



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 16 1999

The Honorable Barbara Lee
United States House of Representatives
1301 Clay Street
Suite 1000 N
Oakland, CA 94612

COR-104226-99

Attn: Julie M. Hadnot
Re: Royce A. Charney, Trust Administrators, Inc.

Dear Congresswoman Lee:

This is in reply to your request that we respond to a question raised by your constituent, Mr. Charney, in correspondence sent to your office dated January 22, 1999. In previous correspondence, we attempted to address Mr. Charney's concerns regarding vouchers as qualified transportation fringe benefits under § 132(f) of the Internal Revenue Code. In Mr. Charney's more recent letter, he questioned whether under a particular fact pattern vouchers would be considered "not readily available." Copies of the various letters are enclosed.

The rules regarding qualified transportation fringe benefits are set forth in § 132(f) and Notice 94-3, 1993-1 C.B. 327. A copy of Notice 94-3 is enclosed.

Section 132(f)(3) provides as follows:

Cash reimbursements.--For purposes of this subsection, the term "qualified transportation fringe" includes a cash reimbursement by an employer to an employee for a benefit described in paragraph (1).¹ The preceding sentence shall apply to a cash reimbursement for any transit pass only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

¹ Paragraph (1) of § 132(f) provides that the term "qualified transportation fringe" means any of the following provided by an employer to an employee:

- (A) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment.
- (B) Any transit pass.
- (C) Qualified parking.

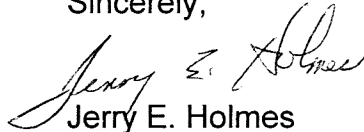
Q&A 3 of Notice 94-3 reiterates the rule from §132(f)(3) that cash reimbursements for transit passes are not qualified transportation fringe benefits if a voucher or similar item that may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees.² The notice further provides that 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.

Whether or not vouchers are "not readily available" is a question of fact. An individual employer must determine whether it can obtain vouchers on terms no less favorable than those to an individual employee and without incurring a significant administrative cost. In accordance with section 7.01 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 22, it is not appropriate for the Service to rule if the question is inherently factual.

We appreciate your having shared Mr. Charney's comments with us. We will include a copy of his letter in our files relating to Code section 132(f). We plan to publish additional guidance under § 132(f) during 1999.

We hope that this information is helpful to you. If you have any further questions, feel free to contact Margaret A. Owens (50-05478) of my staff who can be reached at (202) 622-6040.

Sincerely,



Jerry E. Holmes

Chief, Branch 2

Office of the Associate Chief Counsel

(Employee Benefits & Exempt Organizations)

Enclosures:

Mr. Charney's letter dated September 9, 1998

Our prior response dated December 8, 1998

Mr. Charney's letter dated January 22, 1999

Notice 94-3

² Q&A 3 of Notice 94-3 provides an example of a voucher system:

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.