

highly compensated under this paragraph (g)(1), the term “employee” does not include any individual who does not perform services for the employer as an employee during the calendar year. For example, if an employer has active employees, retired or disabled employees, and widows or widowers who are “employees” under section 132(f)(1)(B), the general rule (described in paragraph (g)(1)(i) of this section) applies only to the active employees.

(2) *Owner*—(i) *General rule.* For purposes of this section, the term “owner” means any employee who owns a one percent or greater interest in either the employer or in any entity that would be aggregated with the employer pursuant to the rules of section 414 (b), (c), or (m). In addition, such an employee shall be treated as an owner of all entities that would be aggregated with the employer pursuant to the rules of section 414 (b), (c), or (m).

(ii) *Determining ownership.* Ownership in a corporation shall be determined pursuant to the rules of section 318(a). For purposes of determining ownership in an entity other than a corporation, the rules of section 318(a) shall apply in a manner similar to the way in which they apply for purposes of determining ownership in a corporation. For non-corporate interests, capital or profits interest must be substituted for stock.

(3) *Officer*—(i) *Non-government.* For purposes of this section, an officer of a non-government employer is any employee who is appointed, confirmed, or elected by the Board or shareholders of the employer. An employee who is an officer of an employer shall be treated as an officer of all entities treated as a single employer pursuant to section 414 (b), (c), or (m). The number of officers is not to exceed one-percent of the total number of employees of all entities treated as a single employer pursuant to section 414 (b), (c), or (m) (increased to the next highest integer, if necessary). If the number of officers exceeds one-percent of all employees, then the limitation is to be applied to employees in descending order of compensation (as defined in paragraph (g)(1)(iii) of this section). Thus, if an employer with 1,000 employees has 11 board-appointed officers, the employee with the least compensation of those

officers would not be an officer under this paragraph (g)(3)(i). In determining the total number of employees with respect to a fringe benefit program, employees described in paragraph (b)(3) of this section are excluded whether or not they are covered under the fringe benefit program, except that (A) employees described in paragraph (b)(3)(ii) of this section are taken into account with respect to the program even if they are excluded under paragraph (b)(3), and (B) employees described in paragraph (b)(3) (i) and (iv) of this section are taken into account with respect to the program unless they are excluded under paragraph (b)(3).

(ii) *Government.* For purposes of this section, an officer of a government employer is any—

(A) Elected official,

(B) Federal employee appointed by the President and confirmed by the Senate. However, in the case of any commissioned officer of the United States Armed Forces, an officer is any employee with the rank of brigadier general or rear admiral (lower half) or above, and

(C) State or local executive officer comparable to individuals described in paragraphs (g)(3)(ii) (A) and (B) of this section.

For purposes of this paragraph (g)(3)(ii), the term “government” includes any Federal, state, or local governmental unit, and any agency or instrumentality thereof.

(4) *Former employees.* [Reserved]

[T.D. 8063, 50 FR 52309, Dec. 23, 1985, as amended by T.D. 8256, 54 FR 28600, July 6, 1989]

§ 1.132-9 Qualified transportation fringes.

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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 § 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 § 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 § 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 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 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 §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. See §1.401(a)-21 of this chapter for rules permitting the use of electronic media to make participant elections with respect to employee benefit arrangements.

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 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.

(i) 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 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 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 non-taxable 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 §1.61-21(d), the vehicle cents-per-mile rule in §1.61-21(e), or the commuting valuation rule in §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 §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. 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 §§ 1.3121(a)-2(a), 1.3301-4, 1.3402(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 §§ 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 §§ 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 § 1.132-6(d)(1). However, if the value of a pass provided in a month exceeds the dollar amount specified in § 1.132-6(d)(1), the full value of the benefit provided (not merely the amount in excess of the dollar amount specified in § 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 § 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 §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 §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 employee taxable years beginning after December 31, 2001. For this purpose, an employer may assume that the employee taxable year is the calendar year.

(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 applicable for employee taxable years beginning after December 31, 2003. For this purpose, an employer may assume that the employee taxable year is the calendar year.

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§ 1.133-1T Questions and answers relating to interest on certain loans used to acquire employer securities (temporary).

Q-1: What does section 133 provide?

A-1: In general, section 133 provides that certain commercial lenders may exclude from gross income fifty percent of the interest received with respect to securities acquisition loans. A securities acquisition loan is any loan to an employee stock ownership plan (ESOP) (as defined in section 4975(e)(7)) that qualifies as an exempt loan under §§ 54.4975-7 and -11 to the extent that the proceeds are used to acquire employer securities (within the meaning of section 409(l)) for the ESOP. A loan made to a corporation sponsoring an

ESOP (or to a person related to such corporation under section 133(b)(2)) may also qualify as a securities acquisition loan to the extent and for the period that the proceeds are (a) loaned to the corporation's ESOP under a loan that qualifies as an exempt loan under §§ 54.4975-7 and -11 and that has substantially similar terms as the loan from the commercial lender to the sponsoring corporation, and (b) used to acquire employer securities for the ESOP. The terms of the loan between the commercial lender and the sponsoring corporation (or a related corporation) and the loan between such corporation and the ESOP shall be treated as substantially similar only if the timing and rate at which employer securities would be released from encumbrance if the loan from the commercial lender were the exempt loan under the applicable rule of § 54.4975-7(b)(8) are substantially similar to the timing and rate at which employer securities will actually be released from encumbrance in accordance with such rule. For this purpose, if the loan from the commercial lender to the sponsoring corporation states a variable rate of interest and the loan between the corporation and the ESOP states a fixed rate of interest, whether the terms of the loans are substantially similar shall be determined at the time the obligations are initially issued by taking into account the adjustment interval on the variable rate loan and the maturity of the fixed rate loan. For example, if the rate on the loan from the commercial lender to the sponsoring corporation adjusts each six months and the loan from the corporation to the ESOP has a ten year term, the initial interest rate on the variable rate loan could be compared to the rate on the fixed rate loan by comparing the yields on 6 month and ten year Treasury obligations. Similarly, if the rates on the two loans are based on different compounding assumptions, whether the terms of the loans are substantially similar shall be determined by taking into account the different compounding assumptions. A securities acquisition loan may be evidenced by any note, bond, debenture, or certificate. Also, section 133(b)(2) provides