



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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CONEX-123815-24

The Honorable Jamaal Bowman, EdD
Member, U.S. House of Representatives
6 Gramatan Avenue, Suite 205
Mount Vernon, NY 10550

Attention:

Dear Representative Bowman:

I'm responding to your December 5, 2023 inquiry on behalf of your constituent, . Your constituent asked if it was possible to retrieve unused funds in a transportation flexible spending account. She explained that COVID-19 first prevented her from commuting and then changed her commuting routine such that she no longer has reimbursable commuting expenses.

For purposes of responding to your inquiry, we assume that what your constituent refers to as a transportation flexible spending account are amounts of qualified transportation fringe benefits received through compensation reduction agreements. Qualified transportation fringe benefits are not qualified benefits under a Section 125 cafeteria plan and are not part of a flexible spending account.

As we will explain below, funds designated as qualified transportation fringe benefits must be used on qualifying commuting activity and cannot be refunded to an employee for any other reason.

Generally, we cannot provide binding legal advice to taxpayers unless they request a private letter ruling as described in Revenue Procedure 2023-1, 2023-1 I.R.B. 1. However, I can provide the following general information on qualified transportation fringe benefits under Section 132(f) of the Internal Revenue Code (Code).

Section 61(a)(1) of the Code provides that gross income means all income from whatever source derived, including compensation for services, including fees,

commissions, fringe benefits, and similar items. Therefore, we consider a fringe benefit provided by an employer income to an employee unless another section of the Code specifically excludes it from gross income. Section 132(a)(5) generally provides that gross income does not include any fringe benefit that constitutes a qualified transportation fringe.

Section 132(f)(1) defines qualified transportation fringes to include: transportation in a commuter highway vehicle between the employee's residence and place of employment, any transit pass, and qualified parking.

According to Section 132(f)(2), the amount of qualified transportation fringe benefits that an employer provides to an employee that can be excluded from gross income cannot exceed a maximum monthly dollar amount adjusted for inflation. The adjusted maximum monthly excludable amount for 2023 is \$300 per month for qualified parking and \$300 for transit passes and van pooling. An employee can be provided both benefits for a total of \$600 per month.

An employer may provide qualified transportation fringes as a supplement to an employee's compensation, either in kind or through a bona fide reimbursement arrangement, as described in Section 1.132-9, Q/A-16 of the Treasury Regulations.

Additionally, Section 132(f)(4) provides that employers may provide qualified transportation fringes through compensation reduction agreements. In a compensation reduction agreement, employees may designate a portion of the amount they otherwise would receive as compensation to fund qualified transportation fringe benefits provided by their employer. The compensation reduction is excluded from an employee's income and wages for federal tax purposes if the employee uses the compensation reduction amount exclusively to fund qualified transportation fringe benefits.

According to Section 1.132-9 Q/A-11 through 15, an employee may cancel a compensation reduction agreement at any time during the year as long as the cancellation is made before the employee is able to currently receive the compensation and before the beginning of the period the qualified transportation fringe will be provided.

According to Section 1.132-9, Q&A 14(d), the regulations specify that amounts set aside under a compensation reduction agreement are not refundable other than by payment of another qualified transportation fringe under the employer's plan.

According to Section 1.132-9, Q&A 15, when an employee elects to reduce their compensation for a month by an amount that exceeds the qualified transportation fringe benefits actually provided in that month, the employer may apply this excess towards qualified transportation fringe benefits in subsequent months.

Additionally, an employee is permitted to use the unused amounts for other qualified transportation fringe benefits offered under the employer's plan, such as qualified

parking, as long as the fringe benefits satisfy all other requirements outlined in Section 1.132-9 of the regulations and the unused amounts do not exceed the maximum monthly limitation for the respective qualified transportation fringe benefit.

According to Section 1.132-9(b) Q/A-16, cash reimbursements by an employer to an employee for expenses related to qualified parking must be made under a bona fide reimbursement arrangement that satisfies substantiation requirements. However, according to Section 1.132-9(b) Q/A-18, there are no employee substantiation requirements in the case of transit passes.

We hope this information is helpful. If you have any questions, please contact me or
, general attorney, of my staff at .

Sincerely,

Jason Healey
Branch Chief, Employment Tax Branch 2
Office of the Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Tax)