

Reg. Section 1.132-6

De Minimis Fringes

(a) In general. Gross income does not include the value of a de minimis fringe provided to an employee. The term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(b) Frequency.

(1) Employee-measured frequency. Generally, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringes to each individual employee. For example, if an employer provides a free meal in kind to one employee on a daily basis, but not to any other employee, the value of the meals is not de minimis with respect to that one employee even though with respect to the employer's entire workforce the meals are provided "infrequently."

(2) Employer-measured frequency. Notwithstanding the rule of paragraph (b)(1) of this section, except for purposes of applying the special rules of paragraph (d)(2) of this section, where it would be administratively difficult to determine frequency with respect to individual employees, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringes to the workforce as a whole. Therefore, under this rule, the frequency with which any individual employee receives such a fringe benefit is not relevant and in some circumstances, the de minimis fringe exclusion may apply with respect to a benefit even though a particular employee receives the benefit frequently. For example, if an employer exercises sufficient control and imposes significant restrictions on the personal use of a company copying machine so that at least 85 percent of the use of the machine is for business purposes, any personal use of the copying machine by particular employees is considered to be a de minimis fringe.

(c) Administrability. Unless excluded by a provision of chapter 1 of the Internal Revenue Code of 1986 other than section 132(a)(4), the value of any fringe benefit that would not be unreasonable or administratively impracticable to account for is includible in the employee's gross income. Thus, except as provided in paragraph (d)(2) of this section, the provision of any cash fringe benefit is never excludable under section 132(a) as a de minimis fringe benefit. Similarly except as otherwise provided in paragraph (d) of this section, a cash equivalent fringe benefit (such as a fringe benefit provided to an employee through the use of a gift certificate or charge or credit card) is generally not excludable under section 132(a) even if the same property or service acquired (if provided in kind) would be excludable as a de minimis fringe benefit. For

example, the provision of cash to an employee for a theatre ticket that would itself be excludable as a de minimis fringe (see paragraph (e)(1) of this section) is not excludable as a de minimis fringe.

(d)Special rules.

(1)Transit passes. A public transit pass provided at a discount to defray an employee's commuting costs may be excluded from the employee's gross income as a de minimis fringe if such discount does not exceed \$21 in any month. The exclusion provided in this paragraph (d)(1) also applies to the provision of tokens or fare cards that enable an individual to travel on the public transit system if the value of such tokens and fare cards in any month does not exceed by more than \$21 the amount the employee paid for the tokens and fare cards for such month. Similarly, the exclusion of this paragraph (d)(1) applies to the provision of a voucher or similar instruments that is exchangeable solely for tokens, fare cards, or other instruments that enable the employee to use the public transit system if the value of such vouchers and other instruments in any month does not exceed \$21. The exclusion of this paragraph (d)(1) also applies to reimbursements made by an employer to an employee after December 31, 1988, to cover the cost of commuting on a public transit system, provided the employee does not receive more than \$21 in such reimbursements for commuting costs in any given month. The reimbursement must be made under a bona fide reimbursement arrangement. A reimbursement arrangement will be treated as bona fide if the employer establishes appropriate procedures for verifying on a periodic basis that the employee's use of public transportation for commuting is consistent with the value of the benefit provided by the employer for that purpose. The amount of in-kind public transit commuting benefits and reimbursements provided during any month that are excludible under this paragraph (d)(1) is limited to \$21. For months ending before July 1, 1991, the amount is \$15 per month. The exclusion provided in this paragraph (d)(1) does not apply to the provision of any benefit to defray public transit expenses incurred for personal travel other than commuting.

(2)Occasional meal money or local transportation fare.

(i) General rule. Meals, meal money or local transportation fare provided to an employee is excluded as a de minimis fringe benefit if the benefit provided is reasonable and is provided in a manner that satisfies the following three conditions:

(A) Occasional basis. The meals, meal money or local transportation fare is provided to the employee on an occasional basis. Whether meal money or local transportation fare is provided to an employee on an occasional basis will depend upon the frequency i.e. the availability of the benefit and regularity with which the benefit is provided by the employer to the employee. Thus, meals, meal money, or local transportation fare or a combination of such benefits provided to an employee on a regular or routine basis is not provided on an occasional basis.

(B) Overtime. The meals, meal money or local transportation fare is provided to an employee because overtime work necessitates an extension

of the employee's normal work schedule. This condition does not fail to be satisfied merely because the circumstances giving rise to the need for overtime work are reasonably foreseeable.

(C) Meal money. In the case of a meal or meal money, the meal or meal money is provided to enable the employee to work overtime. Thus, for example, meals provided on the employer's premises that are consumed during the period that the employee works overtime or meal money provided for meals consumed during such period satisfy this condition.

In no event shall meal money or local transportation fare calculated on the basis of the number of hours worked (e.g., \$1.00 per hour for each hour over eight hours) be considered a de minimis fringe benefit.

(ii) Applicability of other exclusions for certain means and for transportation provided for security concerns. The value of meals furnished to an employee, an employee's spouse, or any of the employee's dependents by or on behalf of the employee's employer for the convenience of the employer is excluded from the employee's gross income if the meals are furnished on the business premises of the employer (see section 119). (For purposes of the exclusion under section 119, the definitions of an employee under §1.132-1(b) do not apply.) If, for a bona fide business-oriented security concern, an employer provides an employee vehicle transportation that is specially designed for security (for example, the vehicle is equipped with bulletproof glass and armor plating), and the conditions of §1.132-5(m) are satisfied, the value of the special security design is excludable from gross income as a working condition fringe if the employee would not have had such special security design but for the bona fide business-oriented security concern.

(iii) Special rule for employer-provided transportation provided in certain circumstances.

(A) Partial exclusion of value. If an employer provides transportation (such as taxi fare) to an employee for use in commuting to and/or 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. The rule of this paragraph (d)(2)(iii) is not available to a control employee as defined in § 1.61-21(f)(5) and (6).

(B) "Unusual circumstances". Unusual circumstances are determined with respect to the employee receiving the transportation and are based on all facts and circumstances. An example of unusual circumstances would be when an employee is asked to work outside of his normal work hours (such as being called to the workplace at 1:00 am when the employee normally works from 8:00 am to 4:00 pm). Another example of unusual

circumstances is a temporary change in the employee's work schedule (such as working from 12 midnight to 8:00 am rather than from 8:00 am to 4:00 pm for a two-week period).

(C) "Unsafe conditions". Factors indicating whether it is unsafe for an employee to use other available means of transportation are the history of crime in the geographic area surrounding the employee's workplace or residence and the time of day during which the employee must commute.

(3) Use of special rules or examples to establish a general rule. The special rules provided in this paragraph (d) or examples provided in paragraph (e) of this section may not be used to establish any general rule permitting exclusion as a de minimis fringe. For example, the fact that \$252 (i.e., \$21 per month for 12 months) worth of public transit passes can be excluded from gross income as a de minimis fringe in 1992 does not mean that any fringe benefit with a value equal to or less than \$252 may be excluded as a de minimis fringe. As another example, the fact that the commuting use of an employer-provided vehicle more than one day a month is an example of a benefit not excludable as a de minimis fringe (see paragraph (e)(2) of this section) does not mean that the commuting use of a vehicle up to 12 times per year is excludable from gross income as a de minimis fringe.

(4) Benefits exceeding value and frequency limits. If a benefit provided to an employee is not de minimis because either the value or frequency exceeds a limit provided in this paragraph (d), no amount of the benefit is considered to be a de minimis fringe. For example, if, in 1992, an employer provides a \$50 monthly public transit pass, the entire \$50 must be included in income, not just the excess value over \$21.

(e) Examples.

(1) Benefits excludable from income. Examples of de minimis fringe benefits are occasional typing of personal letters by a company secretary; occasional personal use of an employer's copying machine, provided that the employer exercises sufficient control and imposes significant restrictions on the personal use of the machine so that at least 85 percent of the use of the machine is for business purposes; occasional cocktail parties, group meals, or picnics for employees and their guests; traditional birthday or holiday gifts of property (not cash) with a low fair market value; occasional theater or sporting event tickets; coffee, doughnuts, and soft drinks; local telephone calls; and flowers, fruit, books, or similar property provided to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis).

(2) Benefits not excludable as de minimis fringes. Examples of fringe benefits that are not excludable from gross income as de minimis fringes are: season tickets to sporting or theatrical events; the commuting use of an employer-provided automobile or other vehicle more than one day a month; membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility; employer-

provided group-term life insurance on the life of the spouse or child of an employee; and use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend. Some amount of the value of certain of these fringe benefits may be excluded from income under other statutory provisions, such as the exclusion for working condition fringes. See § 1.132-5.

(f) Nonapplicability of nondiscrimination rules. Except to the extent provided in § 1.132-7, the nondiscrimination rules of section 132(h)(1) and § 1.132-8 do not apply in determining the amount, if any, of a de minimis fringe. Thus, a fringe benefit may be excludable as a de minimis fringe even if the benefit is provided exclusively to highly compensated employees of the employer.