

Reg. Section 1.132-1(b)(4)

Exclusion from gross income for certain fringe benefits

(a) In general. Gross income does not include any fringe benefit which qualifies as a-

- (1) No-additional-cost service,
- (2) Qualified employee discount,
- (3) Working condition fringe, or
- (4) De minimis fringe.

Special rules apply with respect to certain on-premises gyms and other athletic facilities (§1.132-1(e)), demonstration use of employer-provided automobiles by full-time automobile salesmen (§1.132-5(o)), parking provided to an employee on or near the business premises of the employer (§1.132-5(p)), and on-premises eating facilities (§1.132-7).

(b) Definition of employee.

(1) No-additional-cost services and qualified employee discounts. For purposes of section 132(a)(1) (relating to no-additional-cost services) and section 132(a)(2) (relating to qualified employee discounts), the term "employee" (with respect to a line of business of an employer) means-

- (i) Any individual who is currently employed by the employer in the line of business,
- (ii) Any individual who was formerly employed by the employer in the line of business and who separated from service with the employer in the line of business by reason of retirement or disability, and
- (iii) Any widow or widower of an individual who died while employed by the employer in the line of business or who separated from service with the employer in the line of business by reason of retirement or disability.

For purposes of this paragraph (b)(1), any partner who performs services for a partnership is considered employed by the partnership. In addition, any use by the spouse or dependent child (as defined in paragraph (b)(5) of this section) of the employee will be treated as use by the employee. For purposes of section 132(a)(1) (relating to no-additional-cost services), any use of air transportation by a parent of an employee (determined without regard to section 132(f)(1)(B) and paragraph (b)(1)(iii) of this section) will be treated as use by the employee.

(2) Working condition fringes. For purposes of section 132(a)(3) (relating to working condition fringes), the term "employee" means-

- (i) Any individual who is currently employed by the employer,
- (ii) Any partner who performs services for the partnership,
- (iii) Any director of the employer, and

(iv) Any independent contractor who performs services for the employer.

Notwithstanding anything in this paragraph (b)(2) to the contrary, an independent contractor who performs services for the employer cannot exclude the value of parking or the use of consumer goods provided pursuant to a product testing program under §1.132-5(n); in addition, any director of the employer cannot exclude the value of the use of consumer goods provided pursuant to a product testing program under §1.132-5(n).

(3) On-premises athletic facilities. For purposes of section 132(h)(5) (relating to on-premises athletic facilities), the term "employee" means-

(i) Any individual who is currently employed by the employer,

(ii) Any individual who was formerly employed by the employer and who separated from service with the employer by reason of retirement or disability, and

(iii) Any widow or widower of an individual who died while employed by the employer or who separated from service with the employer by reason of retirement or disability.

For purposes of this paragraph (b)(3), any partner who performs services for a partnership is considered employed by the partnership. In addition, any use by the spouse or dependent child (as defined in paragraph (b)(5) of this section) of the employee will be treated as use by the employee.



(4) De minimis fringes. For purposes of section 132(a)(4) (relating to de minimis fringes), the term "employee" means any recipient of a fringe benefit.

(5) Dependent child. The term "dependent child" means any son, stepson, daughter, or stepdaughter of the employee who is a dependent of the employee, or both of whose parents are deceased and who has not attained age 25. Any child to whom section 152(e) applies will be treated as the dependent of both parents.

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