



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

OFFICE OF
CHIEF COUNSEL

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SPR-139740-01
UIL 132.10-00



Reference: Qualified Transportation Fringe Benefits

Dear Ms. [REDACTED]:

This letter is written in response to your written inquiry, dated June 14, 2001, concerning qualified transportation fringe benefits. Specifically, you asked whether or not the amounts remaining in a qualified transportation fringe benefit arrangement for which no substantiation was made are forfeited at the end of a year. You explain that the arrangement allows for withholding from employees' pretax wages for qualified parking and transit costs.

While the Internal Revenue Service does provide guidance in the form of letter rulings, such rulings must be requested in accordance with instructions found in Revenue Procedure 2001-1, 2001 I.R.B. 4. Your request does not conform to the requirements of Revenue Procedure 2001-1 and, therefore, does not provide the necessary information to issue a ruling applying Internal Revenue Code ("Code") section 132(f) and its applicable regulations to your specific set of facts. Nonetheless, we will provide general information regarding the particular aspect of qualified transportation in which you expressed an interest.

Code section 132(a)(5) excludes from gross income any fringe benefit that constitutes a "qualified transportation fringe." Code section 132(f)(1) defines the term "qualified transportation fringe" to include transportation provided by an employer to an employee for (1) commuter highway vehicle if such travel is between the employee's residence and place of employment, (2) any transit pass, and (3) qualified parking. The amount

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that may be excluded from gross income is \$65.00 per month¹ for the aggregate benefit of transportation by commuter vehicle and transit pass and \$175.00 per month for qualified parking.

Code section 132(f)(4) provides that an employer may allow an employee the choice of receiving either a fixed amount of cash compensation at a specified future date or a fixed amount of qualified transportation fringes to be provided at a future date (i.e., a pretax reduction of compensation). Under Treasury Regulation section 1.132-9, Q/A-14 (2001), a compensation reduction election must be made before the employee is able to currently receive the cash or other taxable amount at the employee's discretion, which determination does not depend on the constructive receipt rules of Code section 451. The election must specify the period for which the qualified transportation fringe will be provided and such period cannot begin before the election is made.

Treasury Regulation section 1.132-9, Q/A-14 provides that an employee may not revoke a compensation reduction election (1) after the employee is currently able to receive the cash or other taxable amount at the employee's discretion, or (2) after the beginning of the period for which the qualified transportation fringe will be provided, (e.g., the period that is described on the employee's election form, such as a calendar month). Unless an election is revoked as previously described, an employee may not subsequently receive the compensation that is withheld. In other words, if an employee terminates employment, a compensation reduction arrangement for qualified transportation fringes may not provide that an employee who ceases to participate in the arrangement will be entitled to receive a refund of the reduction amount that exceeds the actual qualified transportation fringe expense.

Treasury Regulation section 1.132-9, Q/A-15 provides that an employee may carry over unused compensation reduction amounts to subsequent periods pursuant to the employer's compensation reduction arrangement. For example, an employee elects, prior to November 1, to reduce compensation by \$65.00 for the month of November. The Employee incurs \$50.00 in employee-operated commuter highway vehicle expenses during November for which amount the employee is reimbursed \$50.00. By election made before December, the employee elects to reduce compensation by \$65.00 for December, which is the amount of employee-operated commuter highway vehicle expenses that he incurs and for which he is reimbursed. Before January, the employee elects to reduce compensation by \$50.00 for the month of January. The employee incurs \$65.00 in employee-operated commuter highway vehicle expenses during January and is reimbursed \$65.00. Because the employer allows the employee to carry over to the next year the \$15.00 by which the compensation reductions for November and December exceeded the employee-operated commuter highway vehicle

¹ Effective for tax years beginning after December 31, 2001, such monthly limit increases to \$100.00.

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expenses and because the amount does not exceed the statutory amount incurred in January, the amount of \$65.00 that the employee is reimbursed is excludable from the employee's wages for income and employment tax purposes.

We trust that this discussion of Code section 132(f) and the applicable regulations will be helpful to you. If you have any additional questions or need further assistance, please contact Patricia P. Holdsworth, employee identification number 50-20375, at (202) 622-6040.

Sincerely,

Jerry E. Holmes
Chief, Employment Tax Branch 2
Office of the Assistant Chief Counsel
(Exempt Organizations/Employment Tax/
Government Entities)