

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to:

from: Lynne Camillo
Branch Chief, Employment Tax Branch 2
Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and
Employment Taxes) CC:EEE:EOET:ET2

subject: Taxability of cash reimbursements for malfunctioning transit passes

This is in response to your question concerning the taxability of certain cash reimbursements by the _____ for transit benefits under the _____ program. For the reasons stated below, for newly hired or returning seasonal transit pass (_____) users, we think that cash reimbursements may be, under appropriate circumstances, properly viewed as a qualified transportation fringe under section 132(f). However, any cash reimbursements for transit pass users with malfunctioning cards are not qualified transportation fringe benefits, are included in the employees' income, and are included in wages subject to FICA, FUTA, and income tax withholding.

Revenue Ruling 2014-32, 2014-2 C.B. 917, provides guidance on the use of smartcards, debit or credit cards, or other electronic media to provide qualified transportation fringe benefits to employees. MCC-restricted debit cards constitute "transit passes" within the meaning of section 132(f)(5)(A) and Treas. Reg. § 1.132-9(b), Q/A-3 as long as the value stored on the cards is usable only as fare media for transit systems or to purchase only fare media for transit systems. Both the _____ debit card and the _____ card constitute "transit passes" within the meaning of section 132(f)(5)(A) and Treas. Reg. § 1.132-9(b) Q/A-3 because the value stored on the cards

is usable only as fare media for transit systems or to purchase fare media for transit systems.

The [redacted] is required to use the [redacted] debit card and the [redacted] card in lieu of cash reimbursement to provide transit benefits to its employees as long as the [redacted] card and the [redacted] debit card are readily available within the meaning of section 132(f)(3) and Treas. Reg. § 1.132-9(b) Q/A-16(b). Treas. Reg. § 1.132-9(b) Q/A-16(b)(4) and (b)(6) provide that a voucher or similar item is “readily available” for direct distribution by the employer to employees if and only if the employer can obtain it from a provider that does not impose “restrictions” that “effectively prevent the employer from obtaining vouchers for distribution to employees.” Examples of nonfinancial restrictions that effectively prevent the employer from obtaining vouchers appropriate for distribution to employees include advance purchase requirements, purchase quantity requirements, and limitations on denominations of vouchers that are available. See Treas. Reg. § 1.132-9(b) Q/A-16(b)(5) and (b)(6). Treas. Reg. § 1.132-9(b) Q/A-16 and the language in section 132(f)(3) are focused on the availability of vouchers to the employer for distribution to employees, not subsequent use by the employee once they are distributed. See also 66 FR 2241-01 (2001) (stating that the proposed regulations under section 132(f) focused on an employer’s administrative costs relating only to fees paid to fare media providers in determining whether transit passes were readily available. However, nonfinancial restrictions causing a voucher or similar item not to be readily available were added to the final regulations in response to commentators representing employers). Thus, if the relevant transit system imposes timing delays on the purchase or distribution of transit passes because of the transit system’s agreement with the employer, this may be viewed as a restriction that effectively makes the vouchers or transit passes not readily available to the employer for distribution to employees.

Voucher providers may impose a timing delay on the purchase of transit passes by the [redacted] for its employees’ use. For example, the voucher provider may require the [redacted] to only enroll new participants on a certain day of the month. Similarly, voucher providers may require a certain amount of time to prepare and issue a voucher/debit card to new employees and this may prevent the [redacted] from providing the voucher to the employee immediately when the employee begins work. It’s possible that other circumstances may exist under which the voucher provider delays the provision of a transit pass to the [redacted] for providing to its employees. Under these limited circumstances, provided that the substantiation procedures in Treas. Reg. § 1.132-9(b), Q/A-16(c) are satisfied, the [redacted] may provide qualified transportation fringe benefits through cash reimbursements.

However, when an employer provides a [redacted] or [redacted] card to the employee, the benefit is considered provided.¹ Accordingly, malfunctions in the card (e.g., chip

¹ If the [redacted] or [redacted] card provided to the employer by the voucher provider (and subsequently distributed by the employer to the employee) is not a functioning card, thereby creating a delay caused by the voucher provider in the distribution of a functioning card, we believe that situation may also be acceptably viewed as one in which the transit pass or voucher was not readily available for distribution. Accordingly, provided that

stops working) or malfunctions in the system reading the card (e.g., card reader goes down during commute) do not mean that the transit pass was not readily available to the employer for distribution within the meaning of section 132(f)(3). One would expect in these circumstances that the employee would contact the transportation provider to have the malfunction remedied or to provide the transportation. Since the employee has a valid card, it would be the transportation system's responsibility to honor the card and address possible technical malfunctions. The card need only entitle the employee to the benefit, and there is no requirement in the Code and its regulations that the employee ultimately avail him or herself of the transit benefit or that the benefit be available at any time for the employee's use. For example, if an employee missed the van pool and was not able to recuperate the lost trip, the voucher for the van pool rides would still have been provided.² Thus, cash reimbursements for expenses incurred in the use of transit due to malfunctioning cards or systems are not qualified transportation fringe benefits, and the value of any cash reimbursements provided for such expenses is included in the employee's income and is included in wages subject to FICA, FUTA, and income tax withholding.

Please call (202) 317-4774 if you have any further questions.

the substantiation procedures in Treas. Reg. § 1.132-9(b), Q/A-16(c) are satisfied, the may provide qualified transportation fringe benefits through cash reimbursements.

² We do note, however, that the benefits on the card will often remain available for subsequent use, at least within a certain time period.