

## Employee Benefits Alert: New Benefit Available to Bicycle Commuters in 2009

12/5/2008

The Energy Improvement and Extension Act of 2008, signed into law on October 3, 2008 (the "Act"),<sup>1</sup> creates a new fringe benefit for bicycle commuters effective January 1, 2009.

Under the Internal Revenue Code's "fringe benefit" rules,<sup>2</sup> employers may reimburse employee commuters for "qualified transportation fringes." Employees may, within certain limits, exclude these reimbursements from gross income. Prior to the Act, the list of qualified transportation fringes consisted of transit passes, parking, and transportation in a commuter highway vehicle, in each case provided by an employer to an employee. The Act adds "qualified bicycle commuting reimbursements" to this list of qualified transportation fringes.

The key features of the new qualified bicycle commuting reimbursement are as follows.

### Expenses Covered

An employer may reimburse an employee for reasonable expenses incurred by the employee for the purchase of a bicycle and bicycle improvements, repair, and storage. The Act does not define "reasonable expenses," nor is it clear whether "bicycle improvements" may include helmets or other gear.

### Bicycle Must Be Used for Commuting

The Act requires that the bicycle be regularly used for travel between the employee's residence and place of employment.

### Maximum Amount of Reimbursement

The reimbursement is limited to \$20 per "qualified bicycle commuting month." A qualified bicycle commuting month is defined as any month during which such employee

regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment; and

does not receive any benefit for transit passes, parking, and transportation in a commuter highway vehicle.

Thus, seasonal bicycle commuters are only entitled to reimbursement for the months in which they are actually commuting by bicycle. As well, employees who receive benefits for parking, transit passes, or commuter highway vehicles in a given month may not also receive a bicycle reimbursement for that month.

Note that the Act does not define "substantial portion," creating some confusion with respect to employees who commute partway by bicycle and partway by mass transit or other means. It is unclear how much of the commute must be completed by bicycle to constitute a "substantial portion" of the commute and entitle the cyclist to the reimbursement.

### No Cost of Living Adjustments

Unlike the other qualified transportation fringes, the \$20 per month limit on the qualified bicycle commuting reimbursement will not be inflation-adjusted.

### Timing of Reimbursement

An employer may pay the reimbursements any time during the calendar year in which an expense is incurred, or during the three-month period following the end of such calendar year.

### 100% Employer-Funded

The Act does not allow for the benefit to be funded through employee salary deductions.

### Substantiation of Expenses

The Act does not set forth any substantiation rules specific to the bicycle commuting reimbursement. Therefore, we recommend that practitioners follow the substantiation guidelines set forth in IRS Regulation 1.132-9 Q&A 16(c), applicable to cash reimbursements for expenses related to transit passes, parking, and transportation in a commuter highway vehicle.

Generally, these regulations require that employers establish a "bona fide reimbursement arrangement" to establish that their employees have, in fact, incurred expenses for transportation. Whether a reimbursement arrangement is "bona fide" may vary depending on facts and circumstances. The regulations do indicate that 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.

### Effective Date

The new rules described above apply to taxable years beginning after December 31, 2008.

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#### Endnotes

<sup>1</sup>P.L. 110-343. The Energy Improvement and Extension Act of 2008 was an add-on to the Emergency Economic Stabilization Act of 2008.

<sup>2</sup> Internal Revenue Code, Section 132(f) and IRS Regulations at 1.132-9.

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*If you have any questions concerning the information discussed in this alert or any other employee benefits topic, please contact one of the attorneys listed below or your primary contact with the firm who can direct you to the right person. We would be delighted to work with you.*

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