

Reg. Section 1.132-9(b), Q&A-24(a)

Qualified transportation fringes

Q-24. May qualified transportation fringes be provided to individuals who are partners, 2-percent shareholders of S-corporations, or independent contractors?

A-24.



- (a) General rule. Section 132(f)(5)(E) states that self-employed individuals who are employees within the meaning of section 401(c)(1) are not employees for purposes of section 132(f). Therefore, individuals who are partners, sole proprietors, or other independent contractors are not employees for purposes of section 132(f). In addition, under section 1372(a), 2-percent shareholders of S corporations are treated as partners for fringe benefit purposes. Thus, an individual who is both a 2-percent shareholder of an S corporation and a common law employee of that S corporation is not considered an employee for purposes of section 132(f). However, while section 132(f) does not apply to individuals who are partners, 2-percent shareholders of S corporations, or independent contractors, other exclusions for working condition and de minimis fringes may be available as described in paragraphs (b) and (c) of this Q/A-24. See §§ 1.132-1(b)(2) and 1.132-1(b)(4).
- (b) Transit passes. The working condition and de minimis fringe exclusions under section 132(a)(3) and (4) are available for transit passes provided to individuals who are partners, 2-percent shareholders, and independent contractors. For example, tokens or farecards provided by a partnership to an individual who is a partner that enable the partner to commute on a public transit system (not including privately-operated van pools) are excludable from the partner's gross income if the value of the tokens and farecards in any month does not exceed the dollar amount specified in § 1.132-6(d)(1). However, if the value of a pass provided in a month exceeds the dollar amount specified in § 1.132-6(d)(1), the full value of the benefit provided (not merely the amount in excess of the dollar amount specified in § 1.132-6(d)(1)) is includible in gross income.
- (c) Parking. The working condition fringe rules under section 132(d) do not apply to commuter parking. See § 1.132-5(a)(1). However, the de minimis fringe rules under section 132(e) are available for parking provided to individuals who are partners, 2-percent shareholders, or independent contractors that qualifies under the de minimis rules. See § 1.132-6(a) and (b).
- (d) Example. The following example illustrates the principles of this Q/A-24:

Example.

- (i) Individual G is a partner in partnership P. Individual G commutes to and from G's office every day and parks free of charge in P's lot.
- (ii) In this Example, the value of the parking is not excluded under section 132(f), but may be excluded under section 132(e) if the parking is a de minimis fringe under § 1.132-6.