



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Nita M. Lowey  
Member, U.S. House of Representatives  
222 Mamaroneck Avenue, Suite 312  
White Plains, NY 10605

Attention:

Dear Representative Lowey:

I apologize for the delay in responding to your inquiry dated October 30, 2015, on behalf of your constituent, . wrote about his employer's commuter benefit plan which he uses to pay for his commuting costs on a pre-tax basis. Specifically, wrote that he commutes using a commuter bus that only accepts cash or check payments for the bus ticket books. In the past, a third party administrator reimbursed his commuting costs. The third party administrator indicated that it could no longer accept claims for reimbursement after December 31, 2015, and employees must therefore use a contribution-funded debit card to pay for their mass-transit expenses.

As a general matter, we cannot provide binding legal advice to taxpayers unless they request a private letter ruling as described in Revenue Procedure 2016-1, 2016-1 Internal Revenue Bulletin 1. However, I may provide the following general information.

Gross income does not include any benefit that is a "qualified transportation fringe" [Section 132(a)(5) of the Code]. Qualified transportation fringes include any transit pass [Section 132(f)(1)(B)].

A transit pass is any pass, token, farecard, voucher or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is on mass

transit facilities or is provided by any person in the business of transporting persons for compensation or hire in a commuter highway vehicle [Section 132(f)(5)(A)].

A qualified transportation fringe includes cash reimbursement for transit passes provided the reimbursement is made under a bona fide reimbursement arrangement. However, cash reimbursement for transit passes under a bona fide reimbursement plan is only allowed if no voucher or similar item which may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees [Internal Revenue Code sections 132(f)(5)(A) and 1.132-9(b) Q/A 16(a),Q/A-16(b)].

Rev. Rul. 2006-57, 2006-47 I.R.B. 911, provided guidance on the use of smartcards, debit cards, or other electronic media to provide employees with transportation fringe benefits. One type of debit card discussed in Rev. Rul. 2006-57 was terminal-restricted debit cards, which are debit cards that are restricted for use only at merchant terminals at points of sale at which only fare media for local transit systems is sold. Rev. Rul. 2006-57 provided that, as use of terminal-restricted debit cards increased, the IRS intended “to issue guidance clarifying under what situations the [terminal-restricted debit] cards are considered to be readily available and thus preclude cash reimbursement for transit benefits.” In the interim, Rev. Rul. 2006-57 provided that the IRS would not challenge the ability of employers to provide qualified transportation fringes in the form of cash reimbursement for transit passes when the only available voucher or similar item was a terminal-restricted debit card.

Rev. Rul. 2014-32 modified and superseded Rev. Rul. 2006-57. Rev. Rul. 2014-32 provided that beginning after December 31, 2015, employers are no longer permitted to provide qualified transportation fringe benefits in the form of cash reimbursement in geographic areas where a terminal-restricted debit card is readily available, even if that is the only voucher or similar item that is readily available. Cash reimbursement is also not allowed in geographic areas where other readily available debit cards (i.e., debit cards that are not terminal-restricted debit cards) qualify as transit passes.

The prohibition against cash reimbursement for transit passes only applies if a voucher or similar item which may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees. It is a factual determination whether a voucher or similar item that may be exchanged only for a transit pass is readily available.

Under the facts described in his letter, it is not clear whether a voucher or similar item that may be exchanged only for a transit pass is readily available to the employer. For example, it is conceivable that the employer or third-party administrator could purchase ticket books directly from the bus company for distribution to the employee. The fact that the bus company accepts only cash or check payments does not cause the bus tickets to not be readily available to the employer for direct distribution to the employee. However, if other restrictions cause the bus tickets not to

be considered readily available, then cash reimbursement under a bona fide reimbursement arrangement would not be prohibited [section 1.132-9(b) Q/A-16(b)(4)].

I hope this information is helpful. If you have any additional questions, please contact me at \_\_\_\_\_ or \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Victoria A. Judson  
Division Counsel/Associate Chief Counsel  
(Tax Exempt and Government Entities)