



NEW MEXICO COMMUTER CHOICE TO GO KIT

What is the *Commuter Choice* Program?

Commuter Choice is a tax-free transportation benefit your company or non-profit can offer employees. It allows employees who commute to work utilizing public transit, vanpools or methods other than driving alone, to receive a reduction in their payroll (social security and medicare, also known as FICA) taxes, state and federal income taxes. Employers also benefit from a reduction in their taxes, including corporate taxes. This ***Commuter Choice To Go Kit*** makes it easy for your company to understand, establish and administer a program that meets the IRS requirements, to take advantage of this tax-free transportation benefit.

Why implement such a program?

Commuter Choice addresses many important economic and quality of life issues.

- *Commuter Choice* provides a cost-effective incentive for employees to choose a mode of transportation other than driving alone. Traffic congestion contributes to stress, road rage, lost time and accidents. Unreliable, older vehicles contribute to pollution, high absenteeism and lost time. By lowering the number of single occupant automobiles on the roads, companies regain productive time. Use of public transit or vanpooling reduces road congestion, traffic accidents, and increases our quality of life through a healthier and safer environment.
- *Commuter Choice* is also an economic development tool. It provides savings that can be reinvested into New Mexico's economy or your pocket. Transportation is a critical link for workers who are making the monumental transition from welfare to work. Establishment of a *Commuter Choice* program in your organization helps your employees. It provides your employees with a benefit that makes transportation costs more affordable for them. It makes you more attractive as an employer competing for reliable workers. In return you receive a stable workforce and reduced taxes.

How does my company benefit?

- ***Enhanced productivity.*** Your employees will arrive on time and ready to work. They will be more relaxed and not stressed due to traffic congestion, unreliable vehicles, or missed rides.
- ***Lower turnover.*** Reliable transportation provides employees with one less worry. Riding public transit guarantees employee a ride to work every day so your company has fewer turnovers, lowering training costs.
- ***Competitive edge.*** This added fringe benefit would make your company stand out among the others. It is basically a tax-free salary benefit. It will make you a choice employer, increasing employee retention.
- ***Tax savings.*** Your employees will save on payroll, federal and state income taxes. Your FICA, state and federal income tax will all be reduced.



NEW MEXICO COMMUTER CHOICE TO GO KIT

How is it implemented and what are the costs?

Commuter Choice is not difficult to implement and you will not necessarily incur additional costs, but will see tax reductions. There are several ways to provide employees the transportation benefit.

- 1. Cover the full cost.** You may decide to provide the *Commuter Choice* benefit in addition to the employee's current salary. This would be a low-cost salary increase. You can provide up to \$100 dollars per month or a partially subsidized amount. The amount of the benefit you provide would be free of all payroll taxes (a maximum of 7.65%) and income taxes to your employees. These benefit costs **would be deducted from your business income taxes**. The maximum benefit is \$100 per month per employee.
- 2. Offer *Commuter Choice* as a "pre-tax" benefit.** Your employees may have up to \$100 taken out of their current monthly pay, to pay towards the actual cost of commuting on public transit or in vanpools **before taxes**. **Up to \$1,200 per year would be considered non-taxable income**. The employees would save payroll (FICA), federal and state income taxes on the amount of the benefit selected. Employee W-2 forms would reflect a reduction equal to the amount of the benefit.

Your share of FICA and taxes are also reduced because this portion is considered an employee benefit. IRS requirements must be followed to ensure that transit benefits remain tax-free. Employers prefer this option because the employee pays the cost.

- 3. Share the cost of commuting with your employees.** You may decide to pay for a portion of the tax-free transit benefit and allow your employees set aside part of their gross income (pre-tax) to pay the balance of the commuting costs. For 2003, the total **maximum amount eligible as a tax-free benefit is \$100 per month of actual costs, even when you share the costs**.
- 4. Parking benefits for employees using qualified parking.** Employees may receive up to \$180 per month tax free for qualified parking, or the employees may pay for the qualified parking themselves with pre-tax income and save on federal payroll and income tax, or the employer and employees could both pay a share up to the \$180 per month limit. "Qualified parking" is providing parking to an employee on or near business premises or an area from which commuters can commute to work with a commuter highway vehicle, carpool, or transit. This cannot be an employee's residential property.



NEW MEXICO COMMUTER CHOICE TO GO KIT

Any limits or particulars?

For further clarification see Publication 535, Chapter 4 on Fringe Benefits for Businesses. Also look at the “Common Questions” section and the glossary.

Maximum Amount of Employees Benefits

- Up to \$100 per month may be used for transit or vanpool expenses.
- Up to \$180 per month may be used for qualified parking (for commuting via transit or commuter highway vehicle).



NEW MEXICO COMMUTER CHOICE TO GO KIT

Commuter Check Tax Savings Calculator¹

To calculate your estimated savings, look at the federal tax brackets below. Then go to **1. Employee Savings** and **2. Employer Savings** for total annual savings.

Tax Savings from Commuter Choice		Federal Income Tax Brackets (see below)* (27% is most common)					
		10%	15%	27%	30%	35%	38.6%
1. Employee Savings @ \$100/mo. = \$1200/yr.							
Federal Income Tax Saved		\$120	\$180	\$324	\$360	\$420	\$463
FICA Savings (Social Security + Medicare)	Social Security	\$74	\$74	\$74	\$0**	\$0**	\$0**
	Medicare	\$17	\$17	\$17	\$17	\$17	\$17
State/City Income Tax Saved (varies by state; assumes 6%)		\$72	\$72	\$72	\$72	\$72	\$72
Total Annual Employee Savings		\$283	\$343	\$487	\$449	\$509	\$552
Percent Saved		23.6%	28.6%	40.6%	37.4%	42.4%	46.0%
2. Employer Savings @ \$100/mo. = \$1200/yr.							
FICA Savings (Social Security + Medicare)	Social Security	\$74	\$74	\$74	\$0**	\$0	\$0
	Medicare	\$17	\$17	\$17	\$17	\$17	\$17
Total Annual Employer Savings		\$91	\$91	\$91	\$17	\$17	\$17
Percent Saved		7.7%	7.7%	7.7%	1.5%	1.5%	1.5%
<p>*Tax brackets use the income thresholds applying in 2002. The Social Security tax limit (6.2% up to \$84,900 for 2002) also rises annually. Medicare is 1.45% with no limit.</p> <p>**\$74 annual savings in employee and employer Social Security tax does apply for singles in the 30% bracket with income below \$84,900, and for spouses earning less than \$84,900 in the 30%, 35% or 38.6% married brackets.</p>							
2002 Federal Tax Brackets		Married From – to		Single From – to			
10%		Under \$12,000		Under \$6000			
15%		\$12,001-\$46,700		\$6001 \$27,950			
27% (most common)		\$46,701 - \$112,850		\$27,951 - \$67,700			
30%		\$112,851 - \$171,950		\$67,701 - \$141,250			
35%		\$171,951 - \$307,050		\$141,251 - \$307,050			
38.6%		\$307,051 and above		\$307,051 and above			

¹ Adapted from www.commutercheck.com/employee/worksheet.html



NEW MEXICO COMMUTER CHOICE TO GO KIT

Common Questions

What are eligible expenses?

- **Any Transit Pass.** Defined as any pass, token, farecard, voucher, or similar item entitling a person to a ride on a mass transit vehicle or a commuter highway vehicle.
- **Fare on a Commuter Highway Vehicle (also known as a vanpool).** Defined as any vehicle with 6 or more adult passengers, not including the driver, used for employment transportation. Eighty percent of all vehicle miles must reasonably be expected to be for the transportation of employees from their residences to work on trips in which at least 50 percent of the available seating is occupied by commuters (excluding the driver).
- **Qualified Parking.** Defined as parking provided to an employee on or near business premises or, on or near an area from which commuters can commute to work with a commuter highway vehicle, carpool, or transit. This cannot be an employee's residential property.

How about record keeping?

Record keeping is fairly straightforward. It varies slightly depending on how you reimburse your employee. Employees do not need to retain any records of the benefit received for their personal income taxes.

- **Cash reimbursement.** If you can only do a cash reimbursement for transit or vanpool fares, then maintain an adequate record keeping system of a bona fide reimbursement arrangement. Employees will have to produce a receipt or record of their commute expenses for you. This will assure the IRS that the money is used for transportation reimbursement.
- **Vouchers.** An employer that uses transit or vanpool vouchers will only need to keep a record of the voucher purchase. A voucher system must be used if bus passes, farecards, etc. are "readily available. Employers may contract directly with a transit provider, or a broker service to handle bulk purchase, distribution, and administration. New Mexico currently does not have this service.
- **Transit passes.** You can also distribute transit passes each month with a value not exceeding \$100, without requiring employee certification regarding its use.
- **Vanpool receipts or farecards.** Receipts for these should suffice. If your local transit agency does not give out receipts, your employees will need to present the pass at the beginning of each month. They will need to certify that they have purchased the pass and will use it during the month.

Do all vanpools qualify for this benefit?

No. A vanpool, or "commuter highway vehicle" must have a seating capacity of **at least 6 six adults**, excluding the driver. Two requirements for mileage use are that **at least 80% of the mileage** use must be for 1) purposes of transporting employees in connection with travel between their homes and places of employment and 2) for these commuting trips, the number of employees transported to work must be at least one-half of the adult seating capacity of the vehicle, excluding the driver.



NEW MEXICO COMMUTER CHOICE TO GO KIT

Can I give my employees both a public transit and vanpool benefit?

Yes. However, the maximum tax-free amount is \$100 per month. This limit applies whether benefits are provided separately or in combination with one another. For example, you could give an employee a \$50 vanpool benefit and a \$50 transit pass for a monthly total of \$100. But if you provide a \$50 vanpool benefit and a \$60 transit pass for a total of \$110, any amount over \$100 would not be tax-free.

Do I just reimburse my employees for their commuting expenses?

Cash reimbursement for commuting expenses is permitted in very limited circumstances. In most cases, you must either provide vouchers or direct transit media (such as, bus passes, tokens, farecards, etc.,) instead of cash reimbursement. If your area does not have transit media that can be exchanged for public transit or vanpool services **readily available**, you may reimburse your employees for the cost of transit. See IRS rules governing section 132(f) benefits for a definition of "readily available." Employees may be reimbursed up to \$100 monthly using either corporate funds, pre-taxed employee salaries, or a combination.

Can I convert a current parking benefit into a transit or vanpool benefit?

Yes. If you currently provide free or subsidized parking for employees, you may establish a parking "cash out" program. For example, you currently provide \$135 in subsidized parking. Under the "cash out" option employees can take the *Commuter Choice* transit or vanpool benefit up to \$100 per month tax-free and the balance (\$35) in taxable cash for remaining commuting costs. Your tax burden will still be lower because you only incur payroll taxes on the cash value provided.

If the employee wants to accept the full \$135 as salary, it would be taxable but could be used for other commuting alternatives that are not considered qualified transportation fringe benefits, such as walking, bicycling, carpooling, or roller blading to work. First, however, you would want to adjust the value of the parking benefit downward to adjust for additional payroll taxes that will be required. If the employees take the cash, it is subject to payroll and income taxes for the employees and payroll taxes for the employer.

A designated employee "prime member" (often the driver or the person assigned the parking space) who travels in a vanpool and uses commercial parking is eligible for the parking benefit (up to \$180 per month). At the same time, the prime member is eligible to

receive the vanpool benefit (up to \$100 per month). Only one person in the vanpool can receive the parking benefit.

Does the \$100 limit increase over time?

Yes. The IRS would announce any changes as a result of increases in the cost of living. The tax-free amount could increase each year but your company would decide if it wants to increase the amount of *Commuter Choice* benefit offered to employees.



NEW MEXICO COMMUTER CHOICE TO GO KIT

Setting Up a *Commuter Choice* Program

A good place to start is with the Commuter Checklist for your worksite. The information below is taken from the Federal Transit Administration's website: www.fta.dot.gov, see [Commuter Choice](#). This checklist identifies actions you should conduct prior to implementing a *Commuter Choice* Program.

- **Partner with your Transit Agency** – Get the facts about how you can customize a *Commuter Choice* program that meets your needs. Your local transit agency can assist you in creating a program that is just right for your organization.
- **Partner with your Union** -- Discuss and negotiate plans to provide a new benefit for your employees.
- **Consult Tax Counsel** – Obtain specific guidance on any matters related to Federal, state, and local tax law.
- **Survey Your Employees** - Using the enclosed survey forms, find out how much your employees spend to commute. This will help you to set your benefit level.
- **Announce the Benefit** - Include an article in your company newsletter explaining the program.
- **Obtain Authorization** - Survey your employees, find out how much they need, and get their certification or authorization to withhold salary.
- **Modify Salary Accounts** - For pre-tax approach only, adjust their taxable income by the amount of the benefit selected.
- **Update Personnel Manual** - Include *Commuter Choice* benefits as part of your employee package of benefits.
- **Withhold Salary** - For pre-tax approach only, at the beginning of each month's pay period, an amount equal to the monthly benefit.
- **Purchase and Distribute Benefits** - Purchase either vouchers or transit passes from the transit operator and distribute them to your employees monthly, regardless of who funds the benefit.
- **Prepare Modified W-2 Statement** - For the pre-tax approach only, at end of the year, employees' W-2 statements should reflect a lower taxable salary.
- **Celebrate your Employees' Participation** – During National Transit Week (annually held the first full week after Labor Day), partner with your local transit authority to acknowledge your *Commuter Choice* employees.



NEW MEXICO COMMUTER CHOICE TO GO KIT

Where can I obtain further information?

Look at the FTA website: www.fta.dot.gov, see [Commuter Choice](#) for further guidance. You can also calculate your approximate savings by accessing www.commutercheck.com.

Federal Transit Administration
William B. Menczer
Office of Policy Development, TBP-10
400 7th Street, SW, Room 9310
Washington, D.C. 20590
Tel: 202.366.1698 Fax: (202) 366-7116
E-mail: william.menczer@fta.dot.gov
Web: www.fta.dot.gov/library/policy/cc/cc.htm

The National Transit Resource Center
1341 G Street, NW, 10th Floor
Washington, D.C. 20005
Web: www.ctaa.org/ntrc/
Tel: 800.527.8279 extension 123

Internal Revenue Service
Employee Benefits and Exempt Organizations Branch
1111 Constitution Avenue, NW
Washington, D.C. 20224
Web: www.irs.ustreas.gov
Tel: 202.622.6040

Environmental Protection Agency
Greg Dierkers
Office of Mobile Sources
Transportation Air Quality Center (TRAQ)
2000 Traverwood Dr.
Ann Arbor, MI 48105
Tel: 734.214.4022
Fax: 734.214.4052
E-mail: dierkers.greg@epa.gov



NEW MEXICO COMMUTER CHOICE TO GO KIT

Glossary of *Commuter Choice* Terms

Benefit Levels

For calendar year (CY) 2002, the monthly tax-free limit for transit passes is and commuter highway vehicles (vanpools), the limit is \$100; and for qualified parking, \$180. Changes in the Consumer Price Index (CPI) may increase the parking limit in CY 2002 and all limits in CY 2003 and beyond. Increases triggered by CPI changes occur in \$5 increments.

Cash Out

Employers may establish a parking cash out program whereby employees may choose to cash out the value of employer-provided parking, forego parking, and receive the taxable cash value of the parking, or receive a tax-free transit or eligible vanpool benefit up to \$100 per month. The employer transfers its expenditure for the parking space, assuming it is leased, to a direct payment to the employee. If the employee accepts the cash value rather than a tax-free transit or vanpool benefit, then the employee also incurs payroll and income taxes on the amount. The employer only incurs payroll taxes on the cash value provided. This additional taxable salary will allow the employee to finance other commuting modes that are not considered qualified transportation fringe benefits, such as walking, bicycling, carpooling, roller blading, or other means of commuting to work.

Cash Reimbursements

(a) The term qualified transportation fringe includes cash reimbursement by an employer to an employee for expenses incurred or paid by an employee for transportation in a commuter highway vehicle or qualified parking. The term qualified transportation fringe also includes cash reimbursement for transit passes made under a bona fide reimbursement arrangement, but in accordance with 26 USC section 132(f)(3), only if permitted under paragraph (b). The reimbursement must be made under a bona fide reimbursement arrangement, which meets the rules of paragraph (c). A payment made before the date an expense has been incurred or paid is not a reimbursement. In addition, a bona fide reimbursement arrangement does not include an arrangement that is dependent solely upon an employee certifying in advance that the employee will incur expenses at some future date.

(b) Special rule for transit passes—

- (1) **In general.** The term qualified transportation fringe includes cash reimbursement for transit passes made under a bona fide reimbursement arrangement, but, in accordance with 26 USC section 132(f)(3), only if no voucher or similar item that may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees. If a voucher is readily available, the requirement that a voucher be distributed in-kind by the employer is satisfied if the voucher is distributed by the employer or by another person on behalf of the employer (for example, if a transit operator credits amounts to the employee's fare card as a result of payments made to the operator by the employer).



NEW MEXICO COMMUTER CHOICE TO GO KIT

- (2) **Voucher or similar item.** For purposes of the special rule in paragraph (b), a transit system voucher is an instrument that may be purchased by employers from a voucher provider that is accepted by one or more mass transit operators (e.g., train, subway, and bus) in an area as fare media or in exchange for fare media. Thus, for example, a transit pass that may be purchased by employers directly from a voucher provider is a transit system voucher.
- (3) **Voucher provider.** The term voucher provider means any person in the trade or business of selling transit system vouchers to employers, or any transit system or transit operator that sells vouchers to employers for the purpose of direct distribution to employees. Thus, a transit operator might or might not be a voucher provider. A voucher provider is not, for example, a third-party employee benefits administrator that administers a transit pass benefit program for an employer using vouchers that the employer could obtain directly.
- (4) **Readily available.** For purposes of this paragraph (b), a voucher or similar item is readily available for direct distribution by the employer to employees if and only if an employer can obtain it from a voucher provider that-- (i) does not impose fare media charges that cause vouchers to not be readily available as described in paragraph (b)(5); and (ii) does not impose other restrictions that cause vouchers to not be readily available as described in paragraph (b)(6).
- (5) **Fare media charges.** For purposes of paragraph (b)(4), fare media charges relate only to fees paid by the employer to voucher providers for vouchers. The determination of whether obtaining a voucher would result in fare media charges that cause vouchers to not be readily available as described in this paragraph (b) is made with respect to each transit system voucher. If more than one transit system voucher is available for direct distribution to employees, the employer must consider the fees imposed for the lowest cost monthly voucher for purposes of determining whether the fees imposed by the voucher provider satisfy this paragraph. However, if transit system vouchers for multiple transit systems are required in an area to meet the transit needs of the individual employees in that area, the employer has the option of averaging the costs applied to each transit system voucher for purposes of determining whether the fare media charges for transit system vouchers satisfy this paragraph. Fare media charges are described in this paragraph (b)(5), and therefore cause vouchers to not be readily available, if and only if the average annual fare media charges that the employer reasonably expects to incur for transit system vouchers purchased from the voucher provider (disregarding reasonable and customary delivery charges imposed by the voucher provider, e.g., not in excess of \$15) are more than 1 percent of the average annual value of the vouchers for a transit system.
- (6) **Other restrictions.** For purposes of paragraph (b)(4), restrictions that cause vouchers to not be readily available are restrictions imposed by the voucher provider other than fare media charges that effectively prevent the employer



NEW MEXICO COMMUTER CHOICE TO GO KIT

from obtaining vouchers appropriate for distribution to employees.

Examples of such restrictions include—

- (i) **Advance purchase requirements.** Advance purchase requirements cause vouchers to not be readily available only if the voucher provider does not offer vouchers at regular intervals or fails to provide the voucher within a reasonable period after receiving payment for the voucher. For example, a requirement that vouchers may be purchased only once per year may effectively prevent an employer from obtaining vouchers for distribution to employees. An advance purchase requirement that vouchers be purchased not more frequently than monthly does not effectively prevent the employer from obtaining vouchers for distribution to employees.
 - (ii) **Purchase quantity requirements.** Purchase quantity requirements cause vouchers to not be readily available if the voucher provider does not offer vouchers in quantities that are reasonably appropriate to the number of the employer's employees who use mass transportation (for example, the voucher provider requires a \$1,000 minimum purchase and the employer seeks to purchase only \$200 of vouchers)
 - (iii) **Limitations on denominations of vouchers that are available.** If the voucher provider does not offer vouchers in denominations appropriate for distribution to the employer's employees, vouchers are not readily available. For example, vouchers provided in \$5 increments up to the monthly limit are appropriate for distribution to employees, while vouchers available only in a denomination equal to the monthly limit are not appropriate for distribution to employees if the amount of the benefit provided to the employer's employees each month is normally less than the monthly limit.
- (7) **Substantiation requirements.** Employers that make cash reimbursements must establish a bona fide reimbursement arrangement to establish that their employees have, in fact, incurred expenses for transportation in a commuter highway vehicle, transit passes, or qualified parking. For purposes of 26 USC section 132(f), whether cash reimbursements are made under a bona fide reimbursement arrangement may vary depending on the facts and circumstances, including the method or methods of payment utilized within the mass transit system. The employer must implement reasonable procedures to ensure that an amount equal to the reimbursement was incurred for transportation in a commuter highway vehicle, transit passes, or qualified parking. The expense must be substantiated within a reasonable period of time. An expense substantiated to the payor within 180 days after it has been paid will be treated as having been substantiated within a reasonable period of time. An employee certification at the time of reimbursement in either written or electronic form may be a reasonable reimbursement procedure depending on the facts and circumstances. Examples of reasonable reimbursement



NEW MEXICO COMMUTER CHOICE TO GO KIT

procedures are set forth in paragraph (d) of Q/A-16 of the final IRS regulation dated January 11, 2001.

Commuter Choice

Commuter Choice is the name given to benefits that employers can offer employees that encourage them to commute to work by methods other than driving alone. They may include "qualified transportation fringes" under IRS rules (transit and vanpool vouchers and passes and qualified parking), biking, walking, teleworking, roller blading, etc.

Commuter Highway Vehicle

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).

Comprehensive Energy Policy Act of 1992

The Comprehensive Energy Policy Act of 1992 (Public Law 102-486) established vanpool (commuter highway vehicle) tax free benefits of up to \$60 per month (2002 limit is \$100); raised the monthly tax free limit on transit passes from \$21 to \$60 (2002 limit is \$100), capped monthly tax free parking at \$155 (2002 limit is \$180), and provided for changes to these tax free limits based on changes to the CPI.

Eligibility

(a) General rule. 26 USC Section 132(f)(5)(E) states that self-employed individuals who are employees within the meaning of section 401(c)(1) are not employees for purposes of section 132(f). Therefore, individuals who are partners, sole proprietors, or other independent contractors are not employees for purposes of section 132(f). In addition, under section 1372(a), 2-percent shareholders of S corporations are treated as partners for fringe benefit purposes. Thus, an individual who is both a 2-percent shareholder of an S corporation and a common law employee of that S corporation is not considered an employee for purposes of section 132(f). However, while section 132(f) does not apply to individuals who are partners, 2-percent shareholders of S corporations, or independent contractors, other exclusions for working condition and de minimis fringes may be available as described in paragraphs (b) and (c). See Internal Revenue Code Secs. 1.132-1(b)(2) and 1.132-1(b)(4). (b) Transit passes. The working condition and de minimis fringe exclusions under 26 USC section 132(a)(3) and (4) are available for transit passes provided to individuals who are partners, 2-percent shareholders, and independent contractors. For example, tokens or farecards provided by a partnership to an individual who is a partner that enable the partner to commute on a public transit system (not including privately-operated van pools) are excludable from the partner's gross income if the value of the tokens and farecards in any month does not exceed the dollar amount specified in Sec. 1.132-6(d)(1).



NEW MEXICO COMMUTER CHOICE TO GO KIT

However, if the value of a pass provided in a month exceeds the dollar amount specified in Sec. 1.132-6(d)(1), the full value of the benefit provided (not merely the amount in excess of the dollar amount specified in Sec. 1.132-6(d)(1)) is includible in gross income. (c) Parking. The working condition fringe rules under 26 USC section 132(d) do not apply to commuter parking. See Sec. 1.132-5(a)(1). However, the de minimis fringe rules under section 132(e) are available for parking provided to individuals who are partners, 2-percent shareholders, or independent contractors that qualifies under the de minimis rules. See Sec. 1.132-6(a) and (b).

Federal Employees Clean Air Incentives Act of 1993

The Federal Employees Clean Air Incentives Act of 1993 (Public Law 103-172; 5 USC 7905) made permanent the Federal participation in a pilot transit benefit program, allowing Federal agencies to establish programs to encourage non single-occupancy vehicle travel to work. This includes the provision of transit passes, bicycle facilities, and non-monetary incentives.

Federal Employees Eligibility

Under Executive Order 13150, Federal Workforce Transportation, effective October 1, 2000, all Federal employees in the National Capital Region (NCR) will receive a benefit equal to their commuting costs, not to exceed \$65, in the form of passes or vouchers such as Metrochek, purchased by the agency with appropriated funds. As part of a 3 year pilot program, all employees nationwide of the Departments of Transportation (DOT) and Energy (DOE) and the Environmental Protection Agency (EPA) will also receive these same benefits, purchased with agency appropriated funds.

Federal employees located outside the NCR will be permitted to reduce their pre-tax income by an amount equal to their transit or vanpool expenses up to a maximum of \$65 per month. The employing agency will accumulate these withholdings and purchase the vouchers, passes, or fare media on behalf of the employee, and then distribute this fare media directly to the participating employees. See 5 U.S.C. 7905 and 5 U.S.C. 2105 for a complete definition of Federal employees. In some cases, your agency's appropriations acts may further define employees for purposes of this program (e.g., National Institutes of Health, P.L. 105-277).

Monthly Limits

- (a) The value of transportation in a commuter highway vehicle, transit passes, and qualified parking is calculated on a monthly basis to determine whether the value of the benefit has exceeded the applicable statutory monthly limit on qualified transportation fringes. Except in the case of a transit pass provided to an employee, the applicable statutory monthly limit applies to qualified transportation fringes used by the employee in a month. Monthly exclusion amounts are not combined to provide a qualified transportation fringe for any month exceeding the statutory limit. A month is a calendar month or a substantially equivalent period applied consistently.
- (b) **Transit passes.** In the case of transit passes provided to an employee, the applicable statutory monthly limit applies to the transit passes provided by the employer to the



NEW MEXICO COMMUTER CHOICE TO GO KIT

employee in a month for that month or for any previous month in the calendar year. In addition, transit passes distributed in advance for more than one month, but not for more than twelve months, are qualified transportation fringes if the requirements in paragraph (c) are met (relating to the income tax and employment tax treatment of advance transit passes). The applicable statutory monthly limit under 26 USC section 132(f)(2) on the combined amount of transportation in a commuter highway vehicle and transit passes may be calculated by taking into account the monthly limits for all months for which the transit passes are distributed. In the case of a pass that is valid for more than one month, such as an annual pass, the value of the pass may be divided by the number of months for which it is valid for purposes of determining whether the value of the pass exceeds the statutory monthly limit.

- (c) **Rule if employee's employment terminates** (1) Income tax treatment. The value of transit passes provided in advance to an employee with respect to a month in which the individual is not an employee is included in the employee's wages for income tax purposes. (2) Reporting and employment tax treatment. Transit passes distributed in advance to an employee are excludable from wages for employment tax purposes under Internal Revenue Code sections 3121, 3306, and 3401 (FICA, FUTA, and income tax withholding). 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 date that the employee's employment will terminate (for example, if the employee has given notice of retirement) which will occur before the beginning of the last month of the period for which the transit passes are provided. If the employer distributes transit passes to an employee in advance for not more than three months and at the time the transit passes are distributed there is an established date that the employee's employment will terminate, and the employee's employment does terminate before the beginning of the last month of the period for which the transit passes are provided, the value of transit passes provided for months beginning after the date of termination during which the employee is not employed by the employer is included in the employee's wages for employment tax purposes. If transit passes are distributed in advance for more than three months, the value of transit passes provided for the months during which the employee is not employed by the employer is includible in the employee's wages for employment tax purposes regardless of whether at the time the transit passes were distributed there was an established date of termination of the employee's employment.

Parking

- (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) or for purposes of 26 USC 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



NEW MEXICO COMMUTER CHOICE TO GO KIT

include 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 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 Internal Revenue Code Sec. 1.62-2.

- (c) However, parking on or near property used by the employee for residential purposes is not qualified parking.
- (d) Parking is provided by an employer if the parking is on property that the employer owns or leases; the employer pays for the parking; or the employer reimburses the employee for parking expenses (see also "Cash Reimbursements").

Payroll Taxes

- (a) Employment tax treatment generally. Qualified transportation fringes not exceeding the applicable statutory monthly limit of \$65 for transit and vanpools in CY 2001 and \$100 in CY 2002 and \$180 for parking in CY 2001, are not wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding. **Any amount by which an employee elects to reduce compensation is not subject to the FICA, the FUTA, and federal income tax withholding.** Qualified transportation fringes exceeding the applicable statutory monthly limit are wages for purposes of the FICA, the FUTA, and federal income tax withholding and are reported on the employee's Form W-2, Wage and Tax Statement.
- (b) Employment tax treatment of cash reimbursement exceeding monthly limits. Cash reimbursement to employees (for example, cash reimbursement for qualified parking) in excess of the applicable statutory monthly limit under 26 USC section 132(f) is treated as paid for employment tax purposes when actually or constructively paid. See Internal Revenue Code Secs. 31.3121(a)-2(a), 31.3301-4, 31.3402(a)-1(b). Employers must report and deposit the amounts withheld in addition to reporting and depositing other employment taxes. See also "Cash Reimbursements."
- (c) Noncash fringe benefits exceeding monthly limits. If the value of noncash qualified transportation fringes exceeds the applicable statutory monthly limit, the employer may elect, for purposes of the FICA, the FUTA, and federal income tax withholding, to treat the noncash taxable fringe benefits as paid on a pay period, quarterly, semi-annual, annual, or other basis, provided that the benefits are treated as paid no less frequently than annually.

Qualified Transportation Fringes

A "qualified transportation fringe" is any of the following that is provided by an employer to an employee and meets IRS requirements: (1) transportation in a commuter highway vehicle, (2) transit passes, and (3) qualified parking. Nothing in 26 USC section 132(f) prohibits an employer from simultaneously providing an employee any combination of these three benefits.



NEW MEXICO COMMUTER CHOICE TO GO KIT

Record Keeping

There are no substantiation requirements if the employer distributes transit passes.

Thus, an employer may distribute a transit pass for each month with a value not more than the statutory monthly limit without requiring any certification from the employee regarding the use of the transit pass. See also "Cash Reimbursements."

Taxpayer Relief Act of 1997

The Taxpayer Relief Act of 1997 (Public Law 105-34) amended the Internal Revenue Code to permit employees to receive a parking benefit in lieu of salary or to receive a taxable salary equivalent instead of the parking benefit (cash out). These changes did not affect the tax-free treatment of existing parking benefit recipients.

Transit Passes

There are no substantiation requirements if the employer distributes transit passes. Thus, an employer may distribute a transit pass for each month with a value not more than the statutory monthly limit without requiring any certification from the employee regarding the use of the transit pass. 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).

Transportation Equity Act for the 21st Century

The Transportation Equity Act for the 21st Century (Public Law 105-178) among other things, amended the Internal Revenue Code to permit employees to receive tax free transit or vanpool benefits in lieu of compensation in the same manner as was done for parking under the Taxpayer Relief Act of 1997. It also raised the monthly tax-free limit for transit and vanpool benefits from \$65 to \$100 in CY 2002.

Vanpool Benefits

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).

Vouchers

See "Cash Reimbursements" (b)(2).