



Fringe Benefits

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Overview

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- Qualified Employee Discounts
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- Fringe Benefits and Intermediate Sanctions



De Minimis Fringes

- These benefits are so small that accounting for them is impractical.
- Examples include:
 - Supper money
 - Occasional personal use of company copying machine,
 - Company cocktail parties
 - Picnics for employees
- Can be provided on a **discriminatory** basis

IRC Sec. 132(a)(4)



Nondiscriminatory Basis Defined

- **§ 132(j)(1) Non-Discrimination Rule:** it mandates that benefits cannot discriminate in favor of highly compensated employees as defined by **§ 414(q)**—
 - (1) A Benefit available only to employees who make over \$80,000;
 - (2) A Benefit available only to employees who make over \$50,000 and are in the top 20% of employee salary; or
 - (3) A Benefit available only to employees who make over \$50,000 and are officers.
- If the benefit is discriminatory, then the ***TOTAL FMV OF THE BENEFIT MUST BE INCLUDED IN INCOME, under Treas. Reg. § 1.132-8(a).***

IRC Sec. 132(j)(1)



Employee Achievement Awards

- The general rule under Sec. 74(a) is that the FMV of all prizes and awards are included in gross income
 - **Exception—§ 74(b) charitable transfer:** A prize is NOT taxable to the recipient if: (i) it was received for scientific, educational, or similar achievements, and (ii) the recipient orders that it be transferred to a charity.
 - **Exception—§ 74(c)(1) employee achievement awards:** An award to an EE for length of service or safety achievement, which is tangible personal property, is not taxable unless it cost the ER more than \$400 per award and \$1600 per year.

IRC Sec. 74(c)



Working Condition Fringes

- Are not taxable if the employee could have deducted the cost of the item under Sec. 162 or Sec. 167 if they had actually paid for the item
 - Includes employee business expenses that would be eliminated by the 2 percent floor on miscellaneous deductions

IRC Sec. 132(a)(3)



Qualified Employee Discounts

- Are nontaxable if:
 - The discount is not on real estate or investment property;
 - The item discounted is from same line of business in which employee works;
 - The discount does not exceed the gross profit margin on property or 20% on services; and
 - The benefit is offered on nondiscriminatory basis.

IRC Sec. 132(a)(2)



Educational Assistance— Scholarships and Fellowships

- Section 117(a) states in pertinent part:
 - Gross income does not include any amount paid to or for the benefit of a student to aid in pursuing a degree at an educational institution
 - Accordingly, amounts received are nontaxable to extent of tuition and related expenses (e.g., fees, books, and equipment required for courses). See Secs. 117(a) and (b).
 - ***Amounts received for room and board are TAXABLE!***

IRC Sec. 117



Educational Assistance— Scholarships and Fellowships

- Under Sec. 117(d), qualified tuition waivers or reductions by nonprofit educational institutions are excluded from income.
 - Generally limited to undergraduate tuition waivers
 - However, in the case of teaching or research assistants, the exclusion will apply for their graduate tuition waivers if the waiver is in addition to reasonable compensation that is paid to them for services rendered.

IRC Sec. 117



Education Assistance Programs- Sec. 127

- Section 127(a) states that:

“Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a qualified program.”

- Section 127(a)(2) provides that the exclusion may not exceed \$5,250 for any given tax year

IRC Sec. 127



Club Memberships

- Business use of club is not taxable if employer absorbs deduction loss. Clubs include:
 - Social, athletic, sporting, luncheon, airline, hotel, and business clubs
 - Business leagues, trade associations, etc., are not considered clubs
- Business use of club must be documented by employee

Reg. Sec. 1.132-5(s)



Meals

- The courts have distinguished between meals with outsiders and meals with co-workers:
 - Daily meals are not deductible
 - Monthly meals ok
- Some meals may be furnished regardless of frequency:
 - On-the-job meals
 - Meals provided with on-premises housing

IRC Sec. 132(e), 162, 262. *Moss v. Commissioner* (1983)

Housing

- The value of lodging furnished to an employee is excluded from income if:
 - The lodging is on the business premises
 - The lodging is furnished for the convenience of the employer
 - The employee is required to accept the lodging
- Personal services provided with lodging are taxable
- Rental housing is excludable if annual rents paid equal 5% of the appraised value

IRC Sec. 119



Transportation Fringes

- Qualified transportation fringes include:
 - Parking
 - Transit passes
 - Vanpooling
- Nontaxable limit effective 2/17/09 is \$230 for parking and \$230 combined for transit passes and vanpooling
- Expenses are exempt from FICA and income tax withholding
- Effective 2009, bicycle commuting reimbursements of \$20 per month are tax-free

IRC Sec. 132(f)



No Additional Cost Services

- Are nontaxable if:
 - Employee receives services (not property) that are offered to customers in the ordinary course of business. See Sec. 132(b)(1).
 - Employer incurs no substantial additional cost in providing the services. See Sec. 132(b)(1).
 - Services offered are within line of business in which employee works. See Sec. 132(b)(1).
 - Benefit is offered on nondiscriminatory basis. See Sec. 132(j)(1).

IRC 132(a)(1)

Cell Phones

- Proposed legislation would remove cell phones from listed property category
- IRS proposed simplified substantiation methods:
 - Minimal Personal Use Method (two phones)
 - Safe Harbor Method (75% business use)
 - Statistical Sampling Method
 - FMV Determination

IRC Sec. 280F(d). IRS Notice 2009-46



Domestic Partner Benefits

- Employer Health plan coverage is non-taxable only for spouses and dependents
- FMV of coverage for domestic partners must be included in employee's income
- FMV of group coverage is used to calculate amount includable in income of such employees

IRC Sec. 106, PLR 9109060



Fringe Benefits and Intermediate Sanctions

- Essentially the intermediate sanctions provide for an excise tax on “excess benefit transactions” which involve “disqualified persons”
- An excess benefit transaction is one for which the organization did not receive adequate consideration; e.g., payment of fringe benefits to an executive which are not excludible from gross income under the Code and not reported as compensation on Form W-2.
- Penalties on individuals who receive excess benefits are (25-200% of the benefit) and potentially (10% of the benefit up to \$20,000) on any officer, director, or trustee who knowingly permitted the transaction.
- Potential application of the “automatic excess benefit rules” under Treas. Reg. Sec. 53.4958-4(c).



Other Resources

- Pub. 15-B, Employer's Tax Guide to Fringe Benefits: <http://www.irs.gov/publications/p15b/index.html>
- Daher, *Accounting for Free Meals Provided by Your Tax-Exempt Employer: Are There Any Free Lunches Left in the Tax Code?*, THE EXEMPT ORGANIZATION TAX REVIEW, Vol. 48, No. 3, p. 277 (June 2005); reprinted by publisher in TAX NOTES, June 21, 2005 (2005 TNT 118-37).



Questions