



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

OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

I am replying to your letter dated April 02, 2014 to Commissioner Koskinen. You wrote about the relationship between the Internal Revenue Code (the Code) and regulations and recent _____) instructions. You indicate that _____ claims that the IRS has instructed _____ that if it provides free parking to its employees, the value of the free parking must be reported to the IRS as a taxable fringe benefit.

You indicated that _____ provides onsite parking to its employees. Because _____ is a _____ a taxpayer, the laws on disclosure of taxpayer information apply. As a taxpayer, _____ is entitled to the confidentiality of its return information under section 6103(a) of the Code. Therefore, we can only disclose return information if _____ consents to the disclosure. We can, however, provide the following general information on the taxation of employer provided parking.

The Code does not require that an employer provide any fringe benefits to its employees. However, it does provide for the federal income and employment tax consequences if an employer chooses to provide a fringe benefit to its employees.

Gross income means all income from whatever source derived, including compensation for services, including fees, commissions, fringe benefits, and similar items (Section 61(a)(1) of the Code). Consequently, a fringe benefit provided by an employer to an employee is presumed to be income to the employee, unless another section of the Code specifically excludes it from gross income.

Gross income does not include any benefit that is a "qualified transportation fringe" (Section 132(a)(5) of the Code). "Qualified transportation fringes" include qualified

parking (Section 132(f)(1)). Qualified parking is parking an employer provides on or near the business premises of the employer. It does not include any parking on or near the employee's home (Section 132(f)(5)(C)). Parking is provided by an employer if the following circumstances are met:

- Parking is provided on property that the employer owns or leases,
- Employer pays for the parking, or
- Employer reimburses the employee for parking expenses.

(Regulation section 1.132-9(b) Q/A 4(d)).

The amount excludable for qualified parking may not exceed \$175 per month (Section 132(f)(2) of the Code). This amount is indexed for inflation annually. For 2014, the indexed amount has been increased to \$250 per month (Rev. Proc. 2013-35, 2013-47 I.R.B. 537).

Federal Insurance Contributions Act (FICA) taxes, Federal Unemployment Tax Act (FUTA) taxes, and federal income tax withholding are imposed on "wages."¹ Wages do not include any benefits provided to an employee if at the time the benefit is provided it is reasonable to believe the employee would be able to exclude the benefit under section 132 (Sections 3121(a)(20), 3306(b)(16), and 3401(a)(19) of the Code).

Regulation section 1.132-9(b) Q/A 8 states that generally an employee must include in gross income the amount by which the fair market value of the benefit exceeds the amount paid by the employee, if any, and any amount excluded from gross income under section 132(a)(5). Q/A 8 further states that if an employer provides an employee with a qualified transportation fringe that exceeds the monthly limit and the employee does not make any payment, the value of the benefits provided that exceed the monthly limit must be included in the employee's wages for income and employment tax purposes.

I hope this information is helpful. If you have any questions, please contact
of my staff at .

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
Office of the Division Counsel/Associate Chief
Counsel (Tax Exempt & Government Entities)

¹ Wages paid to federal employees are not subject to FUTA tax (section 3306(c)(6)).