Notice 94-3, 1994-1 CB 327, 12/29/1993, IRC Sec(s). 132

IRS EXPLAINS RULES FOR QUALIFIED TRANSPORTATION FRINGE BENEFITS.

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Headnote:

Notice 94-3, 1994-3 I.R.B. 14, 12/29/93
Reference(s): Code Sec. 132

The Service in Notice 94-3 has addressed, in question-and-answer format, issues related to the provision of qualified transportation fringe benefits under section 132(f). The Service has also issued a news release (IR-93-125) that briefly explains some of the items covered in the notice.

The 1992 Energy Policy Act amended section 132 to incorporate three basis changes in the tax treatment of employer-provided transportation benefits. First, it increased the exclusion for transit passes from $21 to $60 a month and provided that only the value of a transit pass in excess of the statutory limit would be includable in gross income. Second, the Act added an exclusion for van pools. Up to $60 a month may be excluded, but the $60 exclusion applies to the aggregate of van pools and transit passes. Finally, the Act eliminated the working condition fringe benefit for commuter parking and provided that the amount of employer-provided parking excludable from gross income is limited to $155 per month.

In Notice 94-3, the Service explains: what a "qualified transportation fringe" is; the limit on the value of qualified transportation fringes that may be excluded from an employee's gross income; the rules for cash reimbursements; the rules for partners and 2-percent shareholders of S corporations; the rules for van pools; how to determine the value of parking; how section 132(f) interacts with other fringe benefit rules; when and how employers withhold and report the value of qualified transportation fringes includable in gross income; and how employers report income for qualified parking provided to car and van pools.

The Service points out that section 132(f) applies to benefits provided after December 31, 1992. The rules in Notice 94-3, it says, can be applied to comply with section 132(f) for benefits provided after December 31, 1992, and before April 1, 1994, and must be applied for benefits provided after March 31, 1994. Under a transition rule for benefits provided after December 31, 1992, and before April 1, 1994, employers may use any reasonable good faith method of compliance with section 132(f) in lieu of the rules contained in Notice 94-3.

The Service invites comments from taxpayers and practitioners "on the administrability and impact of" Notice 94-3. Written comments should be submitted by January 25, 1994, to Associate Chief Counsel (Employee Benefits and Exempt Organizations), CC:EBEO, Attn: Dean R. Morley, Room 5213, 1111 Constitution Avenue, NW, Washington, DC 20224.

meeting will begin at 10:00 a.m. and take place in the IRS Auditorium, 1111 Constitution Avenue, NW, Washington. For more information on the meeting, telephone Ms. Gidget Golston at (202) 622-6040.

Full Text:

Part III. Administrative, Procedural, and Miscellaneous

I. PURPOSE
This notice addresses issues relating to the provision for qualified transportation fringes in section 132(f) of the Internal Revenue Code. As part of the Energy Policy Act of 1992 (the Act), Pub. L. No. 102-486, Congress amended section 132 to incorporate three basic changes in the tax treatment of employer-provided transportation benefits. First, it increased the exclusion for transit passes from $21 to $60 per month and provided that only the value of a transit pass in excess of the statutory limit would be includable in gross income. Second, Congress added an exclusion for van pools. Up to $60 per month may be excluded, but the $60 exclusion applies to the aggregate of van pools and transit passes. Finally, Congress eliminated the working condition fringe benefit for commuter parking and provided that the amount of employer-provided parking excludable from gross income is limited to $155 per month.

In an effort to provide guidance that is both administrable and consistent with the statute, the Internal Revenue Service has considered alternative approaches with respect to a number of issues that arise under the statute. In addition, the Service has discussed various issues with the public, including representatives of employers, trade associations, and government entities. The Internal Revenue Service continues to invite comments from taxpayers and practitioners on the administrability and impact of this notice. Written comments should be submitted no later than Tuesday, January 25, 1994, to:

Associate Chief Counsel
(Employee Benefits and Exempt Organizations) CC:EBEO
Attn: Dean R. Morley, Room 5213
1111 Constitution Avenue, NW
Washington, DC 20224

In addition, the Service will hold a public meeting on this notice on Tuesday, February 1, 1994, at 10:00 a.m. in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, D.C. For more information on the public meeting, contact Ms. Gidget Golston at (202) 622-6040 (not a toll free number).

II. APPLICATION

Q-1: WHAT IS A QUALIFIED TRANSPORTATION FRINGE?
a. IN GENERAL. A "qualified transportation fringe" is any of the following that is provided by an employer to an employee and meets the requirements described in this notice: (1) transportation in a commuter highway vehicle, (2) transit passes, and (3) qualified parking. Nothing in section 132(f) of the Code or this notice prohibits an employer from simultaneously providing an employee any combination of these three benefits.

b. TRANSPORTATION IN A COMMUTER HIGHWAY VEHICLE. A "commuter highway vehicle" is any highway vehicle that has a seating capacity of at least six adults (excluding the driver) and meets the two requirements for mileage use. At least 80 percent of the vehicle's mileage use must be reasonably expected to be (1) for transporting employees in connection with travel between their residences and their place of employment, and (2) on trips during which the number of employees transported for commuting is, on average, at least one-half of the adult seating capacity of the vehicle (excluding the driver).
c. TRANSIT PASSES. A "transit pass" is any pass, token, farecard, voucher, or similar item

entitling a person to transportation (or transportation at a reduced price) (1) on mass transit facilities (whether or not publicly owned), or (2) 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 six adults (excluding the driver).

d. QUALIFIED PARKING. "Qualified parking" is access to parking provided to an employee on or near the employer's business premises or at a location from which the employee commutes to work by car pool, commuter highway vehicle, mass transit facilities, transportation provided by any person in the business of transporting persons for compensation or hire, or by any other means. The term does not include parking on or near property used by the employee for residential purposes.
Qualified parking means parking for which an employer pays (directly to a parking lot operator or by reimbursement to the employee), or that an employer provides on premises it owns or leases. See Q-3b for the rules relating to reimbursements.
For purposes of the definition of qualified parking, a car pool means two or more individuals who commute together in a motor vehicle on a regular basis.

Q-2: IS THERE A LIMIT ON THE VALUE OF QUALIFIED TRANSPORTATION FRINGES THAT MAY BE EXCLUDED FROM AN EMPLOYEE'S GROSS INCOME?
a. TRANSIT PASSES AND TRANSPORTATION IN A COMMUTER HIGHWAY VEHICLE. Up to $60 per month is excludable from the gross income of an employee for transit passes and transportation in a commuter highway vehicle provided by the employer. One $60 limit applies whether these benefits are provided separately or in combination with one another.

b. PARKING. Up to $155 per month is excludable from the gross income of an employee for qualified parking provided by the employer. This exclusion is available whether an employer provides only qualified parking or qualified parking in combination with other benefits described in this notice.

c. LIMITATION ON EMPLOYEES OF A CONTROLLED GROUP OF CORPORATIONS. All employees treated as employed by a single employer under section 414(b), (c), (m), or (o) of the Code are treated as employed by a single employer for purposes of section 132(f). See section 1.132-1(c) of the Income Tax Regulations. Thus, an employee of one corporation that is part of a controlled group of corporations may, under certain circumstances, be eligible to receive qualified transportation fringes from another corporation within the controlled group. The statutory dollar limitations with respect to that employee, however, are not increased under this rule.

d. RESULT IF THE VALUE OF THE OTHERWISE QUALIFIED TRANSPORTATION FRINGE EXCEEDS THE STATUTORY LIMIT. 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 or on behalf of the employee, and any amount excluded from gross income under section 132 or another section of the Code. See section 1.61-21(b)(1) of the regulations. Thus, if an employer provides an employee with a qualified transportation fringe that exceeds the statutory limit, the excess value must be included in the employee's gross income for income and employment tax purposes.

EXAMPLE 1. Each month Employer M provides a transit pass valued at $70 to Employee D. D does not reimburse M for any portion of the pass. Because the value of the monthly transit pass exceeds the statutory limit by $10, $10 must be included in D's wages for income and employment tax purposes.

EXAMPLE 2. Each month Employer M provides parking valued at $165 to Employee E. Because the fair market value of the parking exceeds the statutory limit by $10, $10 must be included in E's wages for income and employment tax purposes.

e. PAYMENTS BY EMPLOYEES FOR QUALIFIED TRANSPORTATION FRINGES. If an employee pays the employer for a qualified transportation fringe, the amount includable in the

employee's gross income is the amount by which the fair market value of the benefit exceeds the amount paid by the employee plus any amount excludable under section 132 or another section of the Code.

EXAMPLE. Employer E provides qualified parking with a fair market value of $200 per month to its employees, but charges the employees $45 per month. Because the amount paid ($45) by the employees plus the amount excludable ($155) for qualified parking equal the fair market value of the benefit, no amount is includable in the employee's gross income.

f. EXCLUSION APPLIES ON A MONTHLY BASIS. The value of qualified parking, transit passes, and transportation in a commuter highway vehicle must be calculated on a monthly basis to determine whether the value of the benefit has exceeded the limits on qualified transportation fringes. If the value of the benefit does not exceed the statutory limit in any month, the unused portion of the exclusion may not be carried over to subsequent months.

Similarly, if the employer provides a benefit having a monthly value greater than the statutory limit, the value in excess of the statutory limit may not be excluded by combining the monthly exclusions. An employer may, however, reimburse an employee for costs incurred for qualified parking, transit passes, and transportation in a commuter highway vehicle in subsequent months, so long as the value of the benefit is calculated on a monthly basis.
EXAMPLE. Employer Q, at the end of a three-month period, reimburses Employee A for transit passes purchased during the preceding three months. A purchased a $60 transit pass each month, and Q reimburses A $180 in cash at the end of the third month. Because the value of the reimbursed expenses did not exceed the statutory limit in any month, the $180 reimbursement is excludable from A's gross income as a qualified transportation fringe. See

Q-3b for the specific rules governing reimbursements.
g. "MONTH" DEFINED. A "month" is a calendar month or a substantially equivalent period applied consistently.

Q-3: ARE CASH REIMBURSEMENTS PERMITTED UNDER NEW SECTION 132(f)?

a. IN GENERAL. The term "qualified transportation fringe" includes cash reimbursements by an employer to an employee for qualified parking, transit passes, or transportation in a commuter highway vehicle. The term "cash reimbursement" does not include cash advances.

b. RECORDKEEPING REQUIREMENTS. Employers that make cash reimbursements must establish a bona fide reimbursement arrangement to ensure that their employees have, in fact, incurred expenses for parking, transit passes, or transportation in a commuter highway vehicle. An employee must demonstrate to the employer that an amount equal to the reimbursement was expended for qualified parking, transit passes, or transportation in a commuter highway vehicle. For example, an employee may present a used transit pass to the employer at the end of the month and certify that he or she purchased and used it during the month, or may present a transit pass to the employer at the beginning of the month and certify that he or she purchased it and will use it during the month. What constitutes 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.

c. SPECIAL RULES FOR TRANSIT PASSES. The term "qualified transportation fringe" does not include reimbursements for transit passes if a voucher or similar item that may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees. A voucher or similar item is "readily available" if an employer can obtain it on terms no less favorable than those to an individual employee and without incurring a significant administrative cost.

d. EXAMPLE. Company C in City X sells vouchers to employers in the metropolitan area of X. 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. Employers can easily obtain vouchers for distribution to their employees. To cover its operating

expenses, C imposes on each voucher a charge that is not significant. Employer M disburses vouchers purchased from C to employees who use operators that accept the vouchers. Because M is not making cash reimbursements of its employees' transit expenses with respect to these operators, M need not maintain a bona fide reimbursement arrangement for these transit expenses. The vouchers disbursed to M's employees are qualified transportation fringes.

Q-4: CAN EMPLOYERS REDUCE THEIR EMPLOYEES' COMPENSATION IN EXCHANGE FOR PROVIDING QUALIFIED TRANSPORTATION FRINGES?
Section 132(f)(4) of the Code prevents employers from reducing their employees' compensation in exchange for providing qualified transportation fringes. This rule applies even if state or local law requires employers to offer employees the choice of receiving a qualified transportation fringe or a higher salary.

EXAMPLE 1. Employer X reduces its employees' compensation by $60 per month and provides $60 per month in transit passes. Each employee is required to include $60 per month in gross income, even though the employee received an otherwise qualified transportation fringe.

EXAMPLE 2. Employer Y offers its employees a choice between $45 per month in transit passes and $45 per month in additional compensation. EVERY employee of Y is required to include $45 per month in gross income, whether the employee selected cash or transit passes.

Q-5: TO WHICH EMPLOYERS AND EMPLOYEES DO THE QUALIFIED TRANSPORTATION FRINGE RULES APPLY?
a. EMPLOYERS. Section 1911 of the Act does not exclude government employers from coverage. Accordingly, section 132(f) of the Code applies to both non-government and government employers.

b. EMPLOYEES. Qualified transportation fringes may be provided only by employers to employees. For this purpose, employees are individuals who are employees within the meaning of section 1.132-1(b)(2)(i) of the regulations. This definition includes common law employees and other statutory employees, such as officers of corporations. Self-employed individuals, who are employees within the meaning of section 401(c)(1) of the Code, are not employees for purposes of section 132(f). Therefore, partners, 2-percent shareholders of S corporations, sole proprietors, and other independent contractors are not employees for purposes of section 132(f). An individual who is both a 2-percent shareholder of an S corporation and an officer of that S corporation is not considered an employee for purposes of section 132(f).

Q-6: ARE THERE ANY SPECIAL RULES FOR QUALIFIED PARKING FOR VEHICLES PROVIDED BY LAW ENFORCEMENT AGENCIES TO THEIR EMPLOYEES?
Section 1911 of the Act does not provide special rules for vehicles provided by law enforcement agencies. Accordingly, section 132(f) of the Code applies to qualified parking provided to law enforcement officers who travel from home to work in vehicles provided by a law enforcement agency unless the vehicle is a qualified nonpersonal use vehicle as described in section 1.274-5T(k) of the regulations.

Under section 1.132-5(h)(1) of the regulations, 100 percent of the value of the use of a qualified nonpersonal use vehicle (as described in section 1.274-5T(k)) is excludable from gross income as a working condition fringe. This exclusion applies to employer-provided parking for qualified nonpersonal use vehicles as well. Thus, if an employee drives from home to work in a vehicle described in section 1.274-5T(k) of the regulations, the parking provided for that vehicle is excludable from the employee's gross income as a working condition fringe. As with employer-provided parking for other types of vehicles used solely for business purposes, parking provided for law enforcement vehicles used exclusively for business purposes is a working condition fringe and the rules of section 132(f) do not apply.

Q-7: MAY PARTNERS AND 2-PERCENT SHAREHOLDERS OF S CORPORATIONS CONTINUE TO USE THE RULES THAT APPLIED TO TRANSIT PASSES AND PARKING PRIOR TO THE ACT?

a. TRANSIT PASSES. The existing de minimis and working condition fringe rules remain available for transit passes provided to partners and 2-percent shareholders of S corporations. For example, the de minimis fringe rule for transit passes continues to apply to partners and 2-percent shareholders of S corporations to the extent it applied prior to the Act. Tokens or farecards provided by a partnership to 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 $21. See section 1.132-6(d)(1) of the regulations. If the value of a pass provided in a month exceeds $21, however, the full value of the benefit is includable in gross income.

b. PARKING. The Act eliminated the working condition fringe exclusion for commuter parking. However, if a partner performing services for a partnership or a director of a corporation would be able to deduct the cost of parking as a trade or business expense under section 162 of the Code, the value of free or reduced-cost parking is excludable as a working condition fringe. See sections 1.132-5(a)(1) and 1.132-1(b)(2) of the regulations. The de minimis fringe rules remain available for parking provided to partners and 2-percent shareholders of S corporations that qualifies under the general de minimis rules. See section 1.132-6(a) and (b).

EXAMPLE. G is a partner in partnership P, which maintains offices at various locations in city C. G commutes to and from G's office every day and parks free of charge in a reserved space in P's lot. G periodically drives to P's other offices in C for business reasons and parks in lots leased by P. G must include in income the full monthly value of G's reserved parking space. Because G would be allowed a deduction under section 162 of the Code for the cost of using the parking spaces at P's other offices, the value of that parking is excludable from gross income as a working condition fringe.

Q-8: HOW DOES SECTION 132(f) AFFECT TRANSIT PASSES AND PARKING PROVIDED TO INDEPENDENT CONTRACTORS?

Even though qualified transportation fringes cannot be provided to self-employed individuals (see Q-5b), the existing de minimis fringe rules for transit passes and parking continue to apply to independent contractors to the extent they applied prior to the Act.

a. TRANSIT PASSES. Tokens or farecards that enable an independent contractor to commute on a public transit system (not including privately-operated van pools) are excludable from the independent contractor's gross income if the value of those tokens and farecards in any month does not exceed $21. See section 1.132-6(d)(1) of the regulations. If the value of a pass provided in a month exceeds $21, however, the full value of the pass is includable in gross income.

b. PARKING. An independent contractor may exclude the value of parking from income as a de minimis fringe if the requirements of section 1.132-6(a) and (b) are satisfied. See also section 1.132-1(b) (2) of the regulations.

Q-9: HOW DO THE QUALIFIED TRANSPORTATION FRINGE RULES APPLY TO VAN POOLS?

a. VAN POOLS OPERATED BY OR FOR THE EMPLOYER.

(i). IN GENERAL. This category covers two types of arrangements: (1) employers purchase or lease vans to enable employees to commute together, and (2) employers contract with and pay a third party to provide the vans, maintenance, and liability insurance. Up to $60 per month of the value of transportation in the vans may be excluded from the employees' gross incomes, provided the van qualifies as a "commuter highway vehicle" as defined in Q-1b of this notice and section 132(f)(5)(B) of the Code.

(ii). VALUATION. The regulations under section 61 of the Code provide that the fair market value of a fringe benefit is based on all the facts and circumstances. As an alternative, transportation in an employer-provided commuter highway vehicle may be valued under the following special valuation rules, which existed prior to the Act: (1) automobile lease valuation rule, see section 1.61-21(d) of the regulations, (2) vehicle cents-per-mile rule, see section 1.61-21(e), and (3) commuting valuation rule, see section 1.61-21(f). For general rules applicable to each of the special valuation rules, see section 1.61-21(c) of the regulations.

The Act does not affect the availability of these rules for valuing an employee's personal use of an employer-provided vehicle that does not qualify as a commuter highway vehicle. EXAMPLE. Employer V purchases a van for purposes of transporting its employees from home to work. The van qualifies as a "commuter highway vehicle" within the meaning of Q-1b and section 132(f)(5)(B) of the Code. V elects to value employee travel in its vans using the commuting valuation rule. In one month, Employee C commutes to and from work in V's van 20 days. Under the commuting valuation rule, the value of each one-way commute is $1.50 (for a total of $3 per day); therefore, the value of C's travel for the month is $60. The full value of the benefit is excludable from C's gross income because it does not exceed the statutory limit. See Q-2d and Q-2e for the rules governing the treatment of amounts in excess of the statutory limit and payments by employees for in-kind qualified transportation fringes.

b. VAN POOLS OPERATED BY EMPLOYEES. Cash reimbursements by an employer to employees for transportation in a van pool operated by employees independent of their employer are excludable as qualified transportation fringes, provided the van qualifies as a "commuter highway vehicle" as defined in section 132(f)(5)(B) of the Code. The amount that may be excluded from an employee's income is limited to $60 per month. See Q-3b for the rules governing cash reimbursements.

c. PRIVATE OR PUBLIC TRANSIT-OPERATED VAN POOLS. The qualified transportation fringe exclusion is available for transit passes 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. The van must seat at least six adults (excluding the driver). See Q-3c for the special rule for cash reimbursements for transit passes.

Q-10: HOW IS THE VALUE OF PARKING DETERMINED?
a. IN GENERAL. The valuation rules of section 1.61-21(b) of the regulations apply both for purposes of determining whether the amount of qualified transportation fringes exceeds the excludable amount and for purposes of determining the actual amount (if any) includable in income. Generally, the value of parking provided by an employer to an employee is based on the cost (including taxes or other added fees) that an individual would incur in an arm's-length transaction to obtain parking at the same site. If that cost is not ascertainable, then the value of parking is based on the cost that an individual would incur in an arm's-length transaction for a space in the same lot or a comparable lot in the same general location under the same or similar circumstances. An employee's subjective perception of the value of the parking is not relevant to the determination of its fair market value.

EXAMPLE. Employer Z operates an industrial plant in a rural area in which no commercial parking is available. Z furnishes ample parking for its employees on the business premises, free of charge. The parking provided by Z has a fair market value of $0 because an individual other than an employee ordinarily would not pay to park there.

b. RATE. Under the general valuation rules of section 1.61-21(b) of the regulations, the monthly rate may be used to determine a monthly value rather than the daily rate multiplied by the number of days in the month. If an annual rate is available, the monthly rate may be determined by dividing the annual rate by twelve. If a space is available for less than a month, the space may be valued according to the daily rate multiplied by the number of days the employee has access to the space. In no case is it necessary, however, for the monthly value

to exceed the monthly rate. The rates described above may only be used if they are available to the general public.

c. PARKING AVAILABLE PRIMARILY TO CUSTOMERS. Employer-provided parking that is available primarily to customers of the employer, free of charge, will be deemed to have a fair market value of $0. This rule does not apply, however, if an employer maintains "preferential" reserved spaces for employees. A reserved space is "preferential" if it is more favorably located than the spaces available to the employer's customers.
EXAMPLE 1. Employer X's place of business is situated in a shopping mall. Ample free parking is available to Y's customers and employees alike in the mall parking lot. None of the spaces is reserved for employees. The parking provided to Y's employees is deemed to have a fair market value of $0.

EXAMPLE 2. Employer Y's place of business is situated in a shopping mall. Ample free parking is available primarily to customers in the mall parking lot. Spaces reserved for employees are no closer to the mall than the spaces available to customers. The spaces reserved for employees have a fair market value of $0 because the spaces are not "preferential" reserved spaces.

EXAMPLE 3. Employer Z provides ample free parking to its employees and customers. Z maintains a separate lot near the entrance to its business premises for management level employees. Customers are not permitted to park in the employees' lot, but may park in the customer lot across an access road from Z's business premises. The parking provided to Z's employees in the separate lot is preferential reserved parking.

d. PARKING VALUED ACCORDING TO ACCESS RATHER THAN USE. The value of the parking subject to tax under section 61 of the Code is the right of access on any given day to employer-provided parking, and not the actual use of the parking by the employee.

EXAMPLE 1. Employer V maintains a parking lot for its employees. V requires its employees to apply for parking spaces prior to the month in which the space is to be used. V distributes a monthly parking pass to each employee who applies to park and does not allow anyone without a pass to park in its lot. No value is includable in the gross incomes of employees who do not apply for parking passes because they do not have access to employer-provided parking. The value of parking provided to employees who apply for and receive passes is the full monthly value.

EXAMPLE 2. Employee D has unlimited access to qualified parking provided by Employer M. During one particular month, D used the parking space 5 days, because D was away on business travel for 1 week and on a personal vacation for 2 weeks. Because D had access to the parking space for the entire month, the amount includable in D's gross income is the amount by which full monthly fair market value exceeds the statutory limit ($155). See Q-2d. See also Q-2e for the result if M charges D for the parking.

Q-11: HOW DOES SECTION 132(f) INTERACT WITH OTHER FRINGE BENEFIT RULES? Under section 132(f)(7) of the Code, a de minimis fringe does not include any qualified transportation fringe. If, however, an employer provides local transportation, other than transit passes or transportation in a commuter highway vehicle, 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).

a. OCCASIONAL LOCAL TRANSPORTATION FARE. Section 1.132-6(d)(2)(i) of the regulations provides that local transportation fare (such as taxi fare) provided to an employee is excludable from income as a de minimis fringe if the benefit is reasonable and is provided on an occasional basis because overtime work necessitates an extension of the employee's normal work schedule.

b. TRANSPORTATION PROVIDED UNDER UNUSUAL CIRCUMSTANCES. Section 1.132-

6(d)(2)(iii) of the regulations provides that if an employer provides transportation (such as taxi fare) to an employee for use in commuting to, from, or both to and from work because of unusual circumstances and because, based on the facts and circumstances, it is unsafe for the employee to use other available means of transportation, the excess of the value of each one-way trip over $1.50 per one-way commute is excluded from gross income.

c. VALUATION OF LOCAL TRANSPORTATION PROVIDED TO "QUALIFIED" EMPLOYEES. Section 1.61-21(k) of the regulations provides a special valuation rule for local transportation provided, solely because of unsafe conditions, to "qualified" employees who would ordinarily walk or use public transportation to and from work. If unsafe conditions exist and the employee is "qualified," local transportation provided to the employee may be valued at $1.50 per one-way commute. Because section 1.61-21(k) is a special valuation rule under section 61, it is not affected by section 132(f)(7). Therefore, employers may continue to provide local transportation to employees meeting the requirements of section 1.61-21(k).

Q-12: WHEN AND HOW DO EMPLOYERS WITHHOLD AND REPORT THE VALUE OF QUALIFIED TRANSPORTATION FRINGES INCLUDABLE IN GROSS INCOME?
a. NONCASH BENEFITS. Taxable fringe benefits are ordinarily treated as wages for federal income tax withholding, Federal Insurance Contributions Act, and Federal Unemployment Tax Act purposes and are reported on an employee's Form W-2, Wage and Tax Statement. Employers may use the guidelines in Announcement 85-113, 1985-31 I.R.B. 31, for reporting and withholding on taxable NONCASH fringe benefits. Announcement 85-113 provides that employers may elect, for purposes of the FICA, the FUTA, and federal income tax withholding purposes, to treat NONCASH 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.

b. CASH REIMBURSEMENTS. Because employers may not use Announcement 85-113 for cash reimbursements to employees (for example, cash reimbursements for transit passes or qualified parking), cash reimbursements in excess of the statutory limits under section 132(f) of the Code are treated as paid for employment tax purposes when actually paid. Employers must report and deposit the amounts withheld in addition to reporting and depositing the employer portion of the FICA taxes and the FUTA tax. See Q-3b for the rules governing cash reimbursements.

Q-13: HOW DO EMPLOYERS REPORT INCOME FOR QUALIFIED PARKING PROVIDED TO CAR AND VAN POOLS?
a. PRIME MEMBER. If an employee obtains a qualified parking space as a result of membership in a car or van pool, the individual to whom the parking space is assigned, the "prime member," must bear the tax consequences attributable to that space. If the space is not assigned to a particular individual, then the employer that provides access to the space must designate one of its employees as the person who will bear the tax consequences. The employer of the prime member is responsible for reporting any taxable income to that employee.

An amount of money (reasonably calculated to cover actual costs, including taxes) received by a prime member from fellow car or van pool members for their share of transporting them to and from work constitutes reimbursement by them for the operation of the vehicle for their mutual convenience. This money is not includable in the gross income of the prime member for federal income tax purposes. Rev. Rul. 55-555, 1955-2 C.B. 20. See also Rev. Rul. 80-99, 1980-1 C.B. 10.

b. NO AGGREGATION OF EXCLUSIONS. Members of a car or van pool are not permitted to combine their $155 parking exclusions for the pool. For example, employees L, M, and B belong to a car pool and use, at no charge, qualified parking worth $165 a month. M is designated as the "prime member" of the car pool and must bear the tax consequences. M may not use the exclusions attributable to B and L. Accordingly, M must include $10 per month in gross income, the amount by which the fair market value of the parking exceeds the

excludable amount.

Q-14: WHAT IS THE EFFECTIVE DATE OF SECTION 132(f)?
a. EFFECTIVE DATE. Section 132(f) of the Code applies to benefits provided after December 31, 1992. The rules in this notice can be applied to comply with section 132(f) of the Code for benefits provided after December 31, 1992, and before April 1, 1994, and must be applied to comply with section 132(f) for benefits provided after March 31, 1994.

b. TRANSITION RULE. For qualified transportation fringes provided after December 31, 1992, and before April 1, 1994 employers may use any reasonable good faith method of compliance with section 132(f) of the Code in lieu of the rules contained in this notice. Efforts to comply with section 132(f) of the Code and to determine the fair market value of benefits that differ from the rules contained in this notice will be considered reasonable good faith compliance so long as they are based on a reasonable good faith interpretation of section 132(f).

DRAFTING INFORMATION

The principal author of this notice is Dean R. Morley of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For additional information, contact Mr. Morley at (202) 622-4606 (not a toll-free number).