



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

OFFICE OF
CHIEF COUNSEL

March 16, 2001

Number: **INFO 2001-0090**
Release Date: 6/29/2001
UIL: 132.00-00

[REDACTED]
Executive Director
[REDACTED]

Dear [REDACTED]:

This responds to your letter dated August 31, 2000, addressed to Commissioner Charles O. Rossotti. The Commissioner asked this office to respond to your concerns about the Internal Revenue Service's proposed regulations for qualified transportation benefits. Specifically, you expressed concerns about (1) cash reimbursements for transit passes, and (2) the definitions of the terms "readily available" and "significant administrative costs" used in the regulations.

The Department of Treasury recently issued final regulations on qualified transportation fringe benefits. [66 Federal Register 2241 (January 11, 2001).] The following can be found in the final regulations. The general information in this letter discusses the "readily available" issue and the substantiation requirements under the final regulations.

Employers May Provide Cash Reimbursement to the Employee

Section 132(f)(3) of the Internal Revenue Code (the Code) provides that the term "qualified transportation fringe" includes a cash reimbursement for a transit pass if "a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee." However, the cash reimbursement must be made pursuant to a bona fide reimbursement arrangement. In this regard, the employer must implement reasonable reimbursement procedures to ensure that employees have, in fact, incurred expenses for transportation. In addition, the employee must provide adequate substantiation before the employer reimburses the employee for an expense.

For example, an employee submits a used transit pass to the employer at the end of the month and certifies both that he or she purchased it, and that he or she used it

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during the month, or presents a transit pass to the employer at the beginning of the month and certifies that it will be used during the month. In both cases, the employer has no reason to doubt the employee's certification.

In certain circumstances, an employee certification will constitute adequate substantiation. However, it would not be permissible for an employee to certify once per year that the employee has incurred expenses up to the amount of the reimbursement that the employee has already received.

In defining "readily available," the regulations reflect the general standards set forth in Notice 94-3, under which a voucher is considered readily available if an employer can obtain it on terms no less favorable than those available to an employee, and without incurring a significant administrative cost. The regulations are very clear about the meaning of "significant administrative cost." The only costs considered in determining whether the administrative costs are significant are the fees the employer pays to the fare media provider, and those costs are considered significant if it exceeds 1 percent of the average monthly value of the vouchers. An employer's distribution costs are not considered for purposes of this test.

Under the Freedom of Information Act, this letter will be made available to the public after we delete names, addresses, and other identifying information.

We hope this information is useful. If you have any questions, please call Robyn Mathis (ID No. 50-15986) of my staff at (202) 622-6040.

Sincerely,

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