

# FRINGE BENEFITS for School Districts

## When Is a Gift Not a Gift?

RULES and BEST PRACTICES on TAXABLE COMPENSATION

WASBO Accounting Conference  
March 2021

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Nekoosa School District



Key Benefit Concepts, LLC

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## Overview

- Business Expenses
- Fringe Benefits
- Trends and Tips

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### Business Expenses - Employer IRC §162

- ▶ Business expense is an ordinary and necessary expense incurred or paid by the employer during the tax year for the purpose of carrying on the trade or business.
- ▶ Example - employer-sponsored attendance at employee training conference.

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### Business Expenses - Employee §IRC 162

- ▶ Reimbursements for costs incurred for an employer's ordinary and necessary business expenses are excluded from the employee's income if they are made under an **accountable plan**.
- ▶ An accountable plan is not a benefit plan and does not require a written plan document.
- ▶ An accountable plan requires
  - ▶ A business connection - the expense must qualify as a business expense to the employer and qualify as an unreimbursed business expense deduction for the employee, if not paid by the employer.
  - ▶ Substantiation - amount, date, time, place and business purpose.
  - ▶ Excess returned in a reasonable period of time.
- ▶ Per diems must be administered under an accountable plan.
- ▶ Examples are work clothes, safety equipment, mileage allowance.

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### Fringe Benefits

- ▶ A **fringe benefit** is a form of compensation for the performance of services -- including property, services, cash or cash equivalent -- in addition to stated wages.
- ▶ All income is taxable, unless a **specific exclusion** applies. IRC § 61

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### Fringe Benefits - Levels of Taxation

- ▶ The Internal Revenue Code (IRC) may provide that a fringe benefit is
  - ▶ **Taxable** - value is includable in the employee's gross income, i.e., not excluded from taxation under any IRC section.
  - ▶ **Nontaxable** - value is excluded from wages by a specific IRC section. For example, the value of qualified health plan benefits.
  - ▶ **Partially taxable** - value is excluded up to certain limits as with an educational assistance program.
  - ▶ **Tax-deferred** - value of the benefit is not taxable when it is received but is subject to tax later as with 403(b) plan contributions.

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### Fringe Benefit Overview

- ▶ Health Insurance IRC §§ 105 and 106
- ▶ Meals and Lodging IRC §119
- ▶ Cafeteria Plans IRC §125
- ▶ Educational Assistance Program IRC §127
- ▶ Dependent Care Assistance IRC §129
- ▶ No additional cost service IRC §132(b)
- ▶ Qualified employee discount IRC §132(c)
- ▶ Working Condition Fringe Benefits IRC §132(d)
- ▶ De Minimis Benefits IRC §132(e)
- ▶ Qualified transportation fringe IRC §132(f)
- ▶ Awards Treasury Regulation §1.274-8
- ▶ On-premises athletic facilities IRC §132(j)(4)
- ▶ Qualified retirement planning services IRC §132(m)
- ▶ Adoption assistance programs IRC §137

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### De minimis fringe benefits IRC §132(e)

- ▶ A de minimis fringe benefit is a property or service provided by the employer that has so little value it would be impractical to account for it.
- ▶ Items are generally de minimis by specific exclusion, everything else is taxable income to the employee. Not a catch-all.
- ▶ There is no minimum value for a de minimis benefit.
- ▶ Cash or cash equivalent is never a de minimis benefit.

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### De minimis fringe benefits IRC §132(e)

#### Examples of de minimis benefits

- ▶ Personal use of employer-provided cell phone
- ▶ Occasional use of the employer copy machine
- ▶ Holiday or birthday gifts that are not cash with a low value
- ▶ Flowers provided for a specific occasion
- ▶ Occasional parties for employees
- ▶ Occasional tickets to theater or sports events
- ▶ Low value snacks

#### Examples of items that are **not** de minimis

- ▶ Gift cards of any amount
- ▶ Season tickets
- ▶ YMCA membership
- ▶ Regular snacks
- ▶ Meals

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### Is a Gift Card Taxable?

- ▶ Gift Card as reward for Wellness Program?
- ▶ Is there a minimum gift card value to be taxable?
- ▶ What if the Gift card comes for a business and is awarded to a District Employee?

**Gift cards are cash and are always taxable**

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#### Examples - characterize these examples as taxable or not taxable

1. Holiday "Chamber Bucks" cards provided to all employees by District
2. Staples gift card from the Band Boosters to the jazz band director at year end.
3. \$15 "cash back" from Scholastic Books to teachers who complete an on-line survey completed on school time.
4. Student gives a Staff member \$20 Culver's gift card after providing letter of recommendation.
5. \$15 stipend from the University of Pennsylvania to teachers who complete a survey on curriculum - no obligation and completed on employee time.
6. Nike athletic gear provided by Nike at no cost to athletic department staff.
7. Massages at the school campus as a Christmas gift from the District
8. New School year team bonding items like T-shirts, coffee mug, window stickers, etc.

**Kahoot!**

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### Meals and Snacks IRC §119

- ▶ The value of any meal furnished by an employer to the employee is excluded from income if the meal is furnished on the employer premises for the **convenience** of the employer.
  - ▶ Meals furnished to allow employees to be **available to respond to emergencies** (e.g., a school lockdown or scheduled practice drill)
  - ▶ Employee's meal period is restricted to 30-45 minutes due to work requirements and **the employee cannot obtain a proper meal during that time period.**
  - ▶ Inadequate eating facilities and restaurants within a reasonable distance from the employee's work location.

However, the IRS will evaluate meal delivery options.  
See, IRS Technical Advice Memorandum 201903017, 01/18/2019.

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### Meals

IRS Technical Advice Memorandum 201903017, 01/18/2019  
Facts - Employer furnished all meals to all employees without substantiation of the business reason for the meals.

IRS Findings:

- 1) Cannot substantiate after the fact (during the audit).
- 2) Protecting the employer's confidential information was not an adequate reason
  - ▶ when some employees did leave the campus for meals,
  - ▶ the employer did not have a policy defining confidential information.
- 3) Enhancing innovation was not an adequate reason when the employer did not have a policy regarding innovation that would have required employer-provided meals on site.

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### Meals

IRS Findings (cont.)

- 4) Improving employee wellness with employer-provided healthy meals was not supported by any **policy describing a business reason** related to the employer's business.
- 5) Ensuring employees are available for emergencies **must be demonstrated with examples of actual emergencies** for which the employee had to be available and not the expectation of a possible emergency.

**Prior Documentation  
A Must!!**

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Examples - should these meals be included in income:

1. Lunch provided during mandatory 4 hour meeting from noon– 4 pm.
2. Teachers assigned to playground/cafeteria duty during student lunch periods with no teacher lunch period.
3. School Resource Officer who walks the cafeteria during every student lunch period.
4. Sub sandwiches in the staff lunchroom before every Board of Education meeting (when Board meeting held at 7 p.m.)
5. Principal is "on call" to intervene during every student lunch period.
6. Meals for Board members when the meeting begins at 6 p.m.
7. Meal provided when interviews occur during lunch or right after school



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Snacks IRC §§119 and 132

- ▶ Snacks that are provided continuously in small, low value portions (e.g., candy bowl) are **excludable** from employee income as a *de minimis* fringe benefit.
- ▶ The value of snacks, even when combined, **cannot be excluded** from employee income as a meal provided for the convenience of the employer.
- ▶ Substantial snacks provided regularly to employees unrelated to a specific business purpose are not excludable from employee income.

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Cafeteria Plans IRC §125

- ▶ Participation in certain benefit plans can be optional without jeopardizing the tax-exempt status of the benefit to the employee. Choice between health benefits or cash
- ▶ Optional benefits are provided in a Section 125/cafeteria plan. Employees can participate in one or more of the cafeteria plan benefits by paying the cost of the benefit through a **salary reduction agreement**.
- ▶ Employees who choose not to participate will not experience the salary reduction. The related income is taxable.
- ▶ Typically benefit plans not eligible for Section 125 election are provided and paid for by the employer or mandatory employee participation. Employers cannot offer a cash payment in lieu of participation. Ex. 403(b) plan is 'cash' and not eligible as Section 125 option. Health Reimbursement Arrangement (HRA) benefit does not have option of cash.

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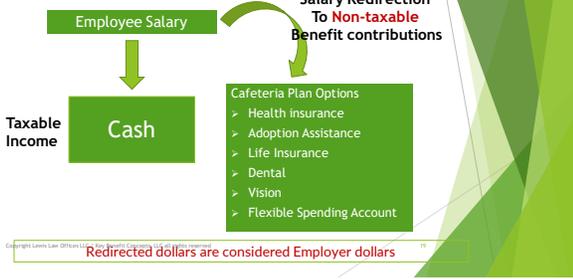
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### Cafeteria Plans IRC §125



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### Cafeteria Plans IRC §125

#### Allowed in a cafeteria plan

- Accident and health
- Adoption assistance
- Dependent care assistance
- Group term life insurance
- Flexible Spending Account
- Medical Savings Accounts (HSA)

#### Not allowed in a cafeteria plan

- De minimis benefits
- Educational assistance
- Transportation (commuting) benefits
- Tuition reduction
- Working condition benefits

Redirected dollars are considered Employer dollars

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### Educational Reimbursement IRC §§132(d) and 127

Educational expenses can be paid by the employer directly or reimbursed to the employee as

- a working condition fringe benefit (132(d) or
- through a Qualified Educational Assistance Program (127).

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### Education as a Working Condition Fringe Benefit IRC §132(d)

- ▶ Education must be job-related.
  - ▶ Maintain or improve job skills
  - ▶ Be expressly required by the employer or by law.
  - ▶ Ex. Work toward an advanced degree necessary to retain the job or pay level.
- ▶ Employer is not required to have a written plan.
- ▶ There is no dollar limit.
- ▶ The employer can discriminate in favor of highly-compensated employees.

The course must not:

- ✓ Be needed to meet the minimum job requirements
- ✓ Qualify the employee for a new trade or business

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### Education as a Working Condition Fringe Benefit IRC §132(d) (Cont'd)

- ▶ Employer must substantiate cash reimbursements
  - ▶ The expense qualifies as a working condition fringe benefit
  - ▶ The payment was actually used for the educational expense.
- ▶ Excess payment was repaid.

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### Qualified Educational Assistance Program IRC §127

- ▶ Employer may exclude up to \$5,250 from employee wages for costs associated with undergraduate or graduate education.
- ▶ Requires a written plan.
- ▶ Cannot be offered as a cafeteria plan benefit.
- ▶ Cannot discriminate in favor of highly compensated employees.
- ▶ The education is not required to be job-related, but it can be job-related.

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Examples – Characterize these educational expenses as taxable or not taxable

1. Karen is the school secretary. She wants to take an undergraduate psychology course at UW-Oshkosh.
2. Adam is a middle school social studies teacher. He wants to get a license as an athletic trainer to work with the high school soccer team.
3. D’Nai teaches high school math. She wants to get her Ed.D. with the goal of working in administration.
4. Maria is working as a special education teacher on a temporary license while completing her undergraduate degree in special education. She has a job offer waiting at her school.
5. The School District of Central State reimburses Joseph for the cost of classes he took to get a maintenance technician certificate but did not require substantiation of the tuition payment.

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**Dependent Care Assistance IRC §129**

- ▶ Up to \$5,000 in employee dependent care expense can be excluded from annual income.
- ▶ Expense is paid through a salary reduction agreement.
- ▶ Can be offered as a pretax benefit via the Section 125/cafeteria plan
- ▶ Requires a written plan and substantiation.

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**On site daycare**

Example:

- ▶ On-site daycare facility that District staff can use.
- ▶ District provides 0-3 year daycare for families with children enrolled in the District.
- ▶ District allows staff to use the daycare on a drop-in basis at no cost to the employee.
- ▶ District provides a \$5,000 Dependent Care FSA.

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### On site daycare

Mark, a District employee, has \$4,000 deducted from his salary for his Dependent Care FSA. He also uses the District daycare once/week when his wife works an early shift. The fair market value of the daycare use annually is \$1,750.

For use of the employer's daycare, the employer includes which amount on the employee's W-2:

- ▶ \$1750
- ▶ \$0
- ▶ \$1000



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### Working Condition Fringe Benefits IRC §132(d)

- ▶ Property and services provided by the employer to the employee so the employee can perform her/his job are not taxable to the employee.
- ▶ Examples:
  - ▶ Use of District vehicle, District-provided cell phone, job-related education and licensing costs.
  - ▶ Also includes cash reimbursements by the employer for pre-arranged business activities made under an accountable plan.
  - ▶ Travel per diems, mileage reimbursement, lodging for job-related travel.

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### Working Condition Fringe Benefits IRC §132(d)

- ▶ Conditions for a working condition fringe benefit
  - ▶ Benefit must relate to the employer's business.
  - ▶ Employee would have been able to take a tax deduction if the employee paid the expense.
  - ▶ Business use is substantiated with records.
- ▶ Catch-all - Any expense can qualify if it meets the working condition fringe benefit criteria.

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### Transportation Benefit

- ▶ Employers may reimburse the employee's expenses for use of a personal vehicle for work purposes on a tax-exempt basis if the reimbursement is consistent with the accountable plan rules.
- ▶ Use of an employer-provided vehicle exclusively for business purposes is a working condition fringe benefit with no tax consequences to the employee.
- ▶ Mixed personal and business use of an employer-provided vehicle requires reporting the personal use as taxable income to the employee.
- ▶ De minimis exception applies to small personal detours (e.g., driving to lunch while out on business) and infrequent commuting of no more than one day per month.

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### Value the personal use of

### maintenance vehicle



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### Alaska bush plane

- Working condition fringe?
- De minimis?
- Transportation fringe?



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