

The Honorable [REDACTED]  
Member, U.S. House of  
Representatives  
Washington, D.C. 20515-1316

Dear [REDACTED]:

This letter is in response to your inquiry dated July 19, 2000, asking us to address concerns raised by [REDACTED]. Her employer, a relatively small company, does not have the human resources to purchase and distribute transit passes to all of its employees. [REDACTED] suggests rewriting section 132(f)(3) of the Internal Revenue Code (the Code) to allow employees to purchase their own transit passes, submit a form to the employer to certify the expense was incurred, and have the employer reimburse the employee.<sup>1</sup>

The following information is included in the proposed regulations for qualified transportation benefits, which were issued January 27, 2000. A public hearing on the proposed regulations was held on June 1, 2000 at the Internal Revenue Service (IRS) building in Washington, DC. The Department of Treasury has included in its annual business plan an item to provide guidance on qualified transportation fringe benefits.

### **Employers May Provide Cash Reimbursement to the Employee**

Employers may provide cash reimbursement if transit passes are not readily available for direct distribution by the employer to the employee. [Section 132(f)(3).] For purposes of this section, a transit pass is considered readily available if an employer can obtain it on terms no less favorable than those available to the employee, and without incurring significant administrative costs. Under the proposed regulations, administrative costs are treated as significant if they exceed 1 percent of the average monthly value of the vouchers (not including delivery charges up to \$15 per order).<sup>2</sup> The employee must provide substantiation to the employer as a condition to receiving

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<sup>1</sup>Transit pass means any pass, token, farecard, voucher, or similar item entitling a person to transportation on mass transit facilities or in a commuter highway vehicle.

<sup>2</sup>A transit system voucher is a voucher accepted by one or more mass transit operators (e.g., train, subway, and bus) in exchange for fare media.

cash reimbursement. The substantiation requirements vary depending upon the payment method used. For example, if an employee uses metered parking, the substantiation requirement may be satisfied if the employee certifies the expense was incurred and the employer believes the employee actually incurred the expense.

### **Employee May Provide Transportation Benefits Using a Compensation Reduction Arrangement.**

Employers can provide qualified transportation benefits using a compensation reduction arrangement. Under this arrangement, an employee's gross income is reduced by the value of the transportation benefit, which gives him or her pretax savings on the cost of commuting to work. An employee can elect to receive either a fixed amount of cash compensation or a fixed amount of qualified transportation benefits, such as parking, at a specified future date. The election must be made before the employee receives the cash or transportation benefit, and it may not exceed the statutory monthly limits for transportation in a commuter highway vehicle, parking, and transit passes. In 2000, the maximum amount an employee could elect to reduce compensation by is \$240 per month (\$65 for transportation in a commuter highway vehicle and transit passes, plus \$175 for qualified parking).

Employers must keep records of compensation reduction elections. Small businesses have several options available which would simplify the recordkeeping requirements:

- (1) The employer can distribute the transit passes in kind
- (2) Employees can elect the compensation reduction electronically
- (3) Compensation reduction elections can be automatically renewed
- (4) An employer can provide for deemed compensation reduction elections under its qualified transportation fringe benefit plan.

This letter will be made available for public inspection after names, addresses, and other identifying information have been deleted, as appropriate, under the Freedom of Information Act.

I hope this information will be helpful in your response to [REDACTED]. If you have any questions regarding this matter, or if you need further assistance, please contact me or Robyn L. Mathis (ID No. 50-15986) of my staff at (202) 622-6040.

Sincerely,

JERRY E. HOLMES  
Chief, Employment Tax Branch 2  
Tax Exempt and Government Entities  
Office of Assistant Chief Counsel  
(Exempt Organizations/Employment  
Tax/Government Entities)