



ebs Flexible Spending Account Program Questions & Answers for *Transit and Qualified Parking*

§1.132-9. Qualified transportation fringes

Q-1. What is a qualified transportation fringe?

A-1.

(a) The following benefits are qualified transportation fringe benefits:

- (1) Transportation in a commuter highway vehicle.
- (2) Transit passes.
- (3) Qualified parking.

(b) An employer may simultaneously provide an employee with any one or more of these three benefits.

Q-2. What is transportation in a commuter highway vehicle?

A-2. Transportation in a commuter highway vehicle is transportation provided by an employer to an employee in connection with travel between the employee's residence and place of employment. A commuter highway vehicle is a highway vehicle with a seating capacity of at least 6 adults (excluding the driver) and with respect to which at least 80 percent of the vehicle's mileage for a year is reasonably expected to be--

(a) For transporting employees in connection with travel between their residences and their place of employment; and

(b) On trips during which the number of employees transported for commuting is at least one-half of the adult seating capacity of the vehicle (excluding the driver).

Q-3. What are transit passes?

A-3. A transit pass is any pass, token, farecard, voucher, or similar item (including an item exchangeable for fare media) that entitles a person to transportation--

(a) On mass transit facilities (whether or not publicly owned); or

(b) Provided by any person in the business of transporting persons for compensation or hire in a highway vehicle with a seating capacity of at least 6 adults (excluding the driver).

Q-4. What is qualified parking?

A-4.

(a) Qualified parking is parking provided to an employee by an employer--

(1) On or near the employer's business premises; or

(2) At a location from which the employee commutes to work (including commuting by carpool, commuter highway vehicle, mass transit facilities, or transportation provided by any person in the business of transporting persons for compensation or hire).

(b) For purposes of section 132(f), parking on or near the employer's business premises includes parking on or near a work location at which the employee provides services for the employer. However, qualified parking does not include--

(1) The value of parking provided to an employee that is excludable from gross income under section 132(a)(3) (as a working condition fringe), or

(2) Reimbursement paid to an employee for parking costs that is excludable from gross income as an amount treated as paid under an accountable plan. See §1.62-2.

(c) However, parking on or near property used by the employee for residential purposes is not qualified parking.

Q-5. May qualified transportation fringes be provided to individuals who are not employees?

A-5. An employer may provide qualified transportation fringes only to individuals who are currently employees of the employer at the time the qualified transportation fringe is provided. The term employee for purposes of qualified transportation fringes is defined in §1.132-1(b)(2)(i). This term includes only common law employees and other statutory employees, such as officers of corporations

Q-6. Must a qualified transportation fringe benefit plan be in writing?

A-6. No. Section 132(f) does not require that a qualified transportation fringe benefit plan be in writing.

Q-7. Is there a limit on the value of qualified transportation fringes that may be excluded from an employee's gross income?

A-7.

(a) *Transportation in a commuter highway vehicle and transit passes.* Before January 1, 2002, up to \$65 per month is excludable from the gross income of an employee for transportation in a commuter highway vehicle and transit passes provided by an employer. On January 1, 2002, this amount is increased to \$100 per month.

(b) *Parking.* As of January 1, 2002, up to \$185 per month is excludable from the gross income of an employee for qualified parking.

(c) *Combination.* An employer may provide qualified parking benefits in addition to transportation in a commuter highway vehicle and transit passes.

(d) *Cost-of-living adjustments.* The amounts in paragraphs (a) and (b) of this Q/A-7 are adjusted annually, beginning with 2000, to reflect cost-of-living. The adjusted figures are announced by the Service before the beginning of the year.

Q-8. What amount is includible in an employee's wages for income and employment tax purposes if the value of the qualified transportation fringe exceeds the applicable statutory monthly limit?

A-8.(a) Generally, an employee must include in gross income the amount by which the fair market value of the benefit exceeds the sum of the amount, if any, paid by the employee and any amount excluded from gross income under section 132(a)(5). Thus, assuming no other statutory exclusion applies, if an employer provides an employee with a qualified transportation fringe that exceeds the applicable statutory monthly limit and the employee does not make any payment, the value of the benefits provided in excess of the applicable statutory monthly limit is included in the employee's wages for income and employment tax purposes. See §1.61-21(b)(1).

(b) The following examples illustrate the principles of this Q/A-8:

Example 1. (i) For each month in a year in which the statutory monthly transit pass limit is \$100 (i.e., a year after 2001), Employer M provides a transit pass valued at \$110 to Employee D, who does not pay any amount to Employer M for the transit pass.

(ii) In this *Example 1*, because the value of the monthly transit pass exceeds the statutory monthly limit by \$10, \$120 (\$110 - \$100, times 12 months) must be included in D's wages for income and employment tax purposes for the year with respect to the transit passes.

Example 2. (i) For each month in a year in which the statutory monthly qualified parking limit is \$175, Employer M provides qualified parking valued at \$195 to Employee E, who does not pay any amount to M for the parking.

(ii) In this *Example 2*, because the fair market value of the qualified parking exceeds the statutory monthly limit by \$20, \$240 (\$195 - \$175, times 12 months) must be included in Employee E's wages for income and employment tax purposes for the year with respect to the qualified parking.

Q-9. May an employee receive qualified transportation fringes from more than one employer?

A-9. (a) *General rule.* Yes. The statutory monthly limits described in Q/A-7 of this section apply to benefits provided by an employer to its employees. For this purpose, all employees treated as employed by a single employer under section 414(b), (c), (m), or (o) are treated as employed by a single employer. See section 414(t) and §1.132-1(c). Thus, qualified transportation fringes paid by entities under common control under

section 414(b), (c), (m), or (o) are combined for purposes of applying the applicable statutory monthly limit. In addition, an individual who is treated as a leased employee of the employer under section 414(n) is treated as an employee of that employer for purposes of section 132. See section 414(n)(3)(C).

Q-10. 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-10. (a) The compensation reduction election must satisfy the requirements set forth under paragraphs (b), (c), and (d) of this Q/A-10.

(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 year) 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-10, 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.

Q-11. May an employee whose qualified transportation fringe costs are less than the employee's compensation reduction carry over this excess amount to subsequent periods?

A-11. (a) Yes. An employee may carry over unused compensation reduction amounts to subsequent periods under the plan of the employee's employer.

(b) The following example illustrates the principles of this Q/A-15:

Example. (i) By an election made before November 1 of a year for which the statutory monthly mass transit limit is \$65, Employee E elects to reduce compensation in the amount of \$65 for the month of November. E incurs \$50 in employee-operated commuter highway vehicle expenses during November for which E is reimbursed \$50 by Employer R, E's employer. By an election made before December, E elects to reduce compensation by \$65 for the month of December. E incurs \$65 in employee-operated commuter highway vehicle expenses during December for which E is reimbursed \$65 by R. Before the following January, E elects to reduce compensation by \$50 for the month of January. E incurs \$65 in employee-operated commuter highway vehicle expenses during January for which E is reimbursed \$65 by R because R allows E to carry over to the next year the \$15 amount by which the compensation reductions for November and December exceeded the employee-operated commuter highway vehicle expenses incurred during those months.