



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

OFFICE OF
CHIEF COUNSEL

September 28, 2000

Number: **200105007**
Release Date: 2/2/2001
UILC: 132.10-00

CC:TEGE:EOEG:ET2:JRichards
WTA-N-117405-00

MEMORANDUM FOR
PROJECT DIRECTOR M:ES:TTRC

FROM: Mary Oppenheimer, Assistant Chief Counsel, CC:TEGE:EOEG

SUBJECT: Taxability under section 132(f) of Reimbursement for Parking at
Nontemporary Work Locations

This is in response to your request for advice on whether parking reimbursement [REDACTED] is excludable from gross income under section 132(f) of the Internal Revenue Code.

ISSUE

Whether reimbursement provided to [REDACTED] for parking costs incurred at nontemporary work locations is excludable from wages for income and employment tax purposes.

CONCLUSION

Reimbursement provided to employees for parking at a nontemporary work location is excludable from wages for income and employment tax purposes to the extent it does not exceed the statutory monthly limitation.

FACTS

[REDACTED] oftentimes work at locations away from their permanent post-of-duty (POD) on a long-term basis. The IRS expense reimbursement arrangement provides that an employee may be reimbursed for all parking expenses incurred at work locations away from the employee's [REDACTED] whether or not those expenses would be deductible by the employee under section 162 of the Code.

LAW AND ANALYSIS

Section 132(a)(5) of the Code provides that gross income does not include any benefit that is a qualified transportation fringe. Section 132(f)(1) provides that qualified transportation fringes include qualified parking.

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Section 132(f)(2) of the Code provides that the amount excludable for qualified parking may not exceed \$175 per month.

Section 132(f)(5)(C) of the Code provides:

The term 'qualified parking' means parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by [mass transit, including van pool transportation provided by a person providing transportation for compensation or hire], in a commuter highway vehicle, or by carpool. Such term shall not include any parking on or near property used by the employee for residential purposes.

Sections 3121(a)(20) and 3401(a)(19) of the Code provide in relevant part that wages do not include any benefits provided to an employee if at the time the benefit is provided it is reasonable to believe the benefit would be excludable to the employee under section 132.

Revenue Ruling 99-7, 1999-1 C.B. 361, addresses under what circumstances daily transportation expenses, including parking, incurred by a taxpayer in going between the taxpayer's residence and work location are deductible under section 162(a) of the Code. Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Section 262, however, provides that no deduction is allowed for personal living or family expenses. The costs of commuting to work, including parking, generally are nondeductible personal expenses under sections 1.162-2(e) and 1.262-1(b)(5) of the Income Tax Regulations.

However, the ruling provides that if a taxpayer has one or more regular work locations, the taxpayer may deduct under section 162(a) the daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location. Under the ruling, a temporary work location is a work location that is realistically expected to last (and does in fact last) for 1 year or less in the absence of facts and circumstances indicating otherwise. If employment at a work location is realistically expected to last for more than 1 year or there is no realistic expectation that the employment will last for 1 year or less, the employment is not temporary, regardless of whether it actually exceeds 1 year. If employment at a work location initially is realistically expected to last for 1 year or less, but at some later date the employment is realistically expected to exceed 1 year, that employment will be treated as temporary (in the absence of facts and circumstances indicating otherwise) until the date that the taxpayer's realistic expectation changes, and will be treated as not temporary after that date.

We believe the section 132(a)(5) exclusion for qualified parking is intended to provide a tax-free benefit for commuter parking. In other words, this section is generally intended

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to provide a benefit for parking costs that are not deductible under section 162(a). Under Rev. Rul. 99-7, parking costs incurred at a temporary work location are generally deductible under section 162(a); whereas costs for parking at any nontemporary work location are considered personal and are therefore nondeductible. Thus, we have concluded that reimbursement for parking at any nontemporary work location under the standards in Rev. Rul. 99-7 falls within the meaning of "parking provided to an employee on or near the business premises of the employer" under section 132(f)(5)(C). Accordingly, these parking benefits are qualified transportation fringes provided the other requirements under section 132(f) are met, including the statutory monthly limitation.

Please contact John Richards of this office if we can provide further assistance.