



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Mike Kelly
Member, U.S. House of Representatives
33 Chestnut Avenue
Sharon, PA 16146

Attention:

Dear Representative Kelly:

I am responding to your inquiry dated February 16, 2018, on behalf of your constituent, . wrote about the commuter benefit plan which he uses to pay for his commuting costs on a pre-tax basis.

Specifically, explained he commutes using a commuter system that, until recently, only accepted cash for commuter tickets. In the past, a third-party administrator provided cash reimbursements for his commuting costs. further explained that in February 2016, the third-party administrator told him cash reimbursements were no longer an option and employees had to use a contribution-funded debit card to purchase their commuter tickets. asked if IRS could make an exception to allow reimbursement of the \$405 he incurred before administrators told him about Revenue Ruling 2014-32 changes.

I am sorry to hear of the difficulties has encountered. We can only address the federal tax treatment of transit benefits provided to employees. We cannot address, for example, specific circumstances or the sufficiency of a third-party administrator's communications about changes to the applicable rules.

In addition, we cannot provide binding legal advice to taxpayers unless they request a private letter ruling as described in Revenue Procedure 2018-1, 2018-1 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 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 [Internal Revenue Code sections 132(f)(5)(A) and 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. Rev. Rul. 2014-32 provided 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 qualify as transit passes. For example, such debit cards include those restricted for use only at merchants that have been assigned a merchant category code indicating that the merchant sells fare media.

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, or a third-party administrator, 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.

Considering the facts described in his letter, it is not clear whether a voucher or similar item that may be exchanged only for a transit pass is readily available to the employer or when such an item became readily available. For example, it is conceivable that the employer or third-party administrator could purchase ticket books directly from the commuter company for distribution to the employee. The fact that the commuter company accepted only cash does not cause the commuter tickets to not be readily available to the employer for direct distribution to the employee. However, if other restrictions cause the commuter tickets not to be considered readily available, then cash reimbursement under a bona fide reimbursement arrangement would not be prohibited [section 1.132-9(b) Q/A-16(b)(4)]. It is also possible that the debit card referred to in his letter may have qualified as a transit pass under the IRS guidance.

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

Sincerely,

Victoria A. Judson
Associate Chief Counsel
(Tax Exempt and Government Entities)