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

OFFICE OF
CHIEF COUNSEL

December 15, 2008

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CONEX-148324-08

Dear :

I am responding to your letters to Senator Richard Durbin and Senator Barack Obama. They wrote to us on your behalf and asked us to reply directly to you. You asked why employees who terminate employment cannot receive any of the balance remaining on their transit reimbursement accounts as taxable compensation.

The law excludes qualified transportation fringes from gross income (section 132(a)(5) of the Internal Revenue Code (the Code)). The term "qualified transportation fringe" refers to any of the following that an employer provides to an employee:

- Transportation in a commuter highway vehicle in connection with travel between the employee's residence and place of employment
- Any transit pass
- Qualified parking

Qualified transportation fringe also includes cash reimbursement for any of the above mentioned benefits (section 132(f)(3) of the Code).

The Income Tax Regulations (the Regulations) allow an employer to provide qualified transportation fringes to employees either as a benefit provided in addition to an employee's regular compensation or under a compensation reduction agreement (section 1.132-9(b) Q/A-11). In these agreements, an employee agrees to contribute pre-tax earnings into an account which he or she can use to pay for qualified transportation fringes. Once the employee elects to convert a portion of pre-tax earnings into a tax-free qualified transportation fringe benefit, the treatment cannot be reversed (section 1.132-9(b) Q/A-14(d).

Participation in a compensation reduction agreement for the provision of qualified transportation fringe benefits is completely voluntary. However, once the employee has agreed to reduce his or her compensation to pay for commuting expenses, the employee is no longer entitled to receive that compensation. Instead, the employee is

entitled to receive nontaxable qualified transportation fringe benefits.

If an employee has a choice between cash compensation or an employer-provided benefit, the law treats the benefit as provided directly by the employer rather than purchased by the employee with the amount of the compensation reduction. It is this treatment that allows the value of the benefit to be excluded from income for tax purposes. If the employee could choose to receive the benefit at any time in the form of cash rather than qualified transportation fringe benefits, then the employee would be treated as constructively receiving the benefits as compensation and would be taxed on the full value.

I hope this information is helpful. If we can assist you further, please contact (Identification Number) at ( ) .

Sincerely,

NANCY MARKS
Associate Chief Counsel/ Division Counsel
(Tax Exempt & Government Entites)

CC: The Honorable Richard Durbin
Attention:

The Honorable Barack Obama
Attention:

OFFICE OF
CHIEF COUNSEL

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

December 15, 2008

The Honorable Barack Obama
United States Senate
Washington, DC 20510

Attention:

Dear Senator Obama:

I am responding to your letter of October 31, 2008, on behalf of your constituent, . She wrote about the termination of transit benefits.

As you requested, I responded directly to . I am enclosing a copy of my response.

I hope this information is helpful. If you need further assistance, please call me at ( ) or at ( ) .

Sincerely,

Nancy Marks
Associate Chief Counsel/ Division Counsel
(Tax Exempt & Government Entities)

Enclosure