



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable John P. Sarbanes
U.S. House of Representatives
Washington, DC 20515

Attention:

Dear Representative Sarbanes:

I am responding to your inquiry dated January 12, 2016, on behalf of your constituent, . wrote asking for guidance from the IRS about the use of debit cards for the pre-tax public transportation benefit.

First, the monthly tax-free exclusion limit for transit passes for 2016 is \$255. This may be sufficient to allow to purchase a MARC train ticket with one form of payment, and therefore a transit pass may in fact be readily available in her case.

As a general matter, we cannot provide binding legal advice to taxpayers unless they request a private letter ruling as described in Revenue Procedure 2016-1, 2016-1 Internal Revenue Bulletin 1. However, I may provide the following general information.

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, we presume a fringe benefit provided by an employer to an employee 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 any transit pass [section 132(f)(1)(B)].

A transit pass is any pass, token, farecard, voucher or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is on mass transit facilities or is provided by any person in the business of transporting persons for compensation or hire in a commuter highway vehicle [section 132(f)(5)(A)].

A qualified transportation fringe includes cash reimbursement for transit passes, provided the reimbursement is made under a bona fide reimbursement arrangement. However, cash reimbursement for transit passes under a bona fide reimbursement plan is only allowed if no voucher or similar item which may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees [sections 132(f)(3) and 1.132-9(b) Q/A 16(a),Q/A-16(b)].

A transit system voucher is an instrument, which may be purchased by employers from a voucher provider, accepted by one or more mass transit operators (for example, train, subway, and bus) in an area either as fare media or in exchange for fare media [section 1.132-9(b) Q/A-16(b)(2)].

A voucher provider is any person in the trade or business of selling transit system vouchers to employers or any transit system or transit operator that sells vouchers to employers for the purpose of direct distribution to employees [section 1.132-9(b) Q/A-16(b)(3)]. The requirement that a voucher be distributed in-kind by the employer is satisfied if the voucher is distributed by another person on behalf of the employer [section 1.132-9(b) Q/A-16(b)(1)].

A voucher or similar item is readily available for direct distribution by an employer to employees if and only if the employer can get it from a voucher provider that does not impose fare media charges greater than 1 percent of the average annual value of the voucher for a transit system, and does not impose other restrictions causing the voucher not to be readily available [section 1.132-9(b) Q/A-16(b)(4)].

Rev. Rul. 2006-57, 2006-47 I.R.B. 911, provided guidance on the use of smartcards, debit cards, or other electronic media to provide employees with transportation fringe benefits. One type of debit card discussed in Rev. Rul. 2006-57 was terminal-restricted debit cards, which are debit cards that are restricted for use only at merchant terminals at points of sale at which only fare media for local transit systems is sold. While terminal-restricted debit cards could qualify as a transit pass in 2006, other types of debit cards did not. Rev. Rul. 2006-57 provided that, as use of terminal-restricted debit cards increased, the IRS intended “to issue guidance clarifying under what situations the [terminal-restricted debit] cards are considered to be readily available and thus preclude cash reimbursement for transit benefits.” In the interim, Rev. Rul. 2006-57 provided that the IRS would not challenge the ability of employers to provide qualified transportation fringes in the form of cash reimbursement for transit passes when the only available voucher or similar item was a terminal-restricted debit card.

In Notice 2012-38, 2012-24 I.R.B. 1014, the IRS requested comments on issues surrounding an employer's provision of transit benefits in light of changes in technology since the publication of Rev. Rul. 2006-57.

Rev. Rul. 2014-32 modified and superseded Rev. Rul. 2006-57 to account for technological changes in the debit card industry since 2006. Based on comments received in response to Notice 2012-38, the IRS concluded that terminal-restricted debit cards are now widely used and generally available for purchase by employers subject to terms and costs that are similar to other forms of electronic media. Thus, beginning after December 31, 2015, employers are no longer permitted to provide qualified transportation fringe benefits in the form of cash reimbursement in geographic areas where the only readily available voucher or similar item is a terminal-restricted debit card. Cash reimbursement is also not allowed in geographic areas where other readily available debit cards (in other words, debit cards that are not terminal-restricted debit cards) qualify as a transit passes.

Thus, the prohibition against cash reimbursement for transit passes under a bona fide reimbursement plan only applies if a voucher or similar item that may be exchanged only for a transit is readily available for direct by the employer to employees. It is a factual determination whether a voucher or similar item is readily available. It is possible that a voucher would not be readily available due to purchase restrictions imposed by the voucher provider similar to the one your constituent describes. In such cases, cash reimbursement under a bona fide reimbursement plan would not be prohibited.

I hope this information is helpful. If you have any additional questions, please contact me at or at .

Sincerely,

Lynne A. Camillo
Branch Chief, Employment Tax Branch 2
(TE/GE Associate Chief Counsel)