



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

OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

This letter responds to your inquiry to Commissioner Koskinen dated August 07, 2016. You indicate that prior to 2016, the third party administrator for your employer's transit benefit program allowed bona fide cash reimbursements for commuting expenses. The third party administrator has indicated that it could no longer accept claims for cash reimbursement after December 31, 2015, and that you (and other employees) must therefore use a contribution-funded debit card to pay for your mass transit expenses.

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 does not include any benefit that is a "qualified transportation fringe" [Section 132(a)(5) of the Internal Revenue 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* (emphasis added) [Section 132(f)(5)(A) and Income Tax Regulations section 1.132-9(b) Q/A 16(a), Q/A-16(b)].

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. 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.

Rev. Rul. 2014-32 modified and superseded Rev. Rul. 2006-57 by providing that 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 a terminal-restricted debit card is readily available, even if that is the only voucher or similar item that is readily available. Cash reimbursement is also not allowed in geographic areas where other readily available debit cards (i.e., debit cards that are not terminal-restricted debit cards) qualify as transit passes.

The prohibition against cash reimbursement for transit passes only applies if a voucher or similar item which may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees. It is a factual determination whether a voucher or similar item that may be exchanged only for a transit pass is readily available. In cases where a voucher or similar item that may be exchanged only for a transit pass is not readily available, cash reimbursement under a bona fide reimbursement plan would be allowed.

The situations described in your letter do not appear to indicate a voucher or similar item that may be exchanged only for a transit pass is not readily available. Rather, the situations described in your letter appear to indicate that employees have failed to use the debit card, which we assume qualifies as a voucher that may be exchanged only for a transit pass.

We note that the law does not require that an employer provide any transit fringe benefits to its employees. The Internal Revenue Code (Code) merely provides for the federal income and employment tax consequences if an employer chooses to provide a transit fringe benefit. In addition, while section 132(f) does list the requirements necessary for employer-provided transit fringe benefits to be excluded from income and employment taxes, employers are free to impose additional restrictions [See Regulation section 1.132-9 Q/A 19]. Thus, even in cases in which a bona fide cash reimbursement is allowed under the Code; the Code does not require an employer to implement a bona fide cash reimbursement arrangement in that case.

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. 2016-1, §2.04. If you have any additional questions, please contact our office at

Sincerely,

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