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DEPARTMENT OF THE TREASURY

Internal Revenue Service (IRS)

26 CFR Parts 1 and 602

[TD 8933]
RIN 1545-AX33

Qualified Transportation Fringe Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations relating to qualified **transportation fringe** benefits. These final regulations provide rules to ensure that **transportation** benefits provided to employees are excludable from gross income. These final regulations reflect changes to the law made by the Energy Policy Act of 1992, the Taxpayer Relief Act of 1997, and the **Transportation** Equity Act for the 21st Century. These final regulations affect employers that offer qualified **transportation** fringes and employees who receive these benefits.

DATES: Effective Date: These regulations are effective January 11, 2001.

Applicability Date: For dates of applicability, see Sec. 1.132-9(b), Q/A-25.

FOR FURTHER INFORMATION CONTACT: John Richards, (202) 622-6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget

in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1676. Responses to this collection of information are mandatory to obtain the benefit described under section 132(f).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimated average annual recordkeeping burden per recordkeeper is 26.5 hours. The estimated annual reporting burden per respondent is .8 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 (Income Tax Regulations). On January 27, 2000, a proposed regulation (REG-113572-99) relating to qualified **transportation** fringes was published in the Federal Register (65 FR 4388). A public hearing was held on June 1, 2000. Written or electronic comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

In general, comments received on the proposed regulations were favorable and, accordingly, the final regulations retain the general structure of the proposed regulations, including the question and answer format and a variety of examples illustrating the substance of the final regulations. However, commentators made a number of specific recommendations for modifications and clarifications of the regulations. In response to these comments, the final regulations incorporate the modifications and clarifications described below.

A. Whether Vouchers are Readily Available

Section 132(f)(3) provides that qualified **transportation** fringes include cash reimbursement for transit passes `` only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the

employee." Thus, if vouchers are readily available, the employer must use vouchers and cash reimbursement of a mass transit expense would not be a qualified **transportation fringe**.

Most of the comments received addressed the issue of whether vouchers are "readily available." Commentators representing employers generally favored rules permitting cash reimbursement. Commentators representing transit operators and voucher providers generally favored rules not permitting cash reimbursement. The following discusses three issues raised by commentators: first, whether the proposed regulations' 1 percent safe harbor should be retained; second, whether internal administrative costs should be considered in applying the 1 percent test; and third, whether other nonfinancial restrictions should be considered in determining whether vouchers are readily available.

1. The 1 Percent Safe Harbor

Under Notice 94-3, 1994-1 C.B. 327, and the proposed regulations, a voucher is readily available if an employer can obtain it on terms no less favorable than those available to an individual employee and without incurring a significant administrative cost. Under the proposed regulations, administrative costs relate only to fees paid to fare media providers, and the determination of whether obtaining a voucher would result in a significant administrative cost is made with respect to each transit system voucher. The proposed regulations provide a rule under which administrative costs are treated as significant if the average monthly administrative costs incurred by the employer for a voucher (disregarding delivery charges imposed by the fare media provider to the extent not in excess of \$15 per order) are more than 1 percent of the average monthly value of the vouchers for a system.

Commentators, in particular those representing fare media providers and transit operators, suggested that the fare media provider fee percentage causing vouchers to not be readily available should be raised because many fare media providers charge fees in excess of the 1 percent limit and, thus, under this

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test, transit vouchers would not be considered readily available in some large metropolitan areas. These commentators assert that the 1 percent test is therefore contrary to the intent of the statute. Commentators suggested that the 1 percent test, particularly if combined with inadequate cash reimbursement substantiation requirements, may result in taxpayer abuse, with the result that the benefit might not be used for the purpose for which it is intended, which is to increase the use of mass transit. In addition, commentators testified at the public hearing that the mandatory use of vouchers (with no ability to use cash reimbursement if vouchers are readily available) would increase the use of vouchers and promote the development of advanced technologies that minimize the burden on employers while ensuring that the benefit is used for mass transit. These new technologies might allow an employer to make payment directly

to the transit operator, who in turn credits fare to the employee's magnetic media fare card, thus eliminating the need for employers to incur the expense of distributing vouchers.

Other commentators, in particular groups representing employers, generally favored the 1 percent test, but suggested that internal costs be considered in applying the test (discussed below). These commentators took the position that an increase in the percentage might affect the market charge for such services. There was also a concern that a strict voucher-use requirement would result in fewer employers adopting transit pass programs, thus frustrating the purpose of section 132(f) to increase the use of mass transit.

The final regulations retain the 1 percent test. The 1 percent test, applicable for years beginning after December 31, 2003, is appropriate in light of the rule (discussed below) that only voucher provider fees are considered in determining availability. It is intended that the delayed application of this rule would provide sufficient time for those affected by this rule to modify their systems and procedures appropriately. The 1 percent threshold, coupled with the exclusion of internal administrative costs from the readily available determination, represents a balanced approach that will promote the growth of voucher programs in most **transportation** areas. In addition, raising the percentage threshold could curtail the growth in transit benefit programs, which would be contrary to the goal of increasing the use of mass transit. Finally, in cases where cash reimbursement is allowed, adequate substantiation requirements will ensure that transit pass benefits will actually go toward mass **transportation** usage. In this regard, the proposed regulations provide that employers must implement reasonable procedures to ensure that an amount equal to the reimbursement was incurred for transit passes. For example, the final regulations clarify that in circumstances when employee certification is a reasonable reimbursement procedure, it must occur after the expense is incurred.

The final regulations also clarify the application of the 1 percent rule if multiple vouchers for a transit system are available for distribution by an employer to employees, and if multiple transit system vouchers are required in an area to meet the transit needs of an employer's employees. The final regulations provide that if multiple transit system vouchers are available for direct distribution to employees, the employer must consider the lowest cost voucher for purposes of determining whether the voucher provider fees cause vouchers to not be readily available. However, if multiple vouchers are required in an area to meet the transit needs of the individual employees in that area, the employer has the option of averaging the costs applied to vouchers from each system for purposes of determining whether the voucher provider fees cause vouchers to not be readily available.

2. Internal Administrative Costs

Several commentators representing employers recommended that, in addition to fare media provider fees, internal administrative costs,

especially security and distribution costs, should be considered in determining whether vouchers are readily available. These commentators noted that administrative costs are increased when an employer must maintain both a voucher system and a reimbursement system to provide qualified transportation fringes. For example, the employer may maintain a cash reimbursement system for transportation in a commuter highway vehicle and qualified parking, and also maintain a voucher system for transit passes. In addition, several commentators suggested that the increased costs and administrative burden for employers that maintain offices in multiple cities should also be considered in determining whether vouchers are readily available.

The final regulations retain the test considering only fees paid to voucher providers in determining availability based on a plain reading of the terms of the statute. The language "readily available for direct distribution by the employer to the employee" under section 132(f)(3) in its plain, ordinary sense means that vouchers are easily obtainable for direct distribution to the employer's employees. The determination of availability bears no relationship with costs that may be incurred after vouchers have been obtained. The service fees charged by voucher providers and delivery costs can reasonably be viewed as affecting whether vouchers are easily obtainable; an employer's internal costs of subsequently administering a voucher program would not. Thus, based upon the plain language of section 132(f), internal administrative costs do not affect whether vouchers are readily available.

Moreover, the test considering only voucher provider fees is a comparatively simple bright line test. A test that depends on the employer's internal administrative costs would necessarily be complex, requiring complex rules that would be difficult for employers to apply.

3. Other Nonfinancial Restrictions

Commentators representing employers suggested that nonfinancial factors should be considered in determining whether vouchers are readily available. They suggested that factors such as whether there are reasonable advance purchase and minimum purchase requirements, and whether vouchers can be purchased in appropriate denominations, should be considered in determining availability. The final regulations adopt this suggestion because nonfinancial restrictions would reasonably affect whether vouchers are available for distribution by an employer to an employee.

The final regulations provide guidance on the types of nonfinancial restrictions that cause vouchers to not be readily available. The final regulations provide that certain nonfinancial restrictions, such as a voucher provider not making vouchers available for purchase at reasonable intervals or failing to provide the vouchers within a reasonable period after receiving payment for the voucher, cause vouchers to not be readily available. In addition, if a voucher provider does not provide vouchers in reasonably appropriate quantities, or in reasonably appropriate denominations, vouchers may not be readily available.

When and as the standards in these final regulations go into effect, they will supercede the current law standards in Notice 94-3.

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B. Advance Transit Passes

Commentators suggested that the administrability of transit pass programs would be improved if vouchers were permitted to be distributed in advance for more than one month. The final regulations adopt this suggestion.

In October of this year, the IRS issued Announcement 2000-78 (2000-43 I.R.B. 428) to notify taxpayers that, when finalized, the regulations will clarify that transit passes may be distributed in advance for more than one month (such as for a calendar quarter) by taking into account the monthly limits for all months for which the transit passes are distributed. The announcement further provides, however, that if an employee receives advance transit passes, and the employee's employment terminates before the beginning of the last month of the period for which the transit passes were provided, the employer must include in the employee's wages, for income and for employment tax purposes (FICA, FUTA, and income tax withholding), the value of the passes provided for those month(s) beginning after the employee's employment terminates to the extent the employer does not recover those transit passes or the value of those passes. The announcement provides that pending the issuance of these final regulations, employers may rely on the announcement.

The final regulations differ from the announcement in one respect. In any case in which transit passes are provided in advance for a period of no more than three months (such as for a calendar quarter), but the recipient ceases to be an employee before the beginning of the last month in that period, the final regulations provide that the value of a transit pass provided in advance for a month is excluded from wages for employment tax (FICA, FUTA, and income tax withholding) purposes (but not for income tax purposes) unless at the time the transit passes were distributed there was an established termination date that was before the beginning of the last month of that period and the employee does in fact terminate employment before the beginning of the last month of that period.

C. Qualified Parking

The final regulations address whether reimbursement paid to an employee for parking at a work location away from the employee's permanent work location is excludable from wages for income and employment tax purposes under section 132(f). Section 132(f)(5)(C) defines qualified parking, in part, as "parking provided to an employee on or near the business premises of the employer * * * ." The final regulations provide that qualified parking includes parking on or

near a work location at which the employee performs services for the employer. However, qualified parking does not include reimbursement for parking that is otherwise excludable from gross income as a reimbursement treated as paid under an accountable plan under Sec. 1.62-2 of the Income Tax Regulations, or parking provided in kind to an employee that is excludable from the employee's gross income as a working condition fringe under section 132(a)(3). Thus, if the exclusion at Sec. 1.62-2 or section 132(a)(3) is available (even if not reimbursed by the employer), then section 132(f) does not apply.

Whether a reimbursement for local **transportation** expenses, including parking at a work location away from the employee's permanent work location, is excludable from the employee's gross income under Sec. 1.62-2, or whether parking provided in kind to an employee is excludable from the employee's gross income under section 132(a)(3), is determined based upon whether the parking expenses would be deductible if paid or incurred by the employee under section 162(a) as an expense incurred in the employee's trade or business of being an employee for the employer. Secs. 1.62-2(d); 1.132-5(a)(2). Revenue Ruling 99-7 (1999-1 C.B. 361) addresses under what circumstances daily **transportation** expenses, including parking, incurred by a taxpayer in going between the taxpayer's residence and a work location are deductible by the taxpayer under section 162(a).

The final regulations provide the minimum requirements to ensure that **transportation** benefits are qualified **transportation** fringes under section 132(f). An employer may have a transit benefit program that is more restrictive than a program meeting the minimum requirements under the regulations. In addition, these regulations do not affect the application of authorities outside the Internal Revenue Code which may restrict a **transportation** benefit program. Federal Government agencies, for example, may be required by other federal law to implement restrictions beyond those required under these regulations.

D. Applicability Date

The regulations are generally applicable for taxable years beginning after December 31, 2001. However, in order to provide a transition period for those affected by the 1 percent rule (described under "The 1 percent safe harbor" in this preamble), that rule is applicable for taxable years beginning after December 31, 2003.

Effect on Other Documents

The following document is obsolete as of January 11, 2001: Announcement 2000-78 (2000-43 I.R.B. 428).

The following document is modified as of the date these regulations become applicable (see Q/A-25): Notice 94-3 (1994-1 C.B. 327).

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. A final regulatory flexibility analysis has been prepared for the collection of information in this Treasury decision under 5 U.S.C. 604. A summary of the analysis is set forth in this preamble under the heading "Summary of Final Regulatory Flexibility Analysis."

Summary of Final Regulatory Flexibility Analysis

This analysis is required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). The collection of information under this rule is based upon the requirements under section 132(f). We estimate that approximately 265,000 employers that provide qualified **transportation** fringes to their employees will be affected by the recordkeeping requirements of this rule. None of the comments received in response to the notice of proposed rulemaking specifically addressed the initial regulatory flexibility analysis.

Section 132(f)(3) provides that qualified **transportation** fringes may be provided in the form of cash reimbursement. The legislative history indicates that an employer providing cash reimbursement to the employer's employees for qualified **transportation** fringes must establish a bona fide reimbursement arrangement. As a condition to providing cash reimbursement for qualified **transportation** fringes, this rule provides that employers must receive substantiation from employees. The objective of this rule is to ensure that reimbursements are made for qualified **transportation** fringes.

Whether an arrangement constitutes a bona fide reimbursement arrangement varies depending on the facts and circumstances, including the method or

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methods of payment utilized within a mass transit system. An employee certification in either written or electronic form may be sufficient depending upon the facts and circumstances. For example, if receipts are not provided in the ordinary course of business, such as with respect to metered parking or used transit passes that cannot be returned to the user, an employee certification that expenses have been incurred constitutes a reasonable reimbursement procedure. A certification that expenses will be incurred in the future, by itself, is not a reasonable reimbursement procedure. There are no particular professional skills required to maintain these records.

In addition, section 132(f)(4) provides that an employee may choose between cash compensation and qualified **transportation** fringes. This rule provides that an employer may allow an employee the choice to receive either a fixed amount of cash compensation at a specified

future date or a fixed amount of qualified **transportation** fringes to be provided for a specified future period (such as qualified parking to be used during a future calendar month). This rule provides that employers must keep records with respect to employee compensation reduction elections. An employee's election must be in writing or some other permanent and verifiable form, and include the date of the election, the amount of compensation to be reduced, and the period for which the qualified **transportation** fringes will be provided. The objective of this rule is to ensure against recharacterization of taxable compensation after it has been paid to the employee. There are no particular professional skills required to maintain these records.

A less burdensome alternative for small organizations would be to exempt those entities from the recordkeeping requirements under this rule. However, it would be inconsistent with the statutory provisions and legislative history to exempt those entities from the recordkeeping requirements imposed under this rule.

This rule provides several options which avoid more burdensome recordkeeping requirements for small entities. This rule provides that (1) there are no substantiation requirements if the employer distributes transit passes in kind; (2) a compensation reduction election may be made electronically; (3) an election to reduce compensation may be automatically renewed; (4) an employer may provide for deemed compensation reduction elections under its qualified **transportation fringe** benefit plan; and (5) a requirement that a voucher be distributed in-kind by the employer is satisfied if the voucher is distributed by the employer or by another person on behalf of the employer (for example, if a transit operator credits amounts to the employee's fare card as a result of payments made to the operator by the employer).

Drafting Information

The principal author of these regulations is John Richards, Office of the Assistant Chief Counsel (Exempt Organizations/Employment Tax/Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.132-0 is amended by:

1. Adding an entry for Sec. 1.132-5(p)(4)
2. Adding entries for Sec. 1.132-9.

The additions read as follows:

Sec. 1.132-0 Outline of regulations under section 132.

* * * * *

Sec. 1.132-5 Working condition fringes.

* * * * *

(p) * * *

(4) Dates of applicability.

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Sec. 1.132-9 Qualified transportation fringes.

(a) Table of contents.

(b) Questions and answers.

Par. 3. Section 1.132-5 is amended by adding paragraph (p)(4) to read as follows:

Sec. 1.132-5 Working condition fringes.

* * * * *

(p) * * *

(4) Dates of applicability. This paragraph (p) applies to benefits provided before January 1, 1993. For benefits provided after December 31, 1992, see Sec. 1.132-9.

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Par. 4. Section 1.132-9 is added to read as follows:

Sec. 1.132-9 Qualified **transportation** fringes.

(a) Table of contents. This section contains a list of the questions and answers in Sec. 1.132-9.

(1) General rules.

Q-1. What is a qualified **transportation** fringe?

Q-2. What is **transportation** in a commuter highway vehicle?

Q-3. What are transit passes?

Q-4. What is qualified parking?

Q-5. May qualified **transportation** fringes be provided to individuals who are not employees?

Q-6. Must a qualified **transportation** fringe benefit plan be in writing?

(2) Dollar limitations.

Q-7. Is there a limit on the value of qualified **transportation** fringes that may be excluded from an employee's gross income?

Q-8. What amount is includible in an employee's wages for income and employment tax purposes if the value of the qualified **transportation** fringe exceeds the applicable statutory monthly limit?

Q-9. Are excludable qualified **transportation** fringes calculated on a monthly basis?

Q-10. May an employee receive qualified **transportation** fringes from more than one employer?

(3) Compensation reduction.

Q-11. May qualified **transportation** fringes be provided to employees pursuant to a compensation reduction agreement?

Q-12. What is a compensation reduction election for purposes of section 132(f)?

Q-13. Is there a limit to the amount of the compensation reduction?

Q-14. When must the employee have made a compensation reduction election and under what circumstances may the amount be paid in cash to the employee?

Q-15. May an employee whose qualified **transportation** fringe costs are less than the employee's compensation reduction carry over this excess amount to subsequent periods?

(4) Expense reimbursements.

Q-16. How does section 132(f) apply to expense reimbursements?

Q-17. May an employer provide nontaxable cash reimbursement under section 132(f) for periods longer than one month?

Q-18. What are the substantiation requirements if an employer distributes transit passes?

Q-19. May an employer choose to impose substantiation requirements in addition to those described in this regulation?

(5) Special rules for parking and vanpools.

Q-20. How is the value of parking determined?

Q-21. How do the qualified **transportation fringe** rules apply to van pools?

(6) Reporting and employment taxes.

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Q-22. What are the reporting and employment tax requirements for qualified **transportation** fringes?

(7) Interaction with other **fringe** benefits.

Q-23. How does section 132(f) interact with other **fringe** benefit rules?

(8) Application to individuals who are not employees.

Q-24. May qualified **transportation** fringes be provided to individuals who are partners, 2-percent shareholders of S-corporations, or independent contractors?

(9) Effective date.

Q-25. What is the effective date of this section?

(b) Questions and answers.

Q-1. What is a qualified **transportation fringe**?

A-1. (a) The following benefits are qualified **transportation fringe** benefits:

(1) **Transportation** in a commuter highway vehicle.

(2) Transit passes.

(3) Qualified parking.

(b) An employer may simultaneously provide an employee with any one or more of these three benefits.

Q-2. What is **transportation** in a commuter highway vehicle?

A-2. **Transportation** in a commuter highway vehicle is **transportation** provided by an employer to an employee in connection with travel between the employee's residence and place of employment. A commuter highway vehicle is a highway vehicle with a seating capacity of at least 6 adults (excluding the driver) and with respect to which at least 80 percent of the vehicle's mileage for a year is reasonably expected to be--

(a) For transporting employees in connection with travel between their residences and their place of employment; and

(b) On trips during which the number of employees transported for commuting is at least one-half of the adult seating capacity of the vehicle (excluding the driver).

Q-3. What are transit passes?

A-3. A transit pass is any pass, token, farecard, voucher, or similar item (including an item exchangeable for fare media) that entitles a person to **transportation**--

(a) On mass transit facilities (whether or not publicly owned); or

(b) Provided by any person in the business of transporting persons for compensation or hire in a highway vehicle with a seating capacity of at least 6 adults (excluding the driver).

Q-4. What is qualified parking?

A-4. (a) Qualified parking is parking provided to an employee by an employer--

(1) On or near the employer's business premises; or

(2) At a location from which the employee commutes to work (including commuting by carpool, commuter highway vehicle, mass transit facilities, or **transportation** provided by any person in the business of transporting persons for compensation or hire).

(b) For purposes of section 132(f), parking on or near the employer's business premises includes parking on or near a work location at which the employee provides services for the employer. However, qualified parking does not include--

(1) The value of parking provided to an employee that is excludable from gross income under section 132(a)(3) (as a working condition **fringe**), or

(2) Reimbursement paid to an employee for parking costs that is excludable from gross income as an amount treated as paid under an accountable plan. See Sec. 1.62-2.

(c) However, parking on or near property used by the employee for residential purposes is not qualified parking.

(d) Parking is provided by an employer if--

(1) The parking is on property that the employer owns or leases;

(2) The employer pays for the parking; or

(3) The employer reimburses the employee for parking expenses (see Q/A-16 of this section for rules relating to cash reimbursements).

Q-5. May qualified **transportation** fringes be provided to individuals who are not employees?

A-5. An employer may provide qualified **transportation** fringes only to individuals who are currently employees of the employer at the time the qualified **transportation** fringe is provided. The term employee for purposes of qualified **transportation** fringes is defined in Sec. 1.132-1(b)(2)(i). This term includes only common law employees and other statutory employees, such as officers of corporations. See Q/A-24 of this section for rules regarding partners, 2-percent shareholders, and independent contractors.

Q-6. Must a qualified **transportation** fringe benefit plan be in writing?

A-6. No. Section 132(f) does not require that a qualified **transportation** fringe benefit plan be in writing.

Q-7. Is there a limit on the value of qualified **transportation** fringes that may be excluded from an employee's gross income?

A-7. (a) **Transportation** in a commuter highway vehicle and transit passes. Before January 1, 2002, up to \$65 per month is excludable from the gross income of an employee for **transportation** in a commuter highway vehicle and transit passes provided by an employer. On January 1, 2002, this amount is increased to \$100 per month.

(b) Parking. Up to \$175 per month is excludable from the gross income of an employee for qualified parking.

(c) Combination. An employer may provide qualified parking benefits

in addition to **transportation** in a commuter highway vehicle and transit passes.

(d) Cost-of-living adjustments. The amounts in paragraphs (a) and (b) of this Q/A-7 are adjusted annually, beginning with 2000, to reflect cost-of-living. The adjusted figures are announced by the Service before the beginning of the year.

Q-8. What amount is includible in an employee's wages for income and employment tax purposes if the value of the qualified **transportation fringe** exceeds the applicable statutory monthly limit?

A-8. (a) Generally, an employee must include in gross income the amount by which the fair market value of the benefit exceeds the sum of the amount, if any, paid by the employee and any amount excluded from gross income under section 132(a)(5). Thus, assuming no other statutory exclusion applies, if an employer provides an employee with a qualified **transportation fringe** that exceeds the applicable statutory monthly limit and the employee does not make any payment, the value of the benefits provided in excess of the applicable statutory monthly limit is included in the employee's wages for income and employment tax purposes. See Sec. 1.61-21(b)(1).

(b) The following examples illustrate the principles of this Q/A-8:

Example 1. (i) For each month in a year in which the statutory monthly transit pass limit is \$100 (i.e., a year after 2001), Employer M provides a transit pass valued at \$110 to Employee D, who does not pay any amount to Employer M for the transit pass.

(ii) In this Example 1, because the value of the monthly transit pass exceeds the statutory monthly limit by \$10, \$120 (\$110--\$100, times 12 months) must be included in D's wages for income and employment tax purposes for the year with respect to the transit passes.

Example 2. (i) For each month in a year in which the statutory monthly qualified parking limit is \$175, Employer M provides qualified parking valued at \$195 to Employee E, who does not pay any amount to M for the parking.

(ii) In this Example 2, because the fair market value of the qualified parking exceeds the statutory monthly limit by \$20, \$240 (\$195--\$175, times 12 months) must be included in Employee E's wages for income and employment tax purposes for the year with respect to the qualified parking.

Example 3. (i) For each month in a year in which the statutory monthly qualified parking limit is \$175, Employer P provides

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qualified parking with a fair market value of \$220 per month to its employees, but charges each employee \$45 per month.

(ii) In this Example 3, because the sum of the amount paid by an employee (\$45) plus the amount excludable for qualified parking (\$175) is not less than the fair market value of the monthly

benefit, no amount is includible in the employee's wages for income and employment tax purposes with respect to the qualified parking.

Q-9. Are excludable qualified **transportation** fringes calculated on a monthly basis?

A-9. (a) In general. Yes. The value of **transportation** in a commuter highway vehicle, transit passes, and qualified parking is calculated on a monthly basis to determine whether the value of the benefit has exceeded the applicable statutory monthly limit on qualified **transportation** fringes. Except in the case of a transit pass provided to an employee, the applicable statutory monthly limit applies to qualified **transportation** fringes used by the employee in a month. Monthly exclusion amounts are not combined to provide a qualified **transportation** fringe for any month exceeding the statutory limit. A month is a calendar month or a substantially equivalent period applied consistently.

(b) Transit passes. In the case of transit passes provided to an employee, the applicable statutory monthly limit applies to the transit passes provided by the employer to the employee in a month for that month or for any previous month in the calendar year. In addition, transit passes distributed in advance for more than one month, but not for more than twelve months, are qualified **transportation** fringes if the requirements in paragraph (c) of this Q/A-9 are met (relating to the income tax and employment tax treatment of advance transit passes). The applicable statutory monthly limit under section 132(f)(2) on the combined amount of **transportation** in a commuter highway vehicle and transit passes may be calculated by taking into account the monthly limits for all months for which the transit passes are distributed. In the case of a pass that is valid for more than one month, such as an annual pass, the value of the pass may be divided by the number of months for which it is valid for purposes of determining whether the value of the pass exceeds the statutory monthly limit.

(c) Rule if employee's employment terminates--(1) Income tax treatment. The value of transit passes provided in advance to an employee with respect to a month in which the individual is not an employee is included in the employee's wages for income tax purposes.

(2) Reporting and employment tax treatment. Transit passes distributed in advance to an employee are excludable from wages for employment tax purposes under sections 3121, 3306, and 3401 (FICA, FUTA, and income tax withholding) if the employer distributes transit passes to the employee in advance for not more than three months and, at the time the transit passes are distributed, there is not an established date that the employee's employment will terminate (for example, if the employee has given notice of retirement) which will occur before the beginning of the last month of the period for which the transit passes are provided. If the employer distributes transit passes to an employee in advance for not more than three months and at the time the transit passes are distributed there is an established date that the employee's employment will terminate, and the employee's

employment does terminate before the beginning of the last month of the period for which the transit passes are provided, the value of transit passes provided for months beginning after the date of termination during which the employee is not employed by the employer is included in the employee's wages for employment tax purposes. If transit passes are distributed in advance for more than three months, the value of transit passes provided for the months during which the employee is not employed by the employer is includible in the employee's wages for employment tax purposes regardless of whether at the time the transit passes were distributed there was an established date of termination of the employee's employment.

(d) Examples. The following examples illustrate the principles of this Q/A-9:

Example 1. (i) Employee E incurs \$150 for qualified parking used during the month of June of a year in which the statutory monthly parking limit is \$175, for which E is reimbursed \$150 by Employer R. Employee E incurs \$180 in expenses for qualified parking used during the month of July of that year, for which E is reimbursed \$180 by Employer R.

(ii) In this Example 1, because monthly exclusion amounts may not be combined to provide a benefit in any month greater than the applicable statutory limit, the amount by which the amount reimbursed for July exceeds the applicable statutory monthly limit (\$180 minus \$175 equals \$5) is includible in Employee E's wages for income and employment tax purposes.

Example 2. (i) Employee F receives transit passes from Employer G with a value of \$195 in March of a year (for which the statutory monthly transit pass limit is \$65) for January, February, and March of that year. F was hired during January and has not received any transit passes from G.

(ii) In this Example 2, the value of the transit passes (three months times \$65 equals \$195) is excludable from F's wages for income and employment tax purposes.

Example 3. (i) Employer S has a qualified **transportation fringe** benefit plan under which its employees receive transit passes near the beginning of each calendar quarter for that calendar quarter. All employees of Employer S receive transit passes from Employer S with a value of \$195 on March 31 for the second calendar quarter covering the months April, May, and June (of a year in which the statutory monthly transit pass limit is \$65).

(ii) In this Example 3, because the value of the transit passes may be calculated by taking into account the monthly limits for all months for which the transit passes are distributed, the value of the transit passes (three months times \$65 equals \$195) is excludable from the employees' wages for income and employment tax purposes.

Example 4. (i) Same facts as in Example 3, except that Employee T, an employee of Employer S, terminates employment with S on May

31. There was not an established date of termination for Employee T at the time the transit passes were distributed.

(ii) In this Example 4, because at the time the transit passes were distributed there was not an established date of termination for Employee T, the value of the transit passes provided for June (\$65) is excludable from T's wages for employment tax purposes. However, the value of the transit passes distributed to Employee T for June (\$65) is not excludable from T's wages for income tax purposes.

(iii) If Employee T's May 31 termination date was established at the time the transit passes were provided, the value of the transit passes provided for June (\$65) is included in T's wages for both income and employment tax purposes.

Example 5. (i) Employer F has a qualified **transportation fringe** benefit plan under which its employees receive transit passes semi-annually in advance of the months for which the transit passes are provided. All employees of Employer F, including Employee X, receive transit passes from F with a value of \$390 on June 30 for the 6 months of July through December (of a year in which the statutory monthly transit pass limit is \$65). Employee X's employment terminates and his last day of work is August 1. Employer F's other employees remain employed throughout the remainder of the year.

(ii) In this Example 5, the value of the transit passes provided to Employee X for the months September, October, November, and December (\$65 times 4 months equals \$260) of the year is included in X's wages for income and employment tax purposes. The value of the transit passes provided to Employer F's other employees is excludable from the employees' wages for income and employment tax purposes.

Example 6. (i) Each month during a year in which the statutory monthly transit pass limit is \$65, Employer R distributes transit

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passes with a face amount of \$70 to each of its employees. Transit passes with a face amount of \$70 can be purchased from the transit system by any individual for \$65.

(ii) In this Example 6, because the value of the transit passes distributed by Employer R does not exceed the applicable statutory monthly limit (\$65), no portion of the value of the transit passes is included as wages for income and employment tax purposes.

Q-10. May an employee receive qualified **transportation** fringes from more than one employer?

A-10. (a) General rule. Yes. The statutory monthly limits described in Q/A-7 of this section apply to benefits provided by an employer to its employees. For this purpose, all employees treated as employed by a single employer under section 414(b), (c), (m), or (o) are treated as employed by a single employer. See section 414(t) and Sec. 1.132-1(c).

Thus, qualified **transportation** fringes paid by entities under common control under section 414(b), (c), (m), or (o) are combined for purposes of applying the applicable statutory monthly limit. In addition, an individual who is treated as a leased employee of the employer under section 414(n) is treated as an employee of that employer for purposes of section 132. See section 414(n)(3)(C).

(b) Examples. The following examples illustrate the principles of this Q/A-10:

Example 1. (i) During a year in which the statutory monthly qualified parking limit is \$175, Employee E works for Employers M and N, who are unrelated and not treated as a single employer under section 414(b), (c), (m), or (o). Each month, M and N each provide qualified parking benefits to E with a value of \$100.

(ii) In this Example 1, because M and N are unrelated employers, and the value of the monthly parking benefit provided by each is not more than the applicable statutory monthly limit, the parking benefits provided by each employer are excludable as qualified **transportation** fringes assuming that the other requirements of this section are satisfied.

Example 2. (i) Same facts as in Example 1, except that Employers M and N are treated as a single employer under section 414(b).

(ii) In this Example 2, because M and N are treated as a single employer, the value of the monthly parking benefit provided by M and N must be combined for purposes of determining whether the applicable statutory monthly limit has been exceeded. Thus, the amount by which the value of the parking benefit exceeds the monthly limit (\$200 minus the monthly limit amount of \$175 equals \$25) for each month in the year is includible in E's wages for income and employment tax purposes.

Q-11. May qualified **transportation** fringes be provided to employees pursuant to a compensation reduction agreement?

A-11. Yes. An employer may offer employees a choice between cash compensation and any qualified **transportation** fringe. An employee who is offered this choice and who elects qualified **transportation** fringes is not required to include the cash compensation in income if--

(a) The election is pursuant to an arrangement described in Q/A-12 of this section;

(b) The amount of the reduction in cash compensation does not exceed the limitation in Q/A-13 of this section;

(c) The arrangement satisfies the timing and reimbursement rules in Q/A-14 and 16 of this section; and

(d) The related **fringe** benefit arrangement otherwise satisfies the requirements set forth elsewhere in this section.

Q-12. What is a compensation reduction election for purposes of section 132(f)?

A-12. (a) Election requirements generally. A compensation reduction arrangement is an arrangement under which the employer provides the

employee with the right to elect whether the employee will receive either a fixed amount of cash compensation at a specified future date or a fixed amount of qualified **transportation** fringes to be provided for a specified future period (such as qualified parking to be used during a future calendar month). The employee's election must be in writing or another form, such as electronic, that includes, in a permanent and verifiable form, the information required to be in the election. The election must contain the date of the election, the amount of the compensation to be reduced, and the period for which the benefit will be provided. The election must relate to a fixed dollar amount or fixed percentage of compensation reduction. An election to reduce compensation for a period by a set amount for such period may be automatically renewed for subsequent periods.

(b) Automatic election permitted. An employer may provide under its qualified **transportation fringe** benefit plan that a compensation reduction election will be deemed to have been made if the employee does not elect to receive cash compensation in lieu of the qualified **transportation fringe**, provided that the employee receives adequate notice that a compensation reduction will be made and is given adequate opportunity to choose to receive the cash compensation instead of the qualified **transportation fringe**.

Q-13. Is there a limit to the amount of the compensation reduction?

A-13. Yes. Each month, the amount of the compensation reduction may not exceed the combined applicable statutory monthly limits for **transportation** in a commuter highway vehicle, transit passes, and qualified parking. For example, for a year in which the statutory monthly limit is \$65 for **transportation** in a commuter highway vehicle and transit passes, and \$175 for qualified parking, an employee could elect to reduce compensation for any month by no more than \$240 (\$65 plus \$175) with respect to qualified **transportation** fringes. If an employee were to elect to reduce compensation by \$250 for a month, the excess \$10 (\$250 minus \$240) would be includible in the employee's wages for income and employment tax purposes.

Q-14. When must the employee have made a compensation reduction election and under what circumstances may the amount be paid in cash to the employee?

A-14. (a) The compensation reduction election must satisfy the requirements set forth under paragraphs (b), (c), and (d) of this Q/A-14.

(b) Timing of election. The compensation reduction election must be made before the employee is able currently to receive the cash or other taxable amount at the employee's discretion. The determination of whether the employee is able currently to receive the cash does not depend on whether it has been constructively received for purposes of section 451. The election must specify that the period (such as a calendar month) for which the qualified **transportation fringe** will be provided must not begin before the election is made. Thus, a compensation reduction election must relate to qualified **transportation** fringes to be provided after the election. For this purpose, the date a

qualified **transportation fringe** is provided is--

(1) The date the employee receives a voucher or similar item; or

(2) In any other case, the date the employee uses the qualified **transportation fringe**.

(c) Revocability of elections. The employee may not revoke a compensation reduction election after the employee is able currently to receive the cash or other taxable amount at the employee's discretion. In addition, the election may not be revoked after the beginning of the period for which the qualified **transportation fringe** will be provided.

(d) Compensation reduction amounts not refundable. Unless an election is revoked in a manner consistent with paragraph (c) of this Q/A-14, an employee may not subsequently receive the compensation (in cash or any form other than by payment of a qualified **transportation fringe** under the employer's plan). Thus, an employer's

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qualified **transportation fringe** benefit plan may not provide that an employee who ceases to participate in the employer's qualified **transportation fringe** benefit plan (such as in the case of termination of employment) is entitled to receive a refund of the amount by which the employee's compensation reductions exceed the actual qualified **transportation fringes** provided to the employee by the employer.

(e) Examples. The following examples illustrate the principles of this Q/A-14:

Example 1. (i) Employer P maintains a qualified **transportation fringe** benefit arrangement during a year in which the statutory monthly limit is \$100 for **transportation** in a commuter highway vehicle and transit passes (2002 or later) and \$180 for qualified parking. Employees of P are paid cash compensation twice per month, with the payroll dates being the first and the fifteenth day of the month. Under P's arrangement, an employee is permitted to elect at any time before the first day of a month to reduce his or her compensation payable during that month in an amount up to the applicable statutory monthly limit (\$100 if the employee elects coverage for **transportation** in a commuter highway vehicle or a mass transit pass, or \$180 if the employee chooses qualified parking) in return for the right to receive qualified **transportation fringes** up to the amount of the election. If such an election is made, P will provide a mass transit pass for that month with a value not exceeding the compensation reduction amount elected by the employee or will reimburse the cost of other qualified **transportation fringes** used by the employee on or after the first day of that month up to the compensation reduction amount elected by the employee. Any compensation reduction amount elected by the employee for the month that is not used for qualified **transportation fringes** is not refunded to the employee at any future date.

(ii) In this Example 1, the arrangement satisfies the

requirements of this Q/A-14 because the election is made before the employee is able currently to receive the cash and the election specifies the future period for which the qualified **transportation** fringes will be provided. The arrangement would also satisfy the requirements of this Q/A-14 and Q/A-13 of this section if employees are allowed to elect to reduce compensation up to \$280 per month (\$100 plus \$180).

(iii) The arrangement would also satisfy the requirements of this Q/A-14 (and Q/A-13 of this section) if employees are allowed to make an election at any time before the first or the fifteenth day of the month to reduce their compensation payable on that payroll date by an amount not in excess of one-half of the applicable statutory monthly limit (depending on the type of qualified **transportation fringe** elected by the employee) and P provides a mass transit pass on or after the applicable payroll date for the compensation reduction amount elected by the employee for the payroll date or reimburses the cost of other qualified **transportation** fringes used by the employee on or after the payroll date up to the compensation reduction amount elected by the employee for that payroll date.

Example 2. (i) Employee Q elects to reduce his compensation payable on March 1 of a year (for which the statutory monthly mass transit limit is \$65) by \$195 in exchange for a mass transit voucher to be provided in March. The election is made on the preceding February 27. Employee Q was hired in January of the year. On March 10 of the year, the employer of Employee Q delivers to Employee Q a mass transit voucher worth \$195 for the months of January, February, and March.

(ii) In this Example 2, \$65 is included in Employee Q's wages for income and employment tax purposes because the compensation reduction election fails to satisfy the requirement in this Q/A-14 and Q/A-12 of this section that the period for which the qualified **transportation fringe** will be provided not begin before the election is made to the extent the election relates to \$65 worth of transit passes for January of the year. The \$65 for February is not taxable because the election was for a future period that includes at least one day in February.

(iii) However, no amount would be included in Employee Q's wages as a result of the election if \$195 worth of mass transit passes were instead provided to Q for the months of February, March, and April (because the compensation reduction would relate solely to fringes to be provided for a period not beginning before the date of the election and the amount provided does not exceed the aggregate limit for the period, i.e., the sum of \$65 for each of February, March, and April). See Q/A-9 of this section for rules governing transit passes distributed in advance for more than one month.

Example 3. (i) Employee R elects to reduce his compensation payable on March 1 of a year (for which the statutory monthly parking limit is \$175) by \$185 in exchange for reimbursement by

Employer T of parking expenses incurred by Employee R for parking on or near Employer T's business premises during the period beginning after the date of the election through March. The election is made on the preceding February 27. Employee R incurs \$10 in parking expenses on February 28 of the year, and \$175 in parking expenses during the month of March. On April 5 of the year, Employer T reimburses Employee R \$185 for the parking expenses incurred on February 28, and during March, of the year.

(ii) In this Example 3, no amount would be includible in Employee R's wages for income and employment tax purposes because the compensation reduction related solely to parking on or near Employer R's business premises used during a period not beginning before the date of the election and the amount reimbursed for parking used in any one month does not exceed the statutory monthly limitation.

Q-15. May an employee whose qualified **transportation fringe** costs are less than the employee's compensation reduction carry over this excess amount to subsequent periods?

A-15. (a) Yes. An employee may carry over unused compensation reduction amounts to subsequent periods under the plan of the employee's employer.

(b) The following example illustrates the principles of this Q/A-15:

Example. (i) By an election made before November 1 of a year for which the statutory monthly mass transit limit is \$65, Employee E elects to reduce compensation in the amount of \$65 for the month of November. E incurs \$50 in employee-operated commuter highway vehicle expenses during November for which E is reimbursed \$50 by Employer R, E's employer. By an election made before December, E elects to reduce compensation by \$65 for the month of December. E incurs \$65 in employee-operated commuter highway vehicle expenses during December for which E is reimbursed \$65 by R. Before the following January, E elects to reduce compensation by \$50 for the month of January. E incurs \$65 in employee-operated commuter highway vehicle expenses during January for which E is reimbursed \$65 by R because R allows E to carry over to the next year the \$15 amount by which the compensation reductions for November and December exceeded the employee-operated commuter highway vehicle expenses incurred during those months.

(ii) In this Example, because Employee E is reimbursed in an amount not exceeding the applicable statutory monthly limit, and the reimbursement does not exceed the amount of employee-operated commuter highway vehicle expenses incurred during the month of January, the amount reimbursed (\$65) is excludable from E's wages for income and employment tax purposes.

Q-16. How does section 132(f) apply to expense reimbursements?

A-16. (a) In general. The term qualified **transportation fringe**

includes cash reimbursement by an employer to an employee for expenses incurred or paid by an employee for **transportation** in a commuter highway vehicle or qualified parking. The term qualified **transportation fringe** also includes cash reimbursement for transit passes made under a bona fide reimbursement arrangement, but, in accordance with section 132(f)(3), only if permitted under paragraph (b) of this Q/A-16. The reimbursement must be made under a bona fide reimbursement arrangement which meets the rules of paragraph (c) of this Q/A-16. A payment made before the date an expense has been incurred or paid is not a reimbursement. In addition, a bona fide reimbursement arrangement does not include an arrangement that is dependent solely upon an employee certifying in advance that the employee will incur expenses at some future date.

(b) Special rule for transit passes--(1) In general. The term qualified **transportation fringe** includes cash reimbursement for transit passes made

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under a bona fide reimbursement arrangement, but, in accordance with section 132(f)(3), only if no voucher or similar item that may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees. If a voucher is readily available, the requirement that a voucher be distributed in-kind by the employer is satisfied if the voucher is distributed by the employer or by another person on behalf of the employer (for example, if a transit operator credits amounts to the employee's fare card as a result of payments made to the operator by the employer).

(2) Voucher or similar item. For purposes of the special rule in paragraph (b) of this Q/A-16, a transit system voucher is an instrument that may be purchased by employers from a voucher provider that is accepted by one or more mass transit operators (e.g., train, subway, and bus) in an area as fare media or in exchange for fare media. Thus, for example, a transit pass that may be purchased by employers directly from a voucher provider is a transit system voucher.

(3) Voucher provider. The term voucher provider means any person in the trade or business of selling transit system vouchers to employers, or any transit system or transit operator that sells vouchers to employers for the purpose of direct distribution to employees. Thus, a transit operator might or might not be a voucher provider. A voucher provider is not, for example, a third-party employee benefits administrator that administers a transit pass benefit program for an employer using vouchers that the employer could obtain directly.

(4) Readily available. For purposes of this paragraph (b), a voucher or similar item is readily available for direct distribution by the employer to employees if and only if an employer can obtain it from a voucher provider that--

(i) does not impose fare media charges that cause vouchers to not be readily available as described in paragraph (b)(5) of this section;

and

(ii) does not impose other restrictions that cause vouchers to not be readily available as described in paragraph (b)(6) of this section.

(5) Fare media charges. For purposes of paragraph (b)(4) of this section, fare media charges relate only to fees paid by the employer to voucher providers for vouchers. The determination of whether obtaining a voucher would result in fare media charges that cause vouchers to not be readily available as described in this paragraph (b) is made with respect to each transit system voucher. If more than one transit system voucher is available for direct distribution to employees, the employer must consider the fees imposed for the lowest cost monthly voucher for purposes of determining whether the fees imposed by the voucher provider satisfy this paragraph. However, if transit system vouchers for multiple transit systems are required in an area to meet the transit needs of the individual employees in that area, the employer has the option of averaging the costs applied to each transit system voucher for purposes of determining whether the fare media charges for transit system vouchers satisfy this paragraph. Fare media charges are described in this paragraph (b)(5), and therefore cause vouchers to not be readily available, if and only if the average annual fare media charges that the employer reasonably expects to incur for transit system vouchers purchased from the voucher provider (disregarding reasonable and customary delivery charges imposed by the voucher provider, e.g., not in excess of \$15) are more than 1 percent of the average annual value of the vouchers for a transit system.

(6) Other restrictions. For purposes of paragraph (b)(4) of this section, restrictions that cause vouchers to not be readily available are restrictions imposed by the voucher provider other than fare media charges that effectively prevent the employer from obtaining vouchers appropriate for distribution to employees. Examples of such restrictions include--

(i) Advance purchase requirements. Advance purchase requirements cause vouchers to not be readily available only if the voucher provider does not offer vouchers at regular intervals or fails to provide the voucher within a reasonable period after receiving payment for the voucher. For example, a requirement that vouchers may be purchased only once per year may effectively prevent an employer from obtaining vouchers for distribution to employees. An advance purchase requirement that vouchers be purchased not more frequently than monthly does not effectively prevent the employer from obtaining vouchers for distribution to employees.

(ii) Purchase quantity requirements. Purchase quantity requirements cause vouchers to not be readily available if the voucher provider does not offer vouchers in quantities that are reasonably appropriate to the number of the employer's employees who use mass transportation (for example, the voucher provider requires a \$1,000 minimum purchase and the employer seeks to purchase only \$200 of vouchers).

(iii) Limitations on denominations of vouchers that are available. If the voucher provider does not offer vouchers in denominations

appropriate for distribution to the employer's employees, vouchers are not readily available. For example, vouchers provided in \$5 increments up to the monthly limit are appropriate for distribution to employees, while vouchers available only in a denomination equal to the monthly limit are not appropriate for distribution to employees if the amount of the benefit provided to the employer's employees each month is normally less than the monthly limit.

(7) Example. The following example illustrates the principles of this paragraph (b):

Example. (i) Company C in City X sells mass transit vouchers to employers in the metropolitan area of X in various denominations appropriate for distribution to employees. Employers can purchase vouchers monthly in reasonably appropriate quantities. Several different bus, rail, van pool, and ferry operators service X, and a number of the operators accept the vouchers either as fare media or in exchange for fare media. To cover its operating expenses, C imposes on each voucher a 50 cents charge, plus a reasonable and customary \$15 charge for delivery of each order of vouchers. Employer M disburses vouchers purchased from C to its employees who use operators that accept the vouchers and M reasonably expects that \$55 is the average value of the voucher it will purchase from C for the next calendar year.

(ii) In this Example, vouchers for X are readily available for direct distribution by the employer to employees because the expected cost of the vouchers disbursed to M's employees for the next calendar year is not more than 1 percent of the value of the vouchers (50 cents divided by \$55 equals 0.91 percent), the delivery charges are disregarded because they are reasonable and customary, and there are no other restrictions that cause the vouchers to not be readily available. Thus, any reimbursement of mass **transportation** costs in X would not be a qualified **transportation fringe**.

(c) Substantiation requirements. Employers that make cash reimbursements must establish a bona fide reimbursement arrangement to establish that their employees have, in fact, incurred expenses for **transportation** in a commuter highway vehicle, transit passes, or qualified parking. For purposes of section 132(f), whether cash reimbursements are made under a bona fide reimbursement arrangement may vary depending on the facts and circumstances, including the method or methods of payment utilized within the mass transit system. The

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employer must implement reasonable procedures to ensure that an amount equal to the reimbursement was incurred for **transportation** in a commuter highway vehicle, transit passes, or qualified parking. The expense must be substantiated within a reasonable period of time. An expense substantiated to the payor within 180 days after it has been

paid will be treated as having been substantiated within a reasonable period of time. An employee certification at the time of reimbursement in either written or electronic form may be a reasonable reimbursement procedure depending on the facts and circumstances. Examples of reasonable reimbursement procedures are set forth in paragraph (d) of this Q/A-16.

(d) Illustrations of reasonable reimbursement procedures. The following are examples of reasonable reimbursement procedures for purposes of paragraph (c) of this Q/A-16. In each case, the reimbursement is made at or within a reasonable period after the end of the events described in paragraphs (d)(1) through (d)(3) of this section.

(1) An employee presents to the employer a parking expense receipt for parking on or near the employer's business premises, the employee certifies that the parking was used by the employee, and the employer has no reason to doubt the employee's certification.

(2) An employee either submits a used time-sensitive transit pass (such as a monthly pass) to the employer and certifies that he or she purchased it or presents an unused or used transit pass to the employer and certifies that he or she purchased it and the employee certifies that he or she has not previously been reimbursed for the transit pass. In both cases, the employer has no reason to doubt the employee's certification.

(3) If a receipt is not provided in the ordinary course of business (e.g., if the employee uses metered parking or if used transit passes cannot be returned to the user), the employee certifies to the employer the type and the amount of expenses incurred, and the employer has no reason to doubt the employee's certification.

Q-17. May an employer provide nontaxable cash reimbursement under section 132(f) for periods longer than one month?

A-17. (a) General rule. Yes. Qualified **transportation** fringes include reimbursement to employees for costs incurred for **transportation** in more than one month, provided the reimbursement for each month in the period is calculated separately and does not exceed the applicable statutory monthly limit for any month in the period. See Q/A-8 and 9 of this section if the limit for a month is exceeded.

(b) Example. The following example illustrates the principles of this Q/A-17:

Example. (i) Employee R pays \$100 per month for qualified parking used during the period from April 1 through June 30 of a year in which the statutory monthly qualified parking limit is \$175. After receiving adequate substantiation from Employee R, R's employer reimburses R \$300 in cash on June 30 of that year.

(ii) In this Example, because the value of the reimbursed expenses for each month did not exceed the applicable statutory monthly limit, the \$300 reimbursement is excludable from R's wages for income and employment tax purposes as a qualified **transportation fringe**.

Q-18. What are the substantiation requirements if an employer distributes transit passes?

A-18. There are no substantiation requirements if the employer distributes transit passes. Thus, an employer may distribute a transit pass for each month with a value not more than the statutory monthly limit without requiring any certification from the employee regarding the use of the transit pass.

Q-19. May an employer choose to impose substantiation requirements in addition to those described in this regulation?

A-19. Yes.

Q-20. How is the value of parking determined?

A-20. Section 1.61-21(b)(2) applies for purposes of determining the value of parking.

Q-21. How do the qualified **transportation fringe** rules apply to van pools?

A-21. (a) Van pools generally. Employer and employee-operated van pools, as well as private or public transit-operated van pools, may qualify as qualified **transportation** fringes. The value of van pool benefits which are qualified **transportation** fringes may be excluded up to the applicable statutory monthly limit for **transportation** in a commuter highway vehicle and transit passes, less the value of any transit passes provided by the employer for the month.

(b) Employer-operated van pools. The value of van pool **transportation** provided by or for an employer to its employees is excludable as a qualified **transportation fringe**, provided the van qualifies as a commuter highway vehicle as defined in section 132(f)(5)(B) and Q/A-2 of this section. A van pool is operated by or for the employer if the employer purchases or leases vans to enable employees to commute together or the employer contracts with and pays a third party to provide the vans and some or all of the costs of operating the vans, including maintenance, liability insurance and other operating expenses.

(c) Employee-operated van pools. Cash reimbursement by an employer to employees for expenses incurred for **transportation** in a van pool operated by employees independent of their employer are excludable as qualified **transportation** fringes, provided that the van qualifies as a commuter highway vehicle as defined in section 132(f)(5)(B) and Q/A-2 of this section. See Q/A-16 of this section for the rules governing cash reimbursements.

(d) Private or public transit-operated van pool transit passes. The qualified **transportation fringe** exclusion for transit passes is available for travel in van pools owned and operated either by public transit authorities or by any person in the business of transporting persons for compensation or hire. In accordance with paragraph (b) of Q/A-3 of this section, the van must seat at least 6 adults (excluding the driver). See Q/A-16(b) and (c) of this section for a special rule for cash reimbursement for transit passes and the substantiation requirements for cash reimbursement.

(e) Value of van pool **transportation** benefits. Section 1.61-21(b)(2) provides that the fair market value of a **fringe** benefit is based on all the facts and circumstances. Alternatively, **transportation** in an employer-provided commuter highway vehicle may be valued under the automobile lease valuation rule in Sec. 1.61-21(d), the vehicle cents-per-mile rule in Sec. 1.61-21(e), or the commuting valuation rule in Sec. 1.61-21(f). If one of these special valuation rules is used, the employer must use the same valuation rule to value the use of the commuter highway vehicle by each employee who share the use. See Sec. 1.61-21(c)(2)(i)(B).

(f) Qualified parking prime member. If an employee obtains a qualified parking space as a result of membership in a car or van pool, the applicable statutory monthly limit for qualified parking applies to the individual to whom the parking space is assigned. This individual is the prime member. In determining the tax consequences to the prime member, the statutory monthly limit amounts of each car pool member may not be combined. If the employer provides access to the space and the space is not assigned to a particular individual, then the employer must designate one of its employees as the prime member who will bear the tax consequences. The employer may not designate more than one prime member for a car or van pool during a month.

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The employer of the prime member is responsible for including the value of the qualified parking in excess of the statutory monthly limit in the prime member's wages for income and employment tax purposes.

Q-22. What are the reporting and employment tax requirements for qualified **transportation** fringes?

A-22. (a) Employment tax treatment generally. Qualified **transportation** fringes not exceeding the applicable statutory monthly limit described in Q/A-7 of this section are not wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding. Any amount by which an employee elects to reduce compensation as provided in Q/A-11 of this section is not subject to the FICA, the FUTA, and federal income tax withholding. Qualified **transportation** fringes exceeding the applicable statutory monthly limit described in Q/A-7 of this section are wages for purposes of the FICA, the FUTA, and federal income tax withholding and are reported on the employee's Form W-2, Wage and Tax Statement.

(b) Employment tax treatment of cash reimbursement exceeding monthly limits. Cash reimbursement to employees (for example, cash reimbursement for qualified parking) in excess of the applicable statutory monthly limit under section 132(f) is treated as paid for employment tax purposes when actually or constructively paid. See Secs. 31.3121(a)-2(a), 31.3301-4, 31.3402(a)-1(b) of this chapter. Employers must report and deposit the amounts withheld in addition to reporting and depositing other employment taxes. See Q/A-16 of this

section for rules governing cash reimbursements.

(c) Noncash **fringe** benefits exceeding monthly limits. If the value of noncash qualified **transportation** fringes exceeds the applicable statutory monthly limit, the employer may elect, for purposes of the FICA, the FUTA, and federal income tax withholding, to treat the noncash taxable **fringe** benefits as paid on a pay period, quarterly, semi-annual, annual, or other basis, provided that the benefits are treated as paid no less frequently than annually.

Q-23. How does section 132(f) interact with other **fringe** benefit rules?

A-23. For purposes of section 132, the terms working condition **fringe** and de minimis **fringe** do not include any qualified **transportation fringe** under section 132(f). If, however, an employer provides local **transportation** other than transit passes (without any direct or indirect compensation reduction election), the value of the benefit may be excludable, either totally or partially, under **fringe** benefit rules other than the qualified **transportation fringe** rules under section 132(f). See Secs. 1.132-6(d)(2)(i) (occasional local **transportation** fare), 1.132-6(d)(2)(iii) (**transportation** provided under unusual circumstances), and 1.61-21(k) (valuation of local **transportation** provided to qualified employees). See also Q/A-4(b) of this section.

Q-24. May qualified **transportation** fringes be provided to individuals who are partners, 2-percent shareholders of S-corporations, or independent contractors?

A-24. (a) General rule. Section 132(f)(5)(E) states that self-employed individuals who are employees within the meaning of section 401(c)(1) are not employees for purposes of section 132(f). Therefore, individuals who are partners, sole proprietors, or other independent contractors are not employees for purposes of section 132(f). In addition, under section 1372(a), 2-percent shareholders of S corporations are treated as partners for **fringe** benefit purposes. Thus, an individual who is both a 2-percent shareholder of an S corporation and a common law employee of that S corporation is not considered an employee for purposes of section 132(f). However, while section 132(f) does not apply to individuals who are partners, 2-percent shareholders of S corporations, or independent contractors, other exclusions for working condition and de minimis fringes may be available as described in paragraphs (b) and (c) of this Q/A-24. See Secs. 1.132-1(b)(2) and 1.132-1(b)(4).

(b) Transit passes. The working condition and de minimis **fringe** exclusions under section 132(a)(3) and (4) are available for transit passes provided to individuals who are partners, 2-percent shareholders, and independent contractors. For example, tokens or farecards provided by a partnership to an individual who is a partner that enable the partner to commute on a public transit system (not including privately-operated van pools) are excludable from the partner's gross income if the value of the tokens and farecards in any month does not exceed the dollar amount specified in Sec. 1.132-

6(d)(1). However, if the value of a pass provided in a month exceeds the dollar amount specified in Sec. 1.132-6(d)(1), the full value of the benefit provided (not merely the amount in excess of the dollar amount specified in Sec. 1.132-6(d)(1)) is includible in gross income.

(c) Parking. The working condition fringe rules under section 132(d) do not apply to commuter parking. See Sec. 1.132-5(a)(1). However, the de minimis fringe rules under section 132(e) are available for parking provided to individuals who are partners, 2-percent shareholders, or independent contractors that qualifies under the de minimis rules. See Sec. 1.132-6(a) and (b).

(d) Example. The following example illustrates the principles of this Q/A-24:

Example. (i) Individual G is a partner in partnership P. Individual G commutes to and from G's office every day and parks free of charge in P's lot.

(ii) In this Example, the value of the parking is not excluded under section 132(f), but may be excluded under section 132(e) if the parking is a de minimis fringe under Sec. 1.132-6.

Q-25. What is the effective date of this section?

A-25. (a) Except as provided in paragraph (b) of this Q/A-25, this section is applicable for taxable years beginning after December 31, 2001.

(b) The last sentence of paragraph (b)(5) of Q/A-16 of this section (relating to whether transit system vouchers for transit passes are readily available) is effective for taxable years beginning after December 31, 2003.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In Sec. 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

Sec. 602.101 OMB Control numbers.

* * * * *

(b)

Current OMB	
CFR part or section where identified and described	control No.

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1.132-9(b)..... 1545-1676

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Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.
Approved: December 29, 2000.
Jonathan Talisman,
Acting Assistant Secretary of the Treasury.
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