



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

OFFICE OF THE CHIEF COUNSEL

July 26, 2013

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Attention: _____,

Dear _____:

This is in reply to your letter dated June 21, 2013, requesting that the Internal Revenue Service "adopt bike share as a qualifier for the Transportation (Commuting) Benefits program under the Fringe Benefit Exclusion Rules for transit".

Under section 132(a)(5) of the Internal Revenue Code, employers that provide their employees with transportation benefits can exclude those benefits from their employees' gross incomes if the benefits are "qualified transportation fringes" which are defined in section 132(f).

Under section 132(f)(1)(B), a qualified transportation fringe includes any transit pass. Under section 132(f)(5)(A), a "transit pass" is defined as any pass, token, farecard, voucher, or similar item (including an item exchangeable for fare media) that entitles a person to transportation on **mass transit facilities** (emphasis added) whether or not publicly owned. A bike share program is not a mass transit facility.

Under section 132(f)(1)(D), a qualified transportation fringe includes any qualified bicycle commuting reimbursement. Under section 132(f)(5)(F), a qualified bicycle commuting reimbursement means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair and storage, if such bicycle is regularly used for travel between the employer's residence and place of employment. Expenses incurred in using a bike share program are not expenses for the purchase of a bicycle or bicycle improvements, repair or storage.

Generally, employers can exclude qualified transportation fringe benefits from an employee's gross income even if they provide those benefits in place of pay. However, qualified bicycle commuting reimbursements cannot be excluded if employers provide them in place of pay. Section 132(f)(4), the provision which permits employees to reduce their taxable compensation in order to receive reimbursements for transit expenses on a pre-tax basis, does not apply to qualified bicycle commuting reimbursements. Specifically, section 132(f)(4) provides that "no amount shall be included in the gross income of an employee solely because the employee may choose between any qualified transportation fringe (**other than a qualified bicycle commuting reimbursement**) and compensation that would otherwise be includible in the gross income of such employee" (emphasis added).

Thus, allowing bike share programs to qualify as a pre-tax benefit under section 132 would require legislative action by Congress. Therefore, I have forwarded your suggestion to the Office of Tax Policy at the Treasury Department for consideration. The Office of the Assistant Secretary of the Treasury for Tax Policy is responsible for formulating the tax policies of the Department of Treasury.

I hope this information is helpful to you. This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2013-1, §2.04, 2013-1 IRB 1 (Jan. 2, 2013). If you have any additional questions, please contact _____ of my office at _____.

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2 (Exempt
Organizations/Employment Tax/Government
Entities)
(Tax Exempt & Government Entities)