



# COMPLIANCE OVERVIEW

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## Qualified Transportation Benefits

Given the high cost of commuting, employers may consider implementing a **qualified transportation benefit program** for their employees. Internal Revenue Code (Code) Section 132(f) permits employers to provide certain transportation benefits to employees on a tax-free basis. These benefits include qualified parking, transit passes and transportation to and from work in a commuter highway vehicle (“vanpooling”).

Employees may set aside money from their paychecks on a pre-tax basis to pay for these qualifying expenses. Employers may also provide benefits on a tax-free basis. Code Section 132(f) limits the monthly amount of qualified transportation benefits that employees can exclude from income for tax purposes. For 2019, these limits are \$265 per month for qualified parking and \$265 per month for transit passes and vanpooling expenses (combined).

This Compliance Overview summarizes the rules for qualified transportation benefit programs and highlights implementation steps for employers.

### LINKS AND RESOURCES

- [Code Section 132\(f\)](#) – tax rules for qualified transportation benefits
- [IRS Publication 15-B](#), “Employer’s Tax Guide to Fringe Benefits”
- IRS regulations ([26 CFR § 1.132-9](#)) on qualified transportation benefits

### HIGHLIGHTS

#### KEY RULES

- Employers may provide qualified transportation benefits to their employees on a tax-free basis.
- Eligible expenses include qualified parking, transit passes and vanpooling.
- These benefits are subject to a monthly maximum limit.

#### REIMBURSEMENT REQUIREMENTS

- Qualified transportation benefits can be provided directly by an employer or through a bona fide reimbursement arrangement.
- Employee substantiation is required for cash reimbursement.
- Employers cannot provide cash reimbursement for transit passes when vouchers are readily available.

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

## OVERVIEW

Code Section 132(f) allows employers to offer a qualified transportation benefit program to their employees on a tax-free basis. Under this type of benefit program, employees can choose to have money withheld from their taxable compensation to pay for certain work-related commuting expenses on a pre-tax basis. Employers may also contribute to their employees' qualifying commuting expenses by paying the expenses directly or through a bona fide reimbursement arrangement.

As a general tax rule, all employer-provided benefits are taxable to employees unless the Code provides a specific tax exemption for the benefit. Daily transportation expenses between an employee's home and place of work generally cannot be reimbursed (or paid for) on a tax-free basis; however, the tax exemption for qualified transportation benefits is an exception to this rule.

A qualified transportation benefits program can pay or reimburse the following work-related commuting expenses on a tax-free basis:

Qualified  
parking

Transit  
passes

Vanpooling

Code Section 132(f) establishes a **maximum monthly amount** of qualified transportation benefits that employees may exclude from their income. Both employee pre-tax salary deferrals and employer-paid benefits, if any, count toward the maximum amount.

For 2019, these monthly limits are:

- ✓ Qualified parking: **\$265 per month**
- ✓ Transit passes and vanpooling (combined): **\$265 per month**

These exclusion limits are subject to cost-of-living adjustments, which are announced by the Internal Revenue Service (IRS) before the beginning of each calendar year.

### **Key Steps for Employers**

Employers that want to provide qualified transportation benefits for their employees should **consider their program design options**, including which employees will be eligible, what expenses will be covered and whether the employer will directly provide any benefits under the program.

Code Section 132(f) and underlying IRS regulations include some specific design requirements for these programs (such as the maximum monthly limit). However, employers may structure their

#### **Impact of Commuter Benefits Laws**

A number of major cities, as well as the District of Columbia and New Jersey, have enacted laws that require employers to offer qualified transportation benefits. Employers should check for these laws in areas where employees work to determine if these benefits are required.

programs more narrowly than the tax law allows. For example, instead of covering all eligible commuting expenses, employers often limit the types of expenses that can be paid for or reimbursed under the program (for example, an employer may only allow employees to pay for qualified parking on a pre-tax basis).

In addition, employers should communicate the program's availability and rules to employees. Although Code Section 132(f) does not require a plan document or employee disclosure, employers should make sure their eligible employees understand the program's rules to help avoid benefit disputes and confusion. Employers should also work with their payroll vendors to implement any pre-tax employee contributions.

**Steps to  
implement a  
qualified  
transportation  
benefits  
program:**

- Review design options and decide how to structure the program;
- Communicate the program's availability and features to eligible employees;
- Enroll employees who want to participate and set up payroll deductions, if necessary; and
- If the program covers transit passes, order any readily available vouchers, including smartcards for a particular transit system and terminal-restricted debit cards.

If an employer hires a third-party provider for its qualified transportation benefits program, this provider may assist with the implementation steps.

### ***Payment Options***

Employers that offer qualified transportation benefits have a few different payment options available to them. Although it is common for employees to pay the full cost of benefits through pre-tax salary deferrals, employers may also contribute to the cost.

Design Options	
<b>Employee Pre-tax Salary Deferrals</b>	Employees pay for qualifying expenses by reducing their compensation on a pre-tax basis
<b>Employer-paid Benefits</b>	Employer pays for employees' qualifying expenses (either directly or through a bona fide reimbursement arrangement)
<b>Combination Design</b>	Employees pay for qualifying expenses through pre-tax salary deferrals and employer contributes to the cost (by providing benefits directly or through a bona fide reimbursement arrangement)

## ***Tax Advantages***

Employee salary deferrals and employer contributions to qualified transportation benefit programs are non-taxable, provided they do not exceed the maximum exclusion amount. As noted above, for 2019, this amount is capped at \$265 per month for qualified parking and \$265 per month for transit and vanpooling expenses (combined).

These contributions are not considered wages for federal income tax purposes, including federal income tax withholding, and they are not subject to the Social Security and Medicare tax (FICA) or federal unemployment insurance (FUTA). The reduction in employees' taxable income results in a savings for both employees and employers.

### **No Tax Deduction for Employers**

Beginning in 2018, the [Tax Cuts and Jobs Act of 2017](#) (2017 Tax Act) eliminated the employer tax deduction for qualified transportation benefits. The employer deduction is disallowed regardless of whether the benefits are paid directly by the employer, through a bona fide reimbursement arrangement or through a compensation reduction agreement. For tax-exempt employers, these non-deductible expenses are treated as an increase in unrelated business taxable income.

## ***Inapplicability of Employee Benefit Laws***

While qualified transportation benefit programs must comply with the Code Section 132(f) rules to receive favorable tax treatment, they are NOT subject to the following employee benefits laws:

- ✓ **Code Section 125** – Restrictions on mid-year election changes and the requirement for annual nondiscrimination testing do not apply to qualified transportation benefit programs.
- ✓ **ERISA** – ERISA's plan document and summary plan description (SPD) requirements do not apply to qualified transportation benefit programs.
- ✓ **COBRA, HIPAA and ACA** – Qualified transportation benefit programs are not group health plans, which means they are not subject to group health plan requirements under COBRA, HIPAA or the ACA.

## **ELIGIBLE EXPENSES**

Expenses related to **qualified parking**, **transit passes** and **vanpooling** can be excluded from an employee's taxable income. These expenses have specific meanings, as summarized in the table below.

ELIGIBLE EXPENSES	
Qualified Parking	<p>Includes parking provided to an employee by an employer:</p> <ul style="list-style-type: none"> <li>• At or near the employer's business premises; or</li> <li>• At or near a location from which employees commute to work by carpool, commuter highway vehicle (see definition below) or mass transit.</li> </ul> <p>An employer provides parking to an employee if the employer pays (directly to a parking lot operator or by reimbursement to the employee), or the employer provides the parking on premises that it owns or leases.</p> <p>Qualified parking does not include parking on or near an employee's residence.</p>
Transit Passes	<p>Includes any pass, token, fare card, voucher, or similar item that entitles a person to ride, free of charge or at a reduced rate, on one of the following:</p> <ul style="list-style-type: none"> <li>• On mass transit; or</li> <li>• In a vehicle that seats at least six adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it.</li> </ul> <p>Mass transit may be publicly or privately operated and includes bus, rail, subway or ferry, among other modes of transportation.</p>
Vanpooling	<p>Includes transportation between the employee's residence and place of employment in a <b>commuter highway vehicle</b>. A commuter highway vehicle is any highway vehicle with a seating capacity of six or more adult passengers (not including the driver). Employer- and employee-operated vanpools, as well as private or public transit-operated vanpools may be qualified transportation benefits.</p> <p>For employer- and employee-operated vanpools, at least 80% of the mileage use for a year must reasonably be expected to be for purposes of transporting employees between their residences and workplaces, with employees occupying at least 50% of the vehicle's seats (not including the driver's).</p> <p>Transit passes for vanpools operated by public transit authorities or private companies may be excluded from income as transit passes, subject to the tax rules for transit passes (including the limits on cash reimbursement described below).</p>

Not all work-related commuting expenses can be offered on a tax-free basis through a qualified transportation benefits program. Only the expenses outlined above (qualified parking, transit passes and vanpooling) are eligible. Examples of ineligible commuting expenses include bridge and road tolls,



carpool expenses, gas or fuel expenses and parking and transportation expenses for an employee's spouse or dependents.

### Bicycle commuting

Prior to 2018, reimbursements for bicycle commuting expenses could be excluded from an employee's gross income. The 2017 Tax Act suspended the tax exclusion for bicycle commuting benefits for tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026. Thus, employer reimbursements for bicycling commuting expenses are taxable beginning in 2018.

## ELIGIBLE EMPLOYEES

As a general rule, only **current common law employees** may participate in a qualified transportation benefit program and take advantage of the Code Section 132(f) tax exclusion.

Many employers offer qualified transportation benefits to all of their employees, especially when employees pay for the benefits through pre-tax salary deferrals and the employer does not make contributions. However, because nondiscrimination testing is not required for qualified transportation benefits, employers may subsidize the qualifying commuting expenses of a select group of employees. For example, an employer may pay the parking expenses of its management employees (but not other employees) on a tax-free basis, subject to the maximum exclusion limit.

### *Self-employed Individuals*

Self-employed individuals (such as sole proprietors, partners, independent contractors and more-than-2% shareholders in a Subchapter S corporation) are not considered employees under Code Section 132(f). Thus, these people do not qualify for the tax exclusion for qualified transportation benefits. However, these individuals may be able to exclude transportation expenses under other tax exemptions, such as the Code Section 132(a) exemptions for working condition and de minimis fringe benefits.

### *Former Employees*

Only current employees can participate in a qualified transportation benefit program. Employers that distribute transit passes must follow two special tax rules for former employees:

- ✓ The value of transit passes provided in advance to an employee for a month in which the individual is not an employee is included in the employee's wages for income tax purposes.
- ✓ Transit passes distributed in advance to an employee are excludable from wages for employment tax purposes (FICA and FUTA) if the employer distributes transit passes to the employee in advance for not more than three months and, at the time the transit passes are distributed, there is not an established termination date for the employee (for example, an employee's notice of retirement) that will occur before the beginning of the last month of the period for which the transit passes are provided.

## MONTHLY EXCLUSION LIMITS

Code Section 132(f) limits the monthly amount of qualified transportation benefits that employees can exclude from income for tax purposes. These limits are subject to annual increases for inflation. The following chart shows the monthly exclusion limits:

Tax Year	Limits
2019	<ul style="list-style-type: none"> <li>\$265 per month in qualified parking expenses</li> <li>\$265 per month for transit passes and vanpooling expenses combined</li> </ul>
2018	<ul style="list-style-type: none"> <li>\$260 per month in qualified parking expenses</li> <li>\$260 per month for transit passes and vanpooling expenses combined</li> </ul>

A month is a calendar month or a substantially equivalent period of time that is applied consistently.

If a qualified transportation benefit exceeds the maximum exclusion limit, the value of the benefit in excess of the exclusion limit must be included in the employee's wages for income and employment tax purposes, assuming no other tax exclusion applies.

### Examples

**Example 1:** For 2019, an employer provides an employee with a monthly transit pass valued at \$275. Because the monthly transit pass exceeds the 2019 tax exclusion limit by \$10 each month, \$120 (\$10 per month x 12 months) must be included in the employee's wages for income and employment tax purposes for 2019 with respect to the transit pass.

**Example 2:** For 2019, an employer provides qualified parking valued at \$185 to an employee, who does not pay any amount to the employer for the parking. Because the fair market value of the qualified parking exceeds the statutory monthly limit by \$20, \$240 (\$20 per month x 12 months) must be included in the employee's wages for income and employment tax purposes for the year with respect to the qualified parking.

**Example 3:** For 2019, an employer provides qualified parking valued at \$310 per month to its employees, but charges each employee \$45 per month (paid with after-tax dollars). Because the sum of the amount paid by an employee (\$45) plus the amount excludable for qualified parking (\$265) is not less than the fair market value of the monthly benefit, no amount is includible in the employee's wages for income and employment tax purposes with respect to the qualified parking.

Except for transit passes, the monthly limits apply to the qualified transportation benefits that are used by an employee in a month.

An employee can receive parking, transit and vanpooling benefits (or any combination of those benefits) during the same month, so long as he or she receives no more than the applicable exclusion limit for each type of benefit.

Also, the monthly exclusion amount may not be combined to reimburse expenses in excess of the monthly maximum limit. This means that an employee's monthly benefits for qualified transportation expenses cannot be averaged over a period (for example, a calendar quarter or tax year) to permit reimbursement in excess of the maximum monthly limit for any period. For example, in tax year 2019 an employee incurs \$150 in parking expenses for January and \$270 in February. The employer must include \$5 in the employee's gross income for the month of February, even though the employee did not use the full exclusion allowed for the month of January.

## Multi-month transit passes

Under a special rule, transit passes distributed in advance for more than one month (but not for more than 12 months) are qualified transportation benefits. The value of a multi-month pass should be divided by the number of months for which it is valid to determine whether the value of the pass exceeds the maximum limit.

## RULES FOR EMPLOYEE ELECTIONS

In general, when an employee is offered a choice between cash compensation and qualified transportation expenses, the amount of qualified transportation expenses is not included in gross income if the following requirements are satisfied:

- ✓ The employee's election is in written or electronic form (or another permanent and verifiable form) and includes the date of the election, the amount of compensation to be reduced and the period for which the benefit will be provided;
- ✓ The amount of the election does not exceed the monthly exclusion limit;
- ✓ The election is made before the employee is able to receive the cash compensation and before the beginning of the period for which the transportation benefit will be provided (that is, the date the employee receives a transit pass or the date the employee uses the qualified transportation benefit); and
- ✓ The election is irrevocable for the period of coverage. Many employers design their qualified transportation plans so that employees can change their elections each month; designating the period of coverage is a plan design decision over which employers have discretion.

An employer may design its qualified transportation plan so that an employee's election for a coverage period is **automatically renewed** for subsequent coverage periods, if the employee does not change his or her election. Employers may also use **automatic elections** where employees are deemed to elect benefits under the qualified transportation benefit plan, provided employees receive notice of the arrangement and are given an opportunity to elect cash compensation instead of the qualified transportation benefit.



### Carryovers and Cash-outs

Employers may permit current employees to carry over unused compensation reduction amounts to subsequent periods of coverage under a qualified transportation program. However, employers cannot refund (or cash out) unused compensation reduction amounts to any employee, including current employees and terminated employees.

## REIMBURSEMENT RULES

Qualified transportation benefits can be provided directly by an employer (such as on-site employer-provided parking, an employer-operated vanpool or employer-distributed transit passes). Qualified transportation benefits can also be provided through a bona fide reimbursement arrangement where the employer reimburses employees for qualified transportation expenses they have incurred or paid.

A bona fide reimbursement arrangement requires that the employee incur and substantiate expenses for qualified transportation benefits before reimbursement. An employer must implement reasonable procedures to ensure that the reimbursement amount does not exceed the amount of qualified transportation expense. Typically, this includes an employee certification regarding the expense and third-party substantiation (for example, a parking lot receipt), unless a receipt is not provided in the ordinary course of business.

Also, a bona fide reimbursement arrangement must require that an expense be substantiated within a reasonable period. According to IRS regulations, an expense that is substantiated within **180 days** after it has been paid will be considered to have been substantiated within a reasonable period.

### *Special Rule for Transit Passes*

Employers can reimburse employees for transit passes **only if a voucher (or similar item that the employee can exchange only for a transit pass) is not readily available** for direct distribution by an employer to its employees.

A transit system voucher is an instrument, which may be purchased by employers from a voucher provider, that is accepted by one or more mass transit operators (for example, train, subway and bus) in an area either as fare media or in exchange for fare media.

A voucher is readily available for direct distribution only if an employer can obtain it from a voucher provider that does not impose fare media charges or other restrictions that effectively prevent the employer from obtaining vouchers. Reasonable and customary delivery charges by the voucher provider do not count as fare media charges. Examples of restrictions that effectively prevent the employer from obtaining vouchers appropriate for

### Electronic payment cards.

The IRS issued [Revenue Ruling 2014-32](#) to address when electronic payment cards qualify as vouchers. In general, smartcards and terminal-restricted debit cards that can only be used for fare media for a particular transit system are acceptable as vouchers and do not require substantiation. However, merchant category code (MCC)-restricted debit cards can be treated as vouchers only if they effectively prohibit recipients from purchasing anything other than fare media for local transit systems.

distribution to employees include advance purchase requirements, purchase quantity requirements and limits on denominations of vouchers that are available.

If a voucher is readily available, it may be distributed directly by the employer or by another person on behalf of the employer (for example, a transit operator who credits amounts to the employee's fare card as a result of payments made to the operator by the employer).