



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

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The Honorable Tim Kaine
United States Senate
121 Russell Road, Suite 2
Abingdon, VA 24210

Attention:

Dear Senator Kaine:

I am responding to your inquiry dated September 22, 2021, on behalf of your constituent, . She asked if she could receive a cash refund of her unused transportation benefits. These benefits accumulated in her transit benefit account due to a decrease in commuting during the COVID-19 pandemic.

While I can't provide information specific to case, I hope the following information is helpful. Please note, the information in this letter does not constitute a ruling and it is intended for informational purposes only.

Employees can exclude from their gross income employer-provided transportation benefits if the benefits are "qualified transportation fringes" under Sections 132(a)(5) and 132(f) of the Internal Revenue Code. The term "qualified transportation fringe" refers to any of the following that an employer provides to an employee:

- Transportation in a commuter highway vehicle in connection with travel between the employee's residence and place of employment;
- Any transit pass; and
- Qualified parking.

An employer can provide qualified transportation fringes to employees either as a benefit provided in addition to an employee's regular compensation or under a compensation reduction agreement.¹ In a compensation reduction agreement, an employee agrees to contribute pre-tax earnings into an account the employee can use

¹ Treas. Reg. Section 1.132-9(b) Q/A-11.

to pay for qualified transportation fringe benefits. Pre-tax earnings contributed under a compensation reduction agreement may only be disbursed to the employee for reimbursement of qualified transportation expenses.²

Participation in a compensation reduction agreement is completely voluntary. However, as stated above, once the employee has agreed to reduce their compensation to pay for qualified transportation fringe benefits, the employee can't receive that compensation as a cash refund. Instead, the employee is only entitled to receive nontaxable qualified transportation fringe benefits.

If an employee has a choice between cash compensation or an employer-provided benefit, the law treats the benefit as provided directly by the employer rather than purchased by the employee. This treatment allows the employee to exclude the value of the benefit from income for tax purposes. If the employee could choose to receive the benefits at any time in the form of cash rather than qualified transportation fringe benefits, the law would treat the employee as constructively receiving the benefits as compensation and tax the employee on the full value.

An employer may only provide qualified transportation fringe benefits to individuals who are current employees at the time the benefits are provided.³ Employers cannot continue providing qualified transportation fringe benefits to individuals who no longer are employees. This rule applies regardless of whether the benefits are provided in addition to an employee's regular compensation or under a compensation reduction agreement.

When an employee is terminated, compensation reduction amounts are not refundable to the employee unless they are provided as reimbursement for qualified transportation expenses incurred prior to the employee's termination.⁴ This rule applies even though the employee's contributions may exceed the actual qualified transportation benefits the employer provided to the employee. This rule also does not distinguish between employees who are involuntarily terminated and those that leave their employment voluntarily.

² Treas. Reg. Section 1.132-9(b) Q/A-14(d).

³ Treas. Reg. Section 1.132-9(b) Q/A-5.

⁴ Treas. Reg. Section 1.132-9(b) Q/A 14(d).

I hope this information is helpful. If you need more information, please contact me or
, at .

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and
Employment Taxes)