

Reg. Section 1.132-9(b), Q&A-16(b)(6)(ii) Qualified transportation fringes

Q-16.

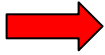
How does section 132(f) apply to expense reimbursements?

A-16.

- (a) In general. The term qualified transportation fringe includes cash reimbursement by an employer to an employee for expenses incurred or paid by an employee for transportation in a commuter highway vehicle or qualified parking. The term qualified transportation fringe also includes cash reimbursement for transit passes made under a bona fide reimbursement arrangement, but, in accordance with section 132(f)(3), only if permitted under paragraph (b) of this Q/A-16. The reimbursement must be made under a bona fide reimbursement arrangement which meets the rules of paragraph (c) of this Q/A-16. A payment made before the date an expense has been incurred or paid is not a reimbursement. In addition, a bona fide reimbursement arrangement does not include an arrangement that is dependent solely upon an employee certifying in advance that the employee will incur expenses at some future date.
- (b) Special rule for transit passes—
- (1) In general. The term qualified transportation fringe includes cash reimbursement for transit passes made under a bona fide reimbursement arrangement, but, in accordance with section 132(f)(3), only if no voucher or similar item that may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees. If a voucher is readily available, the requirement that a voucher be distributed in-kind by the employer is satisfied if the voucher is distributed by the employer or by another person on behalf of the employer (for example, if a transit operator credits amounts to the employee's fare card as a result of payments made to the operator by the employer).
- (2) Voucher or similar item. For purposes of the special rule in paragraph (b) of this Q/A-16, a transit system voucher is an instrument that may be purchased by employers from a voucher provider that is accepted by one or more mass transit operators (e.g., train, subway, and bus) in an area as fare media or in exchange for fare media. Thus, for example, a transit pass that may be purchased by employers directly from a voucher provider is a transit system voucher.

- (3) Voucher provider. The term voucher provider means any person in the trade or business of selling transit system vouchers to employers, or any transit system or transit operator that sells vouchers to employers for the purpose of direct distribution to employees. Thus, a transit operator might or might not be a voucher provider. A voucher provider is not, for example, a third-party employee benefits administrator that administers a transit pass benefit program for an employer using vouchers that the employer could obtain directly.
- (4) Readily available. For purposes of this paragraph (b), a voucher or similar item is readily available for direct distribution by the employer to employees if and only if an employer can obtain it from a voucher provider that—
- (i) does not impose fare media charges that cause vouchers to not be readily available as described in paragraph (b)(5) of this section; and
 - (ii) does not impose other restrictions that cause vouchers to not be readily available as described in paragraph (b)(6) of this section.
- (5) Fare media charges. For purposes of paragraph (b)(4) of this section, fare media charges relate only to fees paid by the employer to voucher providers for vouchers. The determination of whether obtaining a voucher would result in fare media charges that cause vouchers to not be readily available as described in this paragraph (b) is made with respect to each transit system voucher. If more than one transit system voucher is available for direct distribution to employees, the employer must consider the fees imposed for the lowest cost monthly voucher for purposes of determining whether the fees imposed by the voucher provider satisfy this paragraph. However, if transit system vouchers for multiple transit systems are required in an area to meet the transit needs of the individual employees in that area, the employer has the option of averaging the costs applied to each transit system voucher for purposes of determining whether the fare media charges for transit system vouchers satisfy this paragraph. Fare media charges are described in this paragraph (b)(5), and therefore cause vouchers to not be readily available, if and only if the average annual fare media charges that the employer reasonably expects to incur for transit system vouchers purchased from the voucher provider (disregarding reasonable and customary delivery charges imposed by the voucher provider, e.g., not in excess of \$15) are more than 1 percent of the average annual value of the vouchers for a transit system.
- (6) Other restrictions. For purposes of paragraph (b)(4) of this section, restrictions that cause vouchers to not be readily available are restrictions imposed by the voucher provider other than fare media charges that effectively prevent the employer from obtaining vouchers appropriate for distribution to employees. Examples of such restrictions include—
- (i) Advance purchase requirements. Advance purchase requirements cause vouchers to not be readily available only if the voucher provider does not offer vouchers at regular intervals or fails to provide the voucher within a reasonable period after receiving payment for the voucher. For example, a requirement that vouchers may be purchased only once per year may

effectively prevent an employer from obtaining vouchers for distribution to employees. An advance purchase requirement that vouchers be purchased not more frequently than monthly does not effectively prevent the employer from obtaining vouchers for distribution to employees.



- (ii) Purchase quantity requirements. Purchase quantity requirements cause vouchers to not be readily available if the voucher provider does not offer vouchers in quantities that are reasonably appropriate to the number of the employer's employees who use mass transportation (for example, the voucher provider requires a \$1,000 minimum purchase and the employer seeks to purchase only \$200 of vouchers).
- (iii) Limitations on denominations of vouchers that are available. If the voucher provider does not offer vouchers in denominations appropriate for distribution to the employer's employees, vouchers are not readily available. For example, vouchers provided in \$5 increments up to the monthly limit are appropriate for distribution to employees, while vouchers available only in a denomination equal to the monthly limit are not appropriate for distribution to employees if the amount of the benefit provided to the employer's employees each month is normally less than the monthly limit.

(7) Example. The following example illustrates the principles of this paragraph (b):

Example.

- (i) Company C in City X sells mass transit vouchers to employers in the metropolitan area of X in various denominations appropriate for distribution to employees. Employers can purchase vouchers monthly in reasonably appropriate quantities. 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. To cover its operating expenses, C imposes on each voucher a 50 cents charge, plus a reasonable and customary \$15 charge for delivery of each order of vouchers. Employer M disburses vouchers purchased from C to its employees who use operators that accept the vouchers and M reasonably expects that \$55 is the average value of the voucher it will purchase from C for the next calendar year.
- (ii) In this Example, vouchers for X are readily available for direct distribution by the employer to employees because the expected cost of the vouchers disbursed to M's employees for the next calendar year is not more than 1 percent of the value of the vouchers (50 cents divided by \$55 equals 0.91 percent), the delivery charges are disregarded because they are reasonable and customary, and there are no other restrictions that cause the vouchers to not be readily available. Thus, any reimbursement of mass transportation costs in X would not be a qualified transportation fringe.

(c) Substantiation requirements. Employers that make cash reimbursements must establish a bona fide reimbursement arrangement to establish that their employees have, in fact, incurred expenses for transportation in a commuter highway vehicle, transit passes, or qualified parking. For purposes of section 132(f), whether cash reimbursements are made under a bona fide reimbursement arrangement may vary depending on the facts and circumstances, including the method or methods of payment utilized within the mass transit system. The employer must implement reasonable procedures to ensure that an amount equal to the reimbursement was incurred for transportation in a commuter highway vehicle, transit passes, or qualified parking. The expense must be substantiated within a reasonable period of time. An expense substantiated to the payor within 180 days after it has been paid will be treated as having been substantiated within a reasonable period of time. An employee certification at the time of reimbursement in either written or electronic form may be a reasonable reimbursement procedure depending on the facts and circumstances. Examples of reasonable reimbursement procedures are set forth in paragraph (d) of this Q/A-16.

(d) Illustrations of reasonable reimbursement procedures. The following are examples of reasonable reimbursement procedures for purposes of paragraph (c) of this Q/A-16. In each case, the reimbursement is made at or within a reasonable period after the end of the events described in paragraphs (d)(1) through (d)(3) of this section.

(1) An employee presents to the employer a parking expense receipt for parking on or near the employer's business premises, the employee certifies that the parking was used by the employee, and the employer has no reason to doubt the employee's certification.

(2) An employee either submits a used time-sensitive transit pass (such as a monthly pass) to the employer and certifies that he or she purchased it or presents an unused or used transit pass to the employer and certifies that he or she purchased it and the employee certifies that he or she has not previously been reimbursed for the transit pass. In both cases, the employer has no reason to doubt the employee's certification.

(3) If a receipt is not provided in the ordinary course of business (e.g., if the employee uses metered parking or if used transit passes cannot be returned to the user), the employee certifies to the employer the type and the amount of expenses incurred, and the employer has no reason to doubt the employee's certification.