

Bicycle Commuter Benefits Added as Qualified Transportation Fringe Benefit

Beginning January 1, 2009, employers have a new way to support employee efforts to "go green." As part of the emergency economic stabilization legislation that President Bush signed on October 3, 2008, a bicycle commuter benefit was added to Internal Revenue Code § 132(f), which will allow employers to reimburse employees who commute to work by bicycle for certain bicycle expenses. The reimbursements will be excludable from an employee's gross income.

What Expenses May Be Reimbursed?

An employee may be reimbursed on a tax-free basis for reasonable expenses incurred by the employee during the calendar year for the purchase of a bicycle, bicycle improvements, repair, and storage, provided the bicycle is regularly used to travel between the employee's residence and the place of employment.

How Much May the Employer Reimburse?

The employer may reimburse a maximum of \$20 per month for each month in a year that the employee regularly uses the bicycle for a substantial portion of the travel between the employee's residence and the place of employment. An employee may not receive the bicycle commuter reimbursement in any month in which the employee receives any other qualified transportation fringe benefit (i.e., transit pass, transportation in a commuter highway vehicle, qualified parking). Unlike the other qualified transportation fringe benefits, the bicycle commuter reimbursement will not be adjusted for inflation.

When May the Employer Pay the Reimbursement?

The reimbursement may be paid anytime during the year in which the employee commuted by bicycle and as a result, bicycle expenses were incurred, or during the three month period following the year in which the employee commuted by bicycle and as a result, bicycle expenses were incurred. Note that the time period for reimbursement of bicycle expenses differs from the time period set forth under the regulations for qualified transportation fringe benefits for substantiating a claim for reimbursement of qualified transportation expenses. This may be an area where the Internal Revenue Service will issue guidance to clarify the time period when reimbursements of commuter bicycle expenses must be substantiated and may be paid.

How May a Bicycle Commuter Expense Be Substantiated?

Under the regulations for qualified transportation fringe benefits set forth in Treas. Reg. § 1.132-9, when an employer pays an employee a cash reimbursement for a qualified transportation expense, an employer must establish a bona fide reimbursement arrangement to establish that the employee has, in fact, incurred the expense that is being reimbursed. Employers' bona fide reimbursement arrangements will vary depending on an employer's facts and circumstances, but typically a bona fide reimbursement arrangement would include (i) reasonable procedures to ensure that an expense was incurred, (ii) substantiation of the expense within a reasonable period

of time, typically within 180 days, and (iii) an employee certification at the time that the employee requests reimbursement. The substantiation of an expense typically would include an employee submitting a copy of the receipt for the expense incurred.

What Qualifies as Commuting by Bicycle?

An employee is considered to commute by bicycle any month during which the employee regularly uses the bicycle for a substantial portion of travel between the employee's residence and the place of employment. The statute does not define either "regularly uses" or "substantial portion" so unless the Internal Revenue Service provides guidance on the meaning of those terms, employers will be left to apply their own reasonable interpretations of those terms.

May Employees Use Pre-Tax Compensation to Fund this Benefit?

No. Unlike other qualified transportation fringe benefits, employees may not pay for this benefit using pre-tax compensation. The bicycle benefit is funded solely with employer contributions.

Is a Written Plan Required for the Bicycle Commuter Benefits?

Under the current regulations for qualified transportation fringe benefits set forth in Treas. Reg. § 1.132-9, Q/A-6, a written plan document should not be required. An employer may, however, want to have a written document to set forth the terms of the benefit, e.g., how much the employer will pay, who is eligible for the bicycle commuter benefit, and the rules that must be followed to receive reimbursement of bicycle commuter expenses.

When Is the New Law Effective?

The new law is effective for taxable years beginning on January 1, 2009.

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