

Reg. Section 1.132-9(b), Q&A-14(d)

Qualified transportation fringes

Q-14.

When must the employee have made a compensation reduction election and under what circumstances may the amount be paid in cash to the employee?

A-14.

- (a) The compensation reduction election must satisfy the requirements set forth under paragraphs (b), (c), and (d) of this Q/A-14.
- (b) Timing of election. The compensation reduction election must be made before the employee is able currently to receive the cash or other taxable amount at the employee's discretion. The determination of whether the employee is able currently to receive the cash does not depend on whether it has been constructively received for purposes of section 451. The election must specify that the period (such as a calendar month) for which the qualified transportation fringe will be provided must not begin before the election is made. Thus, a compensation reduction election must relate to qualified transportation fringes to be provided after the election. For this purpose, the date a qualified transportation fringe is provided is—
 - (1) The date the employee receives a voucher or similar item; or
 - (2) In any other case, the date the employee uses the qualified transportation fringe.
- (c) Revocability of elections. The employee may not revoke a compensation reduction election after the employee is able currently to receive the cash or other taxable amount at the employee's discretion. In addition, the election may not be revoked after the beginning of the period for which the qualified transportation fringe will be provided.
-  (d) Compensation reduction amounts not refundable. Unless an election is revoked in a manner consistent with paragraph (c) of this Q/A-14, an employee may not subsequently receive the compensation (in cash or any form other than by payment of a qualified transportation fringe under the employer's plan). Thus, an employer's qualified transportation fringe benefit plan may not provide that an employee who ceases to participate in the employer's qualified transportation fringe benefit plan (such as in the case of termination of employment) is entitled to receive a refund of the amount by which the employee's compensation reductions exceed the actual qualified transportation fringes provided to the employee by the employer.

(e) Examples. The following examples illustrate the principles of this Q/A-14:

Example 1.

- (i) Employer P maintains a qualified transportation fringe benefit arrangement during a year in which the statutory monthly limit is \$100 for transportation in a commuter highway vehicle and transit passes (2002 or later) and \$180 for qualified parking. Employees of P are paid cash compensation twice per month, with the payroll dates being the first and the fifteenth day of the month. Under P's arrangement, an employee is permitted to elect at any time before the first day of a month to reduce his or her compensation payable during that month in an amount up to the applicable statutory monthly limit (\$100 if the employee elects coverage for transportation in a commuter highway vehicle or a mass transit pass, or \$180 if the employee chooses qualified parking) in return for the right to receive qualified transportation fringes up to the amount of the election. If such an election is made, P will provide a mass transit pass for that month with a value not exceeding the compensation reduction amount elected by the employee or will reimburse the cost of other qualified transportation fringes used by the employee on or after the first day of that month up to the compensation reduction amount elected by the employee. Any compensation reduction amount elected by the employee for the month that is not used for qualified transportation fringes is not refunded to the employee at any future date.
- (ii) In this Example 1, the arrangement satisfies the requirements of this Q/A-14 because the election is made before the employee is able currently to receive the cash and the election specifies the future period for which the qualified transportation fringes will be provided. The arrangement would also satisfy the requirements of this Q/A-14 and Q/A-13 of this section if employees are allowed to elect to reduce compensation up to \$280 per month (\$100 plus \$180).
- (iii) The arrangement would also satisfy the requirements of this Q/A-14 (and Q/A-13 of this section) if employees are allowed to make an election at any time before the first or the fifteenth day of the month to reduce their compensation payable on that payroll date by an amount not in excess of one-half of the applicable statutory monthly limit (depending on the type of qualified transportation fringe elected by the employee) and P provides a mass transit pass on or after the applicable payroll date for the compensation reduction amount elected by the employee for the payroll date or reimburses the cost of other qualified transportation fringes used by the employee on or after the payroll date up to the compensation reduction amount elected by the employee for that payroll date.

Example 2.

- (i) Employee Q elects to reduce his compensation payable on March 1 of a year (for which the statutory monthly mass transit limit is \$65) by \$195 in

exchange for a mass transit voucher to be provided in March. The election is made on the preceding February 27. Employee Q was hired in January of the year. On March 10 of the year, the employer of Employee Q delivers to Employee Q a mass transit voucher worth \$195 for the months of January, February, and March.

- (ii) In this Example 2, \$65 is included in Employee Q's wages for income and employment tax purposes because the compensation reduction election fails to satisfy the requirement in this Q/A-14 and Q/A-12 of this section that the period for which the qualified transportation fringe will be provided not begin before the election is made to the extent the election relates to \$65 worth of transit passes for January of the year. The \$65 for February is not taxable because the election was for a future period that includes at least one day in February.
- (iii) However, no amount would be included in Employee Q's wages as a result of the election if \$195 worth of mass transit passes were instead provided to Q for the months of February, March, and April (because the compensation reduction would relate solely to fringes to be provided for a period not beginning before the date of the election and the amount provided does not exceed the aggregate limit for the period, i.e., the sum of \$65 for each of February, March, and April). See Q/A-9 of this section for rules governing transit passes distributed in advance for more than one month.

Example 3.

- (i) Employee R elects to reduce his compensation payable on March 1 of a year (for which the statutory monthly parking limit is \$175) by \$185 in exchange for reimbursement by Employer T of parking expenses incurred by Employee R for parking on or near Employer T's business premises during the period beginning after the date of the election through March. The election is made on the preceding February 27. Employee R incurs \$10 in parking expenses on February 28 of the year, and \$175 in parking expenses during the month of March. On April 5 of the year, Employer T reimburses Employee R \$185 for the parking expenses incurred on February 28, and during March, of the year.
- (ii) In this Example 3, no amount would be includible in Employee R's wages for income and employment tax purposes because the compensation reduction related solely to parking on or near Employer R's business premises used during a period not beginning before the date of the election and the amount reimbursed for parking used in any one month does not exceed the statutory monthly limitation.