

amounts paid or incurred by the employer for educational assistance benefits during the year are provided to the limitation class described in subparagraph (2). For purposes of this paragraph (f), the program year must be specified in the written plan as either the calendar year or the taxable year of the employer.

(2) *Limitation class.* The limitation class consists of—

(i) *Shareholders.* Individuals who, on any day of the program year, own more than 5% of the total number of shares of outstanding stock of the employer, or

(ii) *Owners.* In the case of an employer's trade or business which is not incorporated, individuals who, on any day of the program year, own more than 5% of the capital or profits interest in the employer, and

(iii) *Spouses or dependents.* Individuals who are spouses or dependents of shareholders or owners described in subdivision (i) or (ii). For purposes of determining stock ownership, the attribution rules described in paragraph (h)(4) of this section apply. The regulations prescribed under section 414(c) are applicable in determining an individual's interest in the capital or profits of an unincorporated trade or business.

(g) *Notification of employees.* A program is not a qualified program unless employees eligible to participate in the program are given reasonable notice of the terms and availability of the program.

(h) *Definitions.* For purposes of this section and § 1.127-1—

(1) *Employee.* The term “employee” includes—

(i) A retired, disabled or laid-off employee,

(ii) A present employee who is on leave, as, for example, in the Armed Forces of the United States, or

(iii) An individual who is self-employed within the meaning of section 401(c)(1).

(2) *Employer.* An individual who owns the entire interest in an unincorporated trade or business shall be treated as his or her own employer. A partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1).

(3) *Officer.* An officer is an individual who is an officer within the meaning of regulations prescribed under section 414(c).

(4) *Shareholder.* The term “shareholder” includes an individual who is a shareholder as determined by the attribution rules under section 1563 (d) and (e), without regard to section 1563(e)(3)(C).

(5) *Highly compensated.* The term “highly compensated” has the same meaning as it does for purposes of section 410(b)(1)(B).

(i) *Substantiation.* An employee receiving payments under a qualified educational assistance program must be prepared to provide substantiation to the employer such that it is reasonable to believe that payments or reimbursements made under the program constitute educational assistance within the meaning of paragraph (c) of this section.

[T.D. 7898, 48 FR 31017, July 6, 1983]

### § 1.132-0 Outline of regulations under section 132.

The following is an outline of regulations in this section relating to exclusions from gross income for certain fringe benefits:

#### § 1.132-0 Outline of regulations under section 132.

##### § 1.132-1 Exclusion from gross income for certain fringe benefits.

§ 1.132-1 (a) In general.

§ 1.132-1 (b) Definition of employee.

(1) No-additional-cost services and qualified employee discounts.

(2) Working condition fringes.

(3) On-premises athletic facilities.

(4) De minimis fringes.

(5) Dependent child.

§ 1.132-1 (c) Special rules for employers—Effect of section 414.

§ 1.132-1 (d) Customers not to include employees.

§ 1.132-1 (e) Treatment of on-premises athletic facilities.

(1) In general.

(2) Premises of the employer.

(3) Application of rules to membership in an athletic facility.

(4) Operation by the employer.

(5) Nonapplicability of nondiscrimination rules.

§ 1.132-1 (f) Nonapplicability of section 132 in certain cases.

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- (1) Tax treatment provided for in another section.
- (2) Limited statutory exclusions.
- § 1.132-1 (g) Effective date.
- § 1.132-2 *No-additional-cost services.*
- § 1.132-2 (a) In general.
  - (1) Definition.
  - (2) Excess capacity services.
  - (3) Cash rebates.
  - (4) Applicability of nondiscrimination rules.
  - (5) No substantial additional cost.
  - (6) Payments for telephone service.
- § 1.132-2 (b) Reciprocal agreements.
- § 1.132-2 (c) Example.
- § 1.132-3 *Qualified employee discounts.*
- § 1.132-3 (a) In general.
  - (1) Definition.
  - (2) Qualified property or services.
  - (3) No reciprocal agreement exception.
  - (4) Property of services provided without charge, at a reduced price, or by rebates.
  - (5) Property or services provided directly by the employer or indirectly through a third party.
  - (6) Applicability of nondiscrimination rules.
- § 1.132-3 (b) Employee discount.
  - (1) Definition.
  - (2) Price to customers.
  - (3) Damaged, distressed, or returned goods.
- § 1.132-3 (c) Gross profit percentage.
  - (1) In general.
  - (2) Line of business.
  - (3) Generally accepted accounting principles.
- § 1.132-3 (d) Treatment of leased sections of department stores.
  - (1) In general.
  - (2) Employees of the leased section.
- § 1.132-3 (e) Excess discounts.
- § 1.132-4 *Line of business limitation.*
- § 1.132-4 (a) In general.
  - (1) Applicability.
  - (2) Definition.
  - (3) Aggregation of two-digit classifications.
- § 1.132-4 (b) Grandfather rule for certain retail stores.
  - (1) In general.
  - (2) Taxable year of affiliated group.
  - (3) Definition of "sales".
  - (4) Retired and disabled employees.
  - (5) Increase of employee discount.
- § 1.132-4 (c) Grandfather rule for telephone service provided to pre-divestiture retirees.
- § 1.132-4 (d) Special rule for certain affiliates of commercial airlines.
  - (1) General rule.
  - (2) "Airline affiliated group" defined.
  - (3) "Qualified affiliate" defined.
- § 1.132-4 (e) Grandfather rule for affiliated groups operating airlines.
- § 1.132-4 (f) Special rule for qualified air transportation organizations.
- § 1.132-4 (g) Relaxation of line of business requirement.
- § 1.132-4 (h) Line of business requirement does not expand benefits eligible for exclusion.
- § 1.132-5 *Working condition fringes.*
- § 1.132-5 (a) In general.
  - (1) Definition.
  - (2) Trade or business of the employee.
- § 1.132-5 (b) Vehicle allocation rules.
  - (1) In general.
  - (2) Use of different employer-provided vehicles.
  - (3) Provision of a vehicle and chauffeur services.
- § 1.132-5 (c) Applicability of substantiation requirements of sections 162 and 274(d).
  - (1) In general.
  - (2) Section 274(d) requirements.
- § 1.132-5 (d) Safe harbor substantiation rules.
  - (1) In general.
  - (2) Period for use of safe harbor rules.
- § 1.132-5 (e) Safe harbor substantiation rule for vehicles not used for personal purposes.
- § 1.132-5 (f) Safe harbor substantiation rule for vehicles not available to employees for personal use other than commuting.
- § 1.132-5 (g) Safe harbor substantiation rule for vehicles used in connection with the business of farming that are available to employees for personal use.
  - (1) In general.
  - (2) Vehicles available to more than one individual.
  - (3) Examples.
- § 1.132-5 (h) Qualified nonpersonal use vehicles.
  - (1) In general.
  - (2) Shared usage of qualified nonpersonal use vehicles.
- § 1.132-5 (i) [Reserved]
- § 1.132-5 (j) Application of section 280F.
- § 1.132-5 (k) Aircraft allocation rule.
- § 1.132-5 (l) [Reserved]
- § 1.132-5 (m) Employer-provided transportation for security concerns.
  - (1) In general.
  - (2) Demonstration of bona fide business-oriented security concerns.
  - (3) Application of security rules to spouses and dependents.
  - (4) Working condition safe harbor for travel on employer-provided aircraft.
  - (5) Bodyguard/chauffeur provided for a bona fide business-oriented security concern.
  - (6) Special valuation rule for government employees.
  - (7) Government employer and employee defined.
  - (8) Examples.
- § 1.132-5 (n) Product testing.
  - (1) In general.
  - (2) Employer-imposed limits.
  - (3) Discriminating classifications.
  - (4) Factors that negate the existence of a product testing program.

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- (5) Failure to meet the requirements of this paragraph (n).
- (6) Example.
- § 1.132-5 (o) Qualified automobile demonstration use.
- (1) In general.
  - (2) Full-time automobile salesman.
  - (3) Demonstration automobile.
  - (4) Substantial restrictions on personal use.
  - (5) Sales area.
  - (6) Applicability of substantiation requirements of sections 162 and 274(d).
  - (7) Special valuation rules.
- § 1.132-5 (p) Parking.
- (1) In general.
  - (2) Reimbursement of parking expenses.
  - (3) Parking on residential property.
  - (4) Dates of applicability.
- § 1.132-5 (q) Nonapplicability of non-discrimination rules.
- § 1.132-5 (r) Volunteers.
- (1) In general.
  - (2) Limit on application of this paragraph.
  - (3) Definitions.
  - (4) Example.
- § 1.132-6 *De minimis fringes.*
- § 1.132-6 (a) In general.
- § 1.132-6 (b) Frequency.
- (1) Employee-measured frequency.
  - (2) Employer-measured frequency.
- § 1.132-6 (c) Administrability.
- § 1.132-6 (d) Special rules.
- (1) Transit passes.
  - (2) Occasional meal money or local transportation fare.
  - (3) Use of special rules or examples to establish a general rule.
  - (4) Benefits exceeding value and frequency limits.
- § 1.132-6 (e) Examples.
- (1) Benefits excludable from income.
  - (2) Benefits not excludable as de minimis fringes.
- § 1.132-6 (f) Nonapplicability of non-discrimination rules.
- § 1.132-7 *Employer-operated eating facilities.*
- § 1.132-7 (a) In general.
- (1) Conditions for exclusion.
  - (2) Employer-operated eating facility for employees.
  - (3) Operation by the employer.
  - (4) Example.
- § 1.132-7 (b) Direct operating costs.
- (1) In general.
  - (2) Multiple dining rooms or cafeterias.
  - (3) Payment to operator of facility.
- § 1.132-7 (c) Valuation of non-excluded meals provided at an employer-operated eating facility for employees.
- § 1.132-8 *Fringe benefit nondiscrimination rules.*
- § 1.132-8 (a) Application of nondiscrimination rules.
- (1) General rule.
  - (2) Consequences of discrimination.
  - (3) Scope of the nondiscrimination rules provided in this section.
- § 1.132-8 (b) Aggregation of Employees.
- (1) Section 132(a) (1) and (2).
  - (2) Section 132(e)(2).
  - (3) Classes of employees who may be excluded.
- § 1.132-8 (c) Availability on substantially the same terms.
- (1) General rule.
  - (2) Certain terms relating to priority.
- § 1.132-8 (d) Testing for discrimination.
- (1) Classification test.
  - (2) Classifications that are per se discriminatory.
  - (3) Former employees.
  - (4) Restructuring of benefits.
  - (5) Employer-operated eating facilities for employees.
- § 1.132-8 (e) Cash bonuses or rebates.
- § 1.132-8 (f) Highly compensated employee.
- (1) Government and non-government employees.
  - (2) Former employees.
- § 1.132-9 *Qualified transportation fringes.*
- § 1.132-9 (a) Table of contents.
- § 1.132-9 (b) Questions and answers.
- [T.D. 8256, 54 FR 28600, July 6, 1989, as amended by T.D. 8457, 57 FR 62196, Dec. 30, 1992]
- § 1.132-1 Exclusion from gross income for certain fringe benefits.**
- (a) *In general.* Gross income does not include any fringe benefit which qualifies as a—
- (1) No-additional-cost service,
  - (2) Qualified employee discount,
  - (3) Working condition fringe, or
  - (4) De minimis fringe.
- Special rules apply with respect to certain on-premises gyms and other athletic facilities (§ 1.132-1(e)), demonstration use of employer-provided automobiles by full-time automobile salesmen (§ 1.132-5(o)), parking provided to an employee on or near the business premises of the employer (§ 1.132-5(p)), and on-premises eating facilities (§ 1.132-7).
- (b) *Definition of employee*—(1) *No-additional-cost services and qualified employee discounts.* For purposes of section 132(a)(1) (relating to no-additional-cost services) and section 132(a)(2) (relating to qualified employee discounts), the term “employee” (with respect to a line of business of an employer means—
- (i) Any individual who is currently employed by the employer in the line of business,
  - (ii) Any individual who was formerly employed by the employer in the line of business and who separated from