

## INTERNAL REVENUE CODE

*IRC Sec. 132*

## § 132. Certain fringe benefits.

(a) Exclusion from gross income. Gross income shall not include any fringe benefit which qualifies as a--

- (1) no-additional-cost service,
- (2) qualified employee discount,
- (3) working condition fringe,
- (4) de minimis fringe,
- (5) qualified transportation fringe,
- (6) qualified moving expense reimbursement,
- (7) qualified retirement planning services, or
- (8) qualified military base realignment and closure fringe.

(b) No-additional-cost service defined. For purposes of this section, the term "no-additional-cost service" means any service provided by an employer to an employee for use by such employee if--

- (1) such service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and
- (2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service).

(c) Qualified employee discount defined. For purposes of this section--

(1) Qualified employee discount. The term "qualified employee discount" means any employee discount with respect to qualified property or services to the extent such discount does not exceed--

- (A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or
- (B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

(2) Gross profit percentage.

(A) In general. The term "gross profit percentage" means the percent which--

- (i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of
- (ii) the aggregate sale price of such property.

(B) Determination of gross profit percentage. Gross profit percentage shall be determined on the basis of--

(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

(ii) the employer's experience during a representative period.

(3) Employee discount defined. The term "employee discount" means the amount by which--

(A) the price at which the property or services are provided by the employer to an employee for use by such employee, is less than

(B) the price at which such property or services are being offered by the employer to customers.

(4) Qualified property or services. The term "qualified property or services" means any property (other than real property and other than personal property of a kind held for investment) or services which are of--

ferred for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services.

(d) Working condition fringe defined. For purposes of this section, the term "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167 [IRC Sec. 162 or 167].

(e) De minimis fringe defined. For purposes of this section--

(1) In general. 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.

(2) Treatment of certain eating facilities. The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if--

(A) such facility is located on or near the business premises of the employer, and

(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees. For purposes of subparagraph (B), an employee entitled under section 119 [IRC Sec. 119] to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal.

(f) Qualified transportation fringe.

(1) In general. For purposes of this section, the term "qualified transportation fringe" means any of the following provided by an employer to an employee:

(A) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment.

(B) Any transit pass.

(C) Qualified parking.

(D) Any qualified bicycle commuting reimbursement.

(2) Limitation on exclusion. The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed--

(A) **[Caution: For taxable years beginning in 2012, see § 3.12 of Rev. Proc. 2011-52 (26 USCS § 1 note) for provision that the monthly limitation under this subparagraph is \$ 125.]** \$ 100 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1),

(B) **[Caution: For taxable years beginning in 2012, see § 3.12 of Rev. Proc. 2011-52 (26 USCS § 1 note) for provision that the monthly limitation under this subparagraph is \$ 240.]** \$ 175 per month in the case of qualified parking, and

(C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.

In the case of any month beginning on or after the date of the enactment of this sentence [enacted Feb. 17, 2009] and before January 1, 2012, subparagraph (A) shall be applied as if the dollar amount therein were the same as the dollar amount in effect for such month under subparagraph (B).

(3) Cash reimbursements. For purposes of this subsection, the term "qualified transportation fringe" includes a cash reimbursement by an employer to an employee for a benefit described in paragraph (1). The preceding sentence shall apply to a cash reimbursement for any transit pass only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

(4) No constructive receipt. No amount shall be included in the gross income of an employee solely because the employee may choose between any qualified transportation fringe (other than a qualified bicycle commuting reimbursement) and compensation which would otherwise be includible in gross income of such employee.

(5) Definitions. For purposes of this subsection--

(A) Transit pass. The term "transit pass" means any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is--

(i) on mass transit facilities (whether or not publicly owned), or

(ii) provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle meeting the requirements of subparagraph (B)(i).

(B) Commuter highway vehicle. The term "commuter highway vehicle" means any highway vehicle--

(i) the seating capacity of which is at least 6 adults (not including the driver), and

(ii) at least 80 percent of the mileage use of which can reasonably be expected to be--

(I) for purposes of transporting employees in connection with travel between their residences and their place of employment, and

(II) on trips during which the number of employees transported for such purposes is at least 1/2 of the adult seating capacity of such vehicle (not including the driver).

(C) Qualified parking. The term "qualified parking" means parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation described in subparagraph (A), in a commuter highway vehicle, or by carpool. Such term shall not include any parking on or near property used by the employee for residential purposes.

(D) Transportation provided by employer. Transportation referred to in paragraph (1)(A) shall be considered to be provided by an employer if such transportation is furnished in a commuter highway vehicle operated by or for the employer.

(E) Employee. For purposes of this subsection, the term "employee" does not include an individual who is an employee within the meaning of section 401(c)(1) [*IRC Sec. 401(c)(1)*].

(F) Definitions related to bicycle commuting reimbursement.

(i) Qualified bicycle commuting reimbursement. The term "qualified bicycle commuting reimbursement" means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

(ii) Applicable annual limitation. The term "applicable annual limitation" means, with respect to any employee for any calendar year, the product of \$ 20 multiplied by the number of qualified bicycle commuting months during such year.

(iii) Qualified bicycle commuting month. The term "qualified bicycle commuting month" means, with respect to any employee, any month during which such employee--

(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).

(6) Inflation adjustment.

(A) In general. In the case of any taxable year beginning in a calendar year after 1999, the dollar amounts contained in subparagraphs (A) and (B) of paragraph (2) shall be increased by an amount equal to--

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) [*IRC Sec. 1(f)(3)*] for the calendar year in which the taxable year begins, by substituting "calendar year 1998" for "calendar year 1992".

In the case of any taxable year beginning in a calendar year after 2002, clause (ii) shall be applied by substituting 'calendar year 2001' for 'calendar year 1998' for purposes of adjusting the dollar amount contained in paragraph (2)(A).

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(B) Rounding. If any increase determined under subparagraph (A) is not a multiple of \$ 5, such increase shall be rounded to the next lowest multiple of \$ 5.

(7) Coordination with other provisions. For purposes of this section, the terms "working condition fringe" and "de minimis fringe" shall not include any qualified transportation fringe (determined without regard to paragraph (2)).

(g) Qualified moving expense reimbursement. For purposes of this section, the term "qualified moving expense reimbursement" means any amount received (directly or indirectly) by an individual from an employer as a payment for (or a reimbursement of) expenses which would be deductible as moving expenses under section 217 [*IRC Sec. 217*] if directly paid or incurred by the individual. Such term shall not include any payment for (or reimbursement of) an expense actually deducted by the individual in a prior taxable year.

(h) Certain individuals treated as employees for purposes of subsections (a)(1) and (2). For purposes of paragraphs (1) and (2) of subsection (a)--

(1) Retired and disabled employees and surviving spouse of employee treated as employee. With respect to a line of business of an employer, the term "employee" includes--

(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

(2) Spouse and dependent children.

(A) In general. Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

(B) Dependent child. For purposes of subparagraph (A), the term "dependent child" means any child (as defined in section 152(f)(1) [*IRC Sec. 152(f)(1)*]) of the employee--

(i) who is a dependent of the employee, or

(ii) both of whose parents are deceased and who has not attained age 25.

For purposes of the preceding sentence, any child to whom section 152(e) [*IRC Sec. 152(e)*] applies shall be treated as the dependent of both parents.

(3) Special rule for parents in the case of air transportation. Any use of air transportation by a parent of an employee (determined without regard to paragraph (1)(B)) shall be treated as use by the employee.

(i) Reciprocal agreements. For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if--

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(1) such service is provided pursuant to a written agreement between such employers, and

(2) neither of such employers incurs any substantial additional costs (including foregone revenue) in providing such service or pursuant to such agreement.

(j) Special rules.

(1) Exclusions under subsection (a)(1) and (2) apply to highly compensated employees only if no discrimination. Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees.

(2) Special rule for leased sections of department stores.

(A) In general. For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store--

(i) such section shall be treated as part of the line of business of the person operating the department store, and

(ii) employees in the leased section shall be treated as employees of the person operating the department store.

(B) Leased section of department store. For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that individuals making such sales are employed by the person operating the department store.

(3) Auto salesmen.

(A) In general. For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

(B) Qualified automobile demonstration use. For purposes of subparagraph (A), the term "qualified automobile demonstration use" means any use of an automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if--

(i) such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

(4) On-premises gyms and other athletic facilities.

(A) In general. Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

(B) On-premises athletic facility. For purposes of this paragraph, the term "on-premises athletic facility" means any gym or other athletic facility--

(i) which is located on the premises of the employer,

(ii) which is operated by the employer, and

(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (h)).

(5) Special rule for affiliates of airlines.

(A) In general. If--

(i) a qualified affiliate is a member of an affiliated group another member of which operates an airline, and

(ii) employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member, then, for purposes of applying paragraph (1) of subsection (a) to such no-additional-cost service provided to such employees, such qualified affiliate shall be treated as engaged in the same line of business as such other member.

(B) Qualified affiliate. For purposes of this paragraph, the term "qualified affiliate" means any corporation which is predominantly engaged in airline-related services.

(C) Airline-related services. For purposes of this paragraph, the term "airline-related services" means any of the following services provided in connection with air transportation:

(i) Catering.

(ii) Baggage handling.

(iii) Ticketing and reservations.

(iv) Flight planning and weather analysis.

(v) Restaurants and gift shops located at an airport.

(vi) Such other similar services provided to the airline as the Secretary may prescribe.

(D) Affiliated group. For purposes of this paragraph, the term "affiliated group" has the meaning given such term by section 1504(a) [IRC Sec. 1504(a)].

(6) Highly compensated employee. For purposes of this section, the term "highly compensated employee" has the meaning given such term by section 414(q) [IRC Sec. 414(q)].

(7) Air cargo. For purposes of subsection (b), the transportation of cargo by air and the transportation of passengers by air shall be treated as the same service.

(8) Application of section to otherwise taxable educational or training benefits. Amounts paid or expenses incurred by the employer for education or training provided to the employee which are not excludable from gross income under section 127 [*IRC Sec. 127*] shall be excluded from gross income under this section if (and only if) such amounts or expenses are a working condition fringe.

(k) Customers not to include employees. For purposes of this section (other than subsection (c)(2)), the term "customers" shall only include customers who are not employees.

(l) Section not to apply to fringe benefits expressly provided for elsewhere. This section (other than subsections (e) and (g)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter [*IRC Sections 1 et seq.*].

(m) Qualified retirement planning services.

(1) In general. For purposes of this section, the term "qualified retirement planning services" means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

(2) Nondiscrimination rule. Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

(3) Qualified employer plan. For purposes of this subsection, the term "qualified employer plan" means a plan, contract, pension, or account described in section 219(g)(5) [*IRC Sec. 219(g)(5)*].

(n) Qualified military base realignment and closure fringe. For purposes of this section--

(1) In general. The term "qualified military base realignment and closure fringe" means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (as in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009 [enacted Feb. 17, 2009]).

(2) Limitation. With respect to any property, such term shall not include any payment referred to in paragraph (1) to the extent that the sum of all of such payments related to such property exceeds the maximum amount described in subsection (c) of such section (as in effect on such date).

(o) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

#### **HISTORY:**

(Added July 18, 1984, P.L. 98-369, Div A, Title V, § 531(a)(1), 98 Stat. 877; April 7, 1986, P.L. 99-272, Title XIII, § 13207(a)(1), (b)(1), 100 Stat. 319; Oct. 22, 1986, P.L. 99-514, Title XI, §§ 1114(b)(5), 1151(e)(2)(A), (g)(5), Title XVIII, §§ 1853(a), 1899A(5), 100 Stat. 2451, 2506, 2507, 2870, 2958; Nov. 10, 1988, P.L. 100-647, Title I, § 1011B(a)(31)(B), Title VI, § 6066(a), 102 Stat. 3488, 3702; Nov. 8, 1989, P.L. 101-140, Title II, § 203(a)(1), (2), 103 Stat. 830; Dec. 19, 1989, P.L. 101-239, Title VII, §§ 7101(b), 7841(d)(7), (19), 103 Stat. 2304, 2428, 2429; Oct. 24, 1992, P.L. 102-486, Title XIX, § 1911(a)-(c), 106 Stat. 3012-3014; Aug. 10, 1993, P.L. 103-66, Title XIII, §§ 13101(b), 13201(b)(3)(F), 13213(d)(1), (2), (3)(B), (C), 107 Stat. 420, 459, 474; Aug. 5, 1997, P.L. 105-34, Title IX, § 970(a), Title X, § 1072(a), 111 Stat. 897, 948; June 9, 1998, P.L. 105-178, Title IX, § 9010(a)(1), (b)(1), (2), (c)(1), (2), 112 Stat. 507, 508; June 7, 2001, P.L. 107-16, Title VI, § 665(a), (b), 115 Stat. 143; Nov. 11, 2003, P.L. 108-121, Title I, § 103(a), (b), 117 Stat. 1337; Oct. 4, 2004, P.L. 108-311, Title II, § 207(13), 118 Stat. 1177; Oct. 3, 2008, P.L. 110-343, Div B, Title II, § 211(a)-(d), 122 Stat. 3840; Feb. 17, 2009, P.L. 111-5, Div B, Title I, Subtitle B, Part VI, § 1151(a), 123 Stat. 333; Nov. 6, 2009, P.L. 111-92, § 14(a), 123 Stat. 2995; Dec. 17, 2010, P.L. 111-312, Title VII, Subtitle B, § 727(a), 124 Stat. 3317.)