

SUPPORTING STATEMENT
Internal Revenue Service
Qualified Transportation Fringe Benefits
OMB # 1545-1676

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 132(f)(3) of the Internal Revenue Code provides that employers may reimburse employees for qualified transportation fringe costs if a voucher or similar item that may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee. The regulations under section 132(f) provides that cash reimbursement may be made only under a bona fide reimbursement arrangement. Therefore, it is necessary that employers obtain substantiation from employees as a condition to providing cash reimbursement. Section 1.132-9(b), Q/A 16, of the proposed regulations requires that employers establish a bona fide reimbursement arrangement to establish that their employees have, in fact, incurred expenses for qualified transportation fringes.

Section 134(f)(4) provides that employers may offer qualified transportation fringes to employees in lieu of salary. This section provides that no amount shall be included in gross income solely because the employee has a choice between cash compensation and any qualified transportation fringe. The regulations impose certain recordkeeping requirements with respect to an employee's compensation reduction election. Section 1.132-9(b), Q/A 12, of the regulations requires that an employer keep a record of an employee's compensation reduction election, including the date of the election and the amount of the election. The purpose of this requirement is to ensure that wages are not recharacterized as a nontaxable fringe after they have been paid.

2. USE OF DATA

The data will be used to verify compliance with the provisions under section 132(f). Employers who provide cash reimbursement to employees or offer qualified transportation fringes in lieu of salary are not required to file any reports with the Internal Revenue Service. Instead, the books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

The proposed regulations provide that compensation reduction elections can be made electronically. In addition, compensation reduction election information can be stored electronically. We estimate that .1% of compensation reduction elections will be made electronically.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Section 132(f) applies to ALL businesses that offer qualified transportation fringe benefits to their employees. There is minimal to no additional burden on small businesses or entities by this collection.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

No information is being collected by the agency. Employers who provide cash reimbursement to employees or offer qualified transportation fringes in lieu of salary are not required to file any reports with the Internal Revenue Service.

This information will be used to determine whether the amount of tax has been computed correctly, if audited. If such recordkeeping were not required, then the IRS would not be able to achieve these objectives.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking was published in the Federal Register on January 23, 2000 (65 FR 4388). A public hearing was held on June 1, 2000. The final regulation was published in the Federal Register on January 11, 2001 (66 FR 2241).

In response to the *Federal Register* notice dated June 19, 2018, (83 FR 28489), we received 2 comments during the comment period regarding TD 8933.

- 1) ACT (Association for Commuter Transportation) – “ACT members are particularly concerned with a provision from the Tax Cut and Jobs Act that disallows the deduction of expenses associated with section 132(f) of the IRC, the qualified transportation exclusion. The Tax Cuts and Jobs Act also makes expenditures by tax-exempt organizations on transportation fringe benefits subject to an unrelated business income tax (UBIT) of 21 percent. ACT is requesting a one-year delay in implementation, the issuance of detailed guidance that addresses our specific concerns, and an exemption for tax-exempts situated in localities that mandate such transportation benefits be provided.”

The comment letter also explained that members had many questions about how the new tax law impacts tax-exempt entities. A list of 9 specific concerns is provided in the comment letter.

This comment does not relate directly to section 132(f) or its implementing regulations at section 1.132-9(b). Instead, the comment seeks relief from a new Code provision that limits income tax deductions, section 512(a)(7), which was enacted as part of the Tax Cuts and Jobs Act.

- 2) WageWorks, Inc. - In response to the IRS’s request for information, WageWorks, Inc. wanted to call to attention a growing area of compliance difficulty that involves the practice of cash reimbursement.

“While relatively infrequent, there continue to be situations that warrant cash reimbursement for both parking and transit expenses. In the case of transit expenses, cash reimbursement is permitted when a voucher (or similar item that may be exchanged for a transit pass) is not readily available for direct distribution by the employer to the employee. In such cases, many terminals do not provide a receipt for a purchased pass. Similarly, on occasion, a receipt is not available for parking expenses incurred to park at a mass transit facility or at work. In this case, an attestation is obtained from the participant that indicates that they incurred the expense and that there was no receipt available. We would appreciate guidance from the IRS about this important practice of cash reimbursement under certain circumstances as well as the appropriate contents of the attestation as there is currently no direct guidance on point and practices vary across the industry.”

The existing regulations at § 1.132-9(b) Q/A 16(c) address situations where receipts are not available by permitting “reasonable reimbursement procedures,” including employee certifications at the time of reimbursement.

Both comment letters have been forwarded to the appropriate office within the IRS for review and consideration. They were still under review at the time this request for renewal was created. Once proper review and consideration is complete the agency will provide a proper response to these comments and concerns.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

We estimate the number of responses to be 48,589,824 with a total amount of burden hours to be 12,968,728.

Salary Reduction Elections

The collection of information is in §1.132-9(b), Q/A 12 and 16. Q/A 12 requires that the employer keep records of employee compensation reduction elections. A compensation reduction election is an election to receive qualified transportation fringes in lieu of salary. An employee's election must be in writing or another form, such as electronic, that includes, in a permanent and verifiable form, the information required to be in the election. The election must contain the date of the election, the amount of the compensation to be reduced, and the period for which the benefit will be provided. The total annual reporting burden for employees preparing elections is estimated at 500,000 hours.

The total estimated burden for the employer to keep records of employee compensation reduction elections is 720,000 hours.

Cash Reimbursement Substantiation

Q/A 16 requires employers that provide cash reimbursement for qualified transportation fringes to establish a bona fide reimbursement arrangement to ensure that their employees have, in fact, incurred expenses for qualified transportation fringes. For purposes of section 132(f), what constitutes 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 qualified transportation fringes. The total burden for the employer to keep records of employee provided substantiation to receive cash reimbursement is 6,300,000 hours (recordkeeping). The total annual reporting burden for employees providing substantiation is estimated at 5,448,728 hours.

OMB Collectio n	Authority	Form	Annual Responses	Hours per Response	Total Burden
IRS 1545- 1676	IRC 1.132-9	N/A	48,589,824	.2669	12,968,728
	IRS TOTAL		48,589,824		12,968,728

Please continue to assign OMB number 1545-1676 to these regulations.

1.132-9

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our *Federal Register* notice dated June 19, 2018, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, to ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There are no start-up costs associated with this collection.

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the burden previously approved by OMB.

This submission is being made for renewal purposes.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date.

Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.