DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

October 24, 2003

Number: **INFO 2003-0244**
Release Date: 12/31/2003

GENIN-157852-03
UIL: 132.10-00

[redacted]

Dear Mr. [redacted]:

I apologize for the delay in responding to your letter dated August 28, 2003, regarding your former employer's failure to reimburse your unused qualified transportation fringe benefit under section 132(f) of the Internal Revenue Code (the Code) and section 1.132-9(b) of the Income Tax Regulations.

Section 61(a)(1) of the Code provides that, except as otherwise provided, gross income generally means all income from whatever source derived, including (but not limited to) compensation for services, including fees, commissions, fringe benefits, and similar items. Consequently, a fringe benefit provided by an employer to an employee is presumed to be income to the employee, unless it is specifically excluded from gross income by another section of the Code. See § 1.61-21(a) of the Income Tax Regulations.

Section 132(a)(5) of the Code provides that gross income does not include any benefit that is a qualified transportation fringe. Section 132(f)(1) provides that "qualified transportation fringe" means the following benefits provided by an employer to an employee: 1) transportation in a commuter highway vehicle (i.e. vanpools), 2) any transit pass, and 3) qualified parking. Additionally, under Code section 132(f)(3) the term "qualified transportation fringe" includes cash reimbursements provided by an employer to an employee for any of the defined benefits set forth above. Thus, qualified transportation fringe benefits must be provided by an employer to an employee, and may be provided either in-kind or through cash reimbursements.

Section 1.132-9(b),Q&A-14(a) of the Regulations provides that an employee may establish an arrangement under which the employer provides the employee with the right to elect whether the employee will receive either a fixed amount of cash compensation at a specified future date or a fixed amount of qualified transportation fringes to be provided for a specified future period (such as qualified parking to be used during a future calendar month).

Section 1.132-9(b),Q&A-14(b) of the Regulations, provides that, an employee may not subsequently receive the compensation in cash or any form other than by payment of a qualified transportation fringe under the employer's plan. Thus, an employer's qualified

transportation fringe benefit plan may not provide that an employee who ceases to participate in the employer's qualified transportation fringe benefit plan (such as in the case of termination of employment) is entitled to receive a refund of the amount by the employee's compensation reductions exceed the actual qualified transportation fringes provided to the employee by the employer.

We hope that this information is helpful to you. If you have any questions or need further assistance, please contact me or [redacted] of this office at [redacted]

Sincerely,

John Richards
Senior Counsel, Employment Tax Branch 2
Office of the Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)