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Date:

July 11, 2003

Legend

= Employer

Dear :

This responds to your request for a ruling concerning whether Employer's parking payment plan ("Plan") meets the requirements of a qualified transportation fringe under section 132(f) of the Internal Revenue Code (the "Code"). If the Plan meets these requirements, reimbursements made by the Employer to employees for parking pursuant to the Plan are excluded from the employee's gross income, and are not subject to income tax withholding, Federal Insurance Contributions Act ("FICA") tax, or Federal Unemployment Tax Act ("FUTA") tax.

ISSUE(S)

Whether Employer-provided parking is "qualified parking" under section 132(f) of the Code and whether Employer's salary reduction arrangement ("Arrangement") meets the requirements set out in section 1.132-9(b) of the Income Tax Regulations.

FACTS

Employer leases office space pursuant to a lease agreement, which includes a license to use the adjoining parking lot. Employer has a Plan that permits employees to park in the adjoining lot pursuant to the Arrangement. Employer charges each employee \$150.00 per month for parking and reduces each participating employee's salary by \$150.00 each month. Employees who choose to participate in Employer's Arrangement and park in Employer's parking lot must make an election to receive parking valued at

\$150.00 per month in lieu of an additional \$150.00 of cash compensation per month. The election is made in a written document. The compensation reduction election must be made prior to the one month period to which it relates. The election document includes the date of the election, the amount of the compensation to be reduced, and the period to which the election relates. The election is irrevocable during its one-month term. Once an election to reduce compensation is made, employees may not receive a refund of the amount by which the employee's compensation reductions exceed the actual amounts expended for parking by the employee. The election automatically renews unless the employee elects out of the Plan.

LAW

Section 61(a)(1) of the Code provides that, except as otherwise provided, gross income means all income from whatever source derived, including (but not limited to) compensation for services, including fees, commissions, fringe benefits, and similar items. Consequently, a fringe benefit provided by an employer to an employee is presumed to be income to the employee, unless it is specifically excluded from gross income by another section of the Code. See § 1.61-21(a) of the Income Tax Regulations.

Section 1.61-21(a)(2) of the Income Tax Regulations provides that to the extent a particular fringe benefit is specifically excluded from gross income by another section of the Code, the requirements and conditions of that section must be applied. Thus, if the requirements of the applicable section are satisfied, the fringe benefit may be excludable from gross income.

Sections 3121(a)(20), 3306(b)(16) 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.

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.

Section 132(f)(2) of the Code provides that the amount excludable for qualified parking may not exceed \$175 per month. Section 132(f)(6) of the Code provides that this figure is to be indexed for inflation annually. For 2003, the indexed figure has been increased to \$190 by Rev. Proc. 2002-70, 2002-46 I.R.B. 845.

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.... Such

term shall not include any parking on or near property used by the employee for residential purposes.”

Section 1.132-9 of the Income Tax Regulations requires employees to elect to participate in a salary reduction arrangement in writing. The arrangement must provide the employee with the right to elect whether the employee will receive either a fixed amount of cash compensation at a specified future date or a fixed amount of qualified transportation fringes to be provided for a specified future period (such as qualified parking to be used during a future calendar month). The employee’s election must be in writing or another form, such as electronic, that includes, in permanent and verifiable form, the information required in the election. The election must contain the date of the election, the amount of the compensation to be reduced, and the period for which the benefit will be provided. The election must relate to a fixed dollar amount or fixed percentage of compensation reduction. The election may be automatically renewed provided the employee has the opportunity to revoke the election. The compensation reduction election must be made before the employee is able to receive cash or other taxable amount at the employee’s discretion. Finally, the employee must not be entitled to receive a refund of the amounts by which the employee’s compensation reductions exceed the actual amounts expended for qualified transportation fringes.

ANALYSIS

The two issues raised are: 1) whether parking provided by Employer is “qualified parking” under section 132(f)(5)(C) of the Code; and 2) whether Employer’s Arrangement fulfills the requirements set out in section 1.132-9 of the Income Tax Regulations. The qualified parking issue will be addressed first.

Employer has a license to use a parking lot adjoining Employer’s work site and allows the employees to use the parking lot.¹ Because Employer provides parking “on or near the business premises of the employer,” Employer’s parking is “qualified parking.” See IRC § 132(f)(5)(C).

We next address whether Employer’s Arrangement fulfills the requirements set out in section 1.132-9(b), Q&A-11 through Q&A-14 of the Income Tax Regulations. Section 1.132-9(b), Q&A-12(a) requires that the employees have “the right to elect whether the employee will receive either a fixed amount of cash compensation or a fixed amount of qualified transportation fringes.” Additionally, it requires the election be in “permanent and verifiable form...”, including “the date of the election, the amount of compensation to be reduced and the period for which the benefit will be provided.” Employer’s Plan allows employees to elect to participate in the Arrangement by reducing their cash compensation by \$150.00 per month to enable them to park in Employer’s lot, or to

¹ Employer requires the employees to enter into the Arrangement prior to parking in the lot.

receive \$150.00 cash compensation per month instead. Employees elect to participate by completing and signing a form. The form is a written document and therefore is in “permanent and verifiable form”. It contains the date of the election, the amount of compensation to be reduced and the time period for which the qualified parking will be provided. The Arrangement automatically renews unless terminated by the employee. Employer’s Arrangement satisfies the requirements set out in 1.132-9(b), Q&A-12(a) of the Income Tax Regulations.

Section 1.132-9(b), Q&A-13 provides that “the amount of the compensation reduction may not exceed the . . . statutory monthly limit[] for . . . qualified parking.” Employer charges \$150 a month to use the parking lot. Accordingly, Employer’s employees are not permitted to reduce their compensation by more than \$150.00 per month for qualified parking. The maximum allowable amount for exclusion as qualified parking per month under §132(f) is \$190.00 for 2003. See Rev. Proc. 2002-70, 2002-46 I.R.B. 845. Therefore, the requirement set out in § 1.132-9(b), Q&A-13 is satisfied.

Section 1.132-9(b), Q&A-14(b) requires compensation reduction elections to be made before the employee is “able currently to receive the cash or other taxable amount at the employee’s discretion The election must specify that the period for which the qualified transportation fringe will be provided must not begin before the election is made.” Additionally, section 1.132-9(b) Q&A-14(d) requires that the employee may not revoke a compensation reduction election after the employee is able currently to receive the cash or other taxable amount at the employee’s discretion or after the beginning of the period for which the qualified transportation fringe will be provided. Employer requires employees to elect to participate in the Arrangement prior to the one-month period to which the election relates. The election is irrevocable during the one-month period for which the qualified parking is provided. Therefore, section 1.132-9(b) Q&A-14 is satisfied.

Accordingly, because Employer’s parking plan meets the requirements of section 132(f) of the Code and section 1.132-9(b) of the Income Tax Regulations, the \$150 reduction of each employee’s salary through the Arrangement is excluded from gross income and excepted from “wages.” See IRC §§ 3121(a)(20), 3306(b)(16) and 3401(a)(19).

CONCLUSION

The parking benefit provided by Employer is qualified parking, under section 132(f) of the Code and the Arrangement meets the requirements set out in the section 1.132-9(b) of the Income Tax Regulations. Therefore, the \$150 reduction from each employee’s salary, through the Arrangement, is excluded from gross income, and not subject to income tax withholding, FICA or FUTA.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Lynne Camillo
Chief, Employment Tax Branch 2
Office of the Assistant Chief Counsel
(Exempt Organizations / Employment Tax / Government Entities)

cc: