



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

OFFICE OF
CHIEF COUNSEL

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CONEX123152-02
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[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]:

This letter responds to your inquiry dated March 25, 2002, to the National Director of Legislative Affairs on behalf of your constituent, [REDACTED]. You ask whether [REDACTED] is eligible to receive nontaxable benefits from his employer for commuting by car pool to his place of employment.

Definition of a Qualified Transportation Fringe Benefit

Qualified transportation fringe benefits include transportation provided by an employer to its employee for:

- (1) A commuter highway vehicle if such travel is between the employee's residence and place of employment (e.g., van pool transportation)
- (2) Any transit pass
- (3) Qualified parking

[Internal Revenue Code section 132(f)(1)]. Qualified transportation fringe benefits are excluded from an employee's gross income and from wages for employment tax purposes [Internal Revenue Code sections 132(a), 3121(a)(20), 3306(b)(16), 3401(a)(17)].

The amount that may be excluded from gross income for van pool transportation is \$100.00 per month¹ [Internal Revenue Code section 132(f)(2)(A)]. The employer may

¹ The amount of \$100.00 is the aggregate monthly benefit for transit passes and transportation by commuter highway vehicles.

provide the monthly benefit in a “pretax” manner by allowing the employee to elect to receive either taxable compensation or a qualified transportation fringe benefit, which would be excluded from the employee’s gross income or wages [Internal Revenue Code section 132(f)(4)].

Van Pool Transportation as a Qualified Transportation Fringe Benefit

Van pool transportation consists of employer-operated and employee-operated van pools and private or public transit-operated van pools. The benefit an employee receives from using one of these van pools may be considered a qualified transportation fringe benefit if the van pool vehicle meets the definition of a commuter highway vehicle as defined in Internal Revenue Code section 132(f)(5)(B).

A “commuter highway vehicle” is any highway vehicle:

1. With a seating capacity of a minimum of six adults, excluding the driver, and
2. Having 80 percent of its mileage used for
 - a. Transporting employees who travel between their residences and their place of employment, and
 - b. Transporting at least half of the vehicle’s adult seating capacity, excluding the driver (e.g., in a six passenger vehicle, at least three adult passengers and the driver must be traveling in the vehicle).

Three Types of Van Pool Transportation

The Treasury Regulations classifies van pool transportation into three types: employer-operated, employee-operated, and private or public transit-operated van pools.

1. Employer-operated van pool. The employer purchases or leases vans to enable employees to commute together to the employer’s place of business. Alternatively, the employer may contract with a third party to provide van transportation. If a van meets the definition of a commuter highway vehicle, then the value of an employer-operated van pool used by an employee is a nontaxable qualified transportation fringe benefit [Treasury Regulation section 1.132-9(b) Q/A-21(b)].
2. Employee-operated van pool. The employees, independent of their employer, operate a van to commute to their places of employment. If a van meets the definition of a commuter highway vehicle, then the employer’s cash reimbursement to employees for expenses incurred in an employee-operated

van pool is a nontaxable qualified transportation fringe benefit [Treasury Regulation section 1.132-9(b) Q/A-21(c)].

3. A private or public transit-operated van pool. A person operates a commuter highway vehicle for the business of transporting persons for compensation or hire. An employer may reimburse as a qualified transportation fringe benefit the cost an employee incurs for commuting in such a van pool. However, the special rules for cash reimbursement for transit passes and the substantiation requirements for cash reimbursements apply [Treasury Regulation sections 1.132-9(b) Q/A-16; Q/A-21(d)].

An Employee's Use of a Nonqualified Van Pool Vehicle is Taxable

If a van pool vehicle does not comply with the definition of a commuter highway vehicle, then the value of the benefit or reimbursement of costs to the employee by the employer is not a qualified transportation fringe benefit. Consequently, this amount is included in the employee's gross income for income tax purposes and wages for employment tax purposes.

Generally, according to Treasury Regulation section 1.61-21(b)(1), an employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the total amount the employee paid for the benefit and the amount, if any, specifically excluded from gross income under a section of the Internal Revenue Code. Under Treasury Regulation section 1.61-21(b)(2), the fair market value of a fringe benefit is based on all the facts and circumstances.

If you would like further assistance, please contact me or [REDACTED]
[REDACTED] at (202) 622-6040.

Sincerely,
Mary Oppenheimer
Assistant Chief Counsel
(Exempt Organizations/Employment Tax/
Government Entities)