

**Fringe Benefits Manual**  
**Baylor University**  
**2006-2007**

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## **1.0 General Overview** [Back to Table of Contents](#)

Although not defined by the Internal Revenue Code (IRC) or Treasury Regulations in definite terms, a fringe benefit is any benefit provided by an employer to an employee outside the payment of salary/wages. Such a benefit can be in the form of cash or non-cash and includes, among other items, payments for an employee's professional dues, transportation, meals and lodging, club memberships, complimentary entertainment or sporting tickets, and service or property discounts. Fringe benefits also include payments to third parties on behalf of the employee or reimbursements to employees for previous expenses.

Unless expressly excluded or deferred until a later year under the IRC, all benefits received by an employee from an employer should be included in the employee's gross income in the year in which it is received. Section 132 of the IRC excludes from employees' income such fringe benefits that fall into one of several categories:

- No-additional cost services
- Qualified employee discounts
- Working condition fringes
- De minimis fringes
- Qualified transportation fringes
- Qualified moving expense reimbursements
- Eating and athletic facilities fringes

For the treatment of specific benefits, see [Section 3.0](#)

## **1.1 Provider of Benefit** [Back to Table of Contents](#)

An employer is the provider of a fringe benefit if it is provided for services performed for the employer. An employer is still considered the provider of the benefit even if the benefit is actually provided to an employee by a third person.

## **1.2 Definition of Employee** [Back to Table of Contents](#)

The definition of an employee differs for different fringe benefits.

- For no-additional cost services, and qualified employee discounts, an employee is an individual who is currently employed by the university in the line of business or a former employee in the line of business who retired or became disabled and no longer works for the university, or any widow or widower of a former employee who died while working for the university or who retired or became disabled. In addition, any use by a spouse or a dependent child (son, stepson, daughter, or stepdaughter, or a dependent whose parents are deceased and is not yet 25 years old) of an employee will be considered use by the employee.
- For working condition fringes, an employee is an individual currently employed by the university or any director of the university or any independent contractor who works for the university.
- For a de minimis fringe, an employee is any recipient of a fringe benefit.
- For an on-premises athletic facility, an employee is an individual currently employed by the university or a former employee who either retired or became disabled or any widow/widower of a former employee who died while employed or retired or became disabled. In addition, any use by a spouse or a dependent child is use by the employee.

## **2.0 Categories of Fringe Benefits** [Back to Table of Contents](#)

### **2.1 No-additional Cost Services** [Back to Table of Contents](#)

A no-additional cost service is defined as any service provided for use by the employee if the service is offered for sale primarily to customers (whether students or third parties) and the employer incurs no substantial additional cost in providing the service to the employee. Such substantial additional costs include foregone revenue and the cost of labor. The service is a no-additional cost service regardless of whether it is offered at no charge or at a reduced rate. Additionally, this exclusion contains a "line of business" requirement. The service or product that the employer is providing free or at a discount must be a service or product that the employer provides during its ordinary activities. Educational services such as tuition remission do not apply here as other Code sections specifically cover these services.

Reciprocal agreements between the university and an unrelated employer can also be considered no-additional cost services if both the university and the unrelated employer have a written reciprocal agreement under which a group of employees of each employer who perform services in the same line of business receive no-additional cost services from the other employer. In addition, the service provided by the unrelated employer must be the same type usually provided to customers by both the employee's line of work and the line of service provided to the employee. As a final requirement, neither employer can incur any substantial additional cost, including foregone revenue.

## **2.2 Qualified Employee Discounts** [Back to Table of Contents](#)

A qualified employee discount is any discount on qualified property or services provided by the employer. For discount of services, the exclusion cannot exceed 20% of the price offered primarily to customers. For products or merchandise, the discount cannot exceed the employer's gross profit percentage multiplied by the price at which property is offered primarily to customers for property in the ordinary line of the university's business. The gross profit percentage is equal to the total sales of the property sold minus the total cost of the property sold divided by the total sales. Qualified property or services is any property or services offered for sale to customers in the ordinary course of the line of business in which the employee performs substantial services. If the discount does exceed this amount, then only the excess is included in the employee's gross income.

*Example for Property* – The campus bookstore had total sales of \$600,000 and the total cost of its merchandise was \$300,000. The gross profit percentage would be  $\frac{\$600,000 - \$300,000}{\$600,000}$  or 50%. Any employee discount that did not exceed 50% of the sale price to customers could be excluded from the employee's gross income.

## **2.3 Working Condition Fringe** [Back to Table of Contents](#)

A working condition fringe is any property or service provided to an employee to the extent that if the employee had paid for the fringe, the payment would have been deductible under IRC §§ 162 or 167 as a business expense. Under these sections, the expense must be an ordinary and necessary business expense and must be properly substantiated to be deductible. To be properly substantiated, the employee must provide the necessary documentation under §162 or §274(d).

Under §162, if the employee is required to report to his employer, the IRS states such shall be done through an expense account or other written statement showing the business nature and amount of all the employee's expenses broken down into different categories such as travel, entertainment, etc. Under §274(d), which only applies to certain categories of items (i.e., travel, entertainment, listed property), the following must be substantiated: the amount of each expense, the date and time of each expense, the location of the expense, the business reason for the expense and the business relationship pertaining to the expense. If this documentation requirement is not satisfied, the employee will be denied the benefit exclusion.

This exclusion is available only to employees, not their families; however, volunteers who provide services for the university can use this exclusion. Any cash payments by the university to an employee are not working condition fringes unless the employee is required to use the money for a specific or pre-arranged business expense, verify the money was actually used for that expense and return to the university any money not used.

## **2.4 De Minimis Fringes** [Back to Table of Contents](#)

A de minimis fringe is any property or service provided to the employee that has such a minimal value that accounting for the receipt of such benefit would be administratively impractical or unreasonable. In determining whether a benefit is de minimis, the IRS looks to the frequency at which the benefit is provided to an individual employee unless this is administratively difficult and then the IRS looks to all employees as a whole. Such benefits include an occasional meal, meal money or local transportation fare, especially for overtime work, occasional personal use of the university's copy machine, traditional birthday or holiday gifts of property with a low fair market value, occasional theater or sporting event tickets, drinks and snacks, local telephone calls, and flowers, fruit, books or similar property provided to employees under special circumstances.

Benefits that are not de minimis benefits are season tickets to sporting or theatrical events, private country club or athletic memberships, use of university owned or leased facilities for a weekend, and the commuting use of a

university-provided vehicle more than one day per month. In addition, a cash equivalent fringe benefit is not excludable; for example, if cash were given to an employee for a theater ticket, this is not excludable as a de minimis fringe benefit.

If a benefit provided is not de minimis because its value or frequency exceeds a set limit, the entire amount of the benefit is included in the employee's gross income, not just the excess over the amount.

## **2.5 Qualified Transportation Fringes** [Back to Table of Contents](#)

A qualified transportation fringe includes three items:

- The use of a commuter highway vehicle, which is a vehicle that seats at least 6 and is used at least 80% for transportation between the employee's residence and the university, limited to \$105 per month in total with the transit pass.
- Any transit passes allowing the holder to use mass transit facilities or ride in a for-hire commuter vehicle, limited to \$105 per month in combination with the use of the commuter highway vehicle.
- Qualified parking, which is parking at or near the university premises or at a location for the use of mass transit facilities, limited to \$200 per month.

The employee is allowed to choose between receiving cash or receiving the qualified transportation benefit without being taxed on the fringe benefit, as long as the alternative chosen stays within the dollar limitations.

## **2.6 Qualified Moving Expense Reimbursements** [Back to Table of Contents](#)

A qualified moving expense reimbursement is any payment by an employer for expenses that would be deductible as moving expenses for the employee under IRC §217 if the employee had paid or incurred the expenses. If the employee had deducted these expenses on a prior year's tax return, this exclusion is not available. Under §217, there are three tests to be met by a qualified moving expense: (1) the move is closely related to the start of work; (2) the distance test; and (3) the time test. Such qualified moving expenses under IRC §217 include the reasonable costs of travel to the new residence from the old residence and transportation of household goods and effects (below).

First, the move must be closely related to the move both in time and in location. Moving expenses incurred within one year from the commencement of work at the new location are closely related in time. If the move is not taken within one year from the date of commencement of work, the employee must show that circumstances prevented the move within that time, such as delaying the move to allow children to complete the school year. Moving expenses are closely related in location to the start of work if the distance from the employee's new home to the new job location is not more than the distance from the former home to the new job location. If this requirement is not met, the employee can still meet this test by showing he/she is required to live at the home as a condition of employment or the employee will spend less money or time commuting from the new home to the new job location. Home is defined as the employee's principal home.

Second, to be a qualified moving expense, the new principal place of work must be at least 50 miles farther from his/her former residence than the distance was from the old residence to his/her former place of work. If the employee did not have a former place of work, the new principal place of work must be at least 50 miles from his former residence.

Third, during the year (12 months) following the employee's arrival, he/she must be a full time employee during at least 39 weeks. The employee does not have to work for the same employer for all 39 weeks, but must be within the same general commuting area, and the 39 weeks do not have to be in a row.

The following cannot be deducted: purchase price of new home, car tags, driver's license, expenses of buying/selling home, expenses of getting/breaking a lease, home improvements to help sell home, loss on sale of home, loss from disposing of club memberships, meal expenses, mortgage penalties, househunting expenses, real estate taxes, security deposits, temporary living expenses, storage charges except those incurred in transit and for foreign moves.

## **2.61 Travel to the New Residence** [Back to Table of Contents](#)

Costs for the travel to the new residence should be calculated by the shortest, most direct route available by conventional transportation. Additional expenses for stopover or side trips are not included. Such costs include lodging for the employee and members of the household for one trip from the employee's former residence to his/her new residence. If the employee travels by car, expenses can be calculated by actual expenses kept by an accurate record or the standard mileage rate. The IRS at the beginning of each calendar year provides this mileage rate. The current 2006 rate is .18 cents per mile. Expenses for the day of arrival are included, as well as any lodging expenses in the former home's area within one day after the employee could no longer live in the former home because furniture had been moved. Reimbursement of these costs is not taxable; however, any reimbursement of meals shall be included as taxable income.

## **2.62 Transportation of Household Goods and Effects** [Back to Table of Contents](#)

Costs for the transportation of household goods and effects include packing, crating, and transportation. If the employee's car is used, expenses can be calculated by actual expenses kept by an accurate record, or the standard mileage rate. Costs of connecting or disconnecting utilities required and costs of shipping the employee's car or household pets are also included. In addition, the cost of moving household goods and personal effects from another location other than the employee's former home can also be included but are limited to the cost of moving them from the former home. Finally, cost of storing and insuring household goods and personal effects within 30 consecutive days after the day the employee's things are moved from the former home and before they are delivered to the new home. Reimbursement of these costs is not taxable.

## **2.7 Eating and Athletic Facilities Fringes** [Back to Table of Contents](#)

An eating facility fringe is the value of meals provided by the university to employees at a university-operated eating facility if the revenue from the facility equals or is greater than the direct operating costs of the facility. The facility must be owned or leased by the university, operated by the university (or contracted with a 3<sup>rd</sup> party to operate), located on or near the business premises of the university and the meals must be provided during, immediately after or immediately before the employee's workday. The direct operating costs included in this calculation are the cost of food and drink, the cost of labor primarily performed on the premises, and the amount paid to the 3<sup>rd</sup> party operator. The direct operating costs may be determined on an individual dining hall basis or in the aggregate.

An on-premises athletic facility fringe is the value of any on-premises athletic facility provided by the university which is on Baylor University premises, is operated by Baylor University and substantially all of the use of which during the calendar year is by employees, their spouses and their dependent children. This does not apply to any athletic facility if the facility is made available to the general public through the sale of memberships or facility rental. This exclusion also does not apply to 3<sup>rd</sup> party health club or country club memberships.

## **3.0 Specific Benefits** [Back to Table of Contents](#)

### **3.1 Use of Facilities/Vehicles Owned by the University** [Back to Table of Contents](#)

#### **3.11 Athletic/Recreational Facilities** [Back to Table of Contents](#)

Recreational facilities provided by the university can include athletic facilities, the Student Life Center, golf courses, the marina, etc. There are typically a few different options for the exclusion of such use from the employee's gross income: 1) as a special athletic facility fringe exclusion (discussed above in 2.7); 2) as a no-additional cost service fringe benefit or; 3) as a qualified employee discount.

A no-additional cost service (as discussed above) is any service provided for use by an employee if the service is offered for sale primarily to customers in the ordinary course of the line of business under which the employee is performing services and the employer incurs no substantial additional cost, including foregone revenue, in providing the service to the employee. The service is such whether offered at a reduced rate or free of charge, and such services usually include excess capacity services. The line of business requirement as to educational organizations has been interpreted by other groups as including all areas of the educational organization, and there is no definitive ruling on such by the IRS. Since students are the customers in question



and the use of the athletic/recreational facility is offered to each student as part of attending the University, use by the employee is also a no-additional cost benefit to employees.

### **3.12 Automobiles** [Back to Table of Contents](#)

The value of the business use of a University-provided automobile by an employee is excludable as a working condition fringe benefit (see 2.3 above). The employee must maintain an accurate mileage log which includes a written record of the miles driven (odometer reading) and business purpose for the usage. Any personal use of the vehicle must be included in the employee's gross income unless the use is incidental, in which case the use is a de minimis fringe benefit (see 2.4 above). Examples of incidental use include stopping for lunch or running the occasional personal errand. However, commuting from the employee's personal residence to work does not qualify as incidental use.

### **3.13 Airplanes/Chartered Flights** [Back to Table of Contents](#)

The initial question concerning employee flights is whether the purpose of the flight was for business reasons or for personal reasons. The second question is what type of flight was used – University provided/charter flight or a commercial flight. If a University-provided or charter flight was used, the third question to resolve is whether control employees were present.

A flight taken for business reasons, the cost of the flight would be deductible by the employee if paid for personally, is excluded as a working condition fringe benefit. Examples of such flights include travel between different University locations, attendance at official events, recruitment activities, etc. In addition, if the plane is a University-provided plane, and 50% or more of the regular passenger seating capacity of the plane is filled with employees flying for substantiated business reasons, the value of the flight will not be included in the income of those employees who are flying for personal reasons. This also applies to spouses and dependent children, surviving spouses, and retired/disabled employees.

Any flights taken for personal purposes by an employee must be included in his/her income. In addition, the employee's income will include the value of any flight for which relatives or friends accompanied the employee for personal purposes. If the flight was on a University-provided or charter aircraft, the flight value is either the cost of an arm's length charter of the same or a comparable plane for that period for the same or a comparable flight, or determined by a formula detailed in Treasury Regulation 1.61-21(g). This formula must be elected by the employer. Regulation 1.61-21(g) states the fair market value of flight on employer-provided aircraft can be determined by multiplying the Standard Industry Fare Level by the appropriate aircraft multiple and then adding the applicable terminal charge. The Standard Industry Fare Level is revised semiannually by the Department of Transportation and in actuality has three rates; the first applies to the first 500 miles of flight, the second to the next 501 to 1500 miles of flight, and the third to any miles over 1500. The terminal charge is also revised semiannually by the Department of Transportation. The aircraft multiple increases with the maximum certified takeoff weight of the aircraft and depends on if the employees present are control or noncontrol employees.

Control employees generally include directors, officers and the top 1% of most highly paid employees. Family members of these employees are also considered control employees.

### **3.14 Cafeterias and Dining Rooms** [Back to Table of Contents](#)

IRC § 132 states the employer operation of any eating facility for employees shall be treated as a de minimis fringe benefit and so excludable from the employee's gross income if the following two factors are met: (1) such facility is located on/near the employer's business premises and (2) revenue derived from such normally equals/exceeds direct operating costs on an annual basis. The meals furnished must be provided during, or immediately before or after, the employee's workday. Meals include food, beverages, and related services.

The direct operating cost is equal to the cost of food (including spoilage), beverages, and cost of labor for personnel whose facility related services are performed primarily on the facility premises. For example, the cost of cooks, waiters, and waitresses are included, but only to the extent performed on the premises. In addition, if the employer contracts with another party to operate the facility, the direct operating costs include any such cost incurred by the employer and the amount paid to the operator to the extent it is attributable to what would be direct operating costs to the employer if he operated the facility. The employer is given a choice with respect to

the application of direct operating costs – each eating facility may be applied separately, or they may be applied in total for all eating facilities.

If the revenue from the facility does not equal or exceed the direct operating cost, the employee must include in income the difference between the fair market value of the meals minus the amount paid, if any, for the meals. FMV is determined by the amount an employee would have to pay in an arm's length transaction.

The above rule only applies to a highly compensated employee if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees. Meals at different employer-operated eating facilities are not related fringe benefits, so a highly compensated employee may exclude from gross income the value of a meal at a nondiscriminatory facility even though meals at a discriminatory facility cannot be excluded. All employees who regularly work at or near the premises on which the eating facility is located are to be aggregated for these discrimination rules, except those employees in different lines of businesses. The discrimination rules are applied separately to each eating facility.

### **3.15 Housing Provided by the University** [Back to Table of Contents](#)

There are two exclusions for lodging provided by employers to employees. Under IRC §119, the value of lodging furnished to employees by the University is excluded from gross income if:

- The lodging is furnished on the business premises of the University,
- The lodging is furnished for the convenience of the University, and
- The employee is required to accept such lodging as a condition of employment.

If any of these elements is missing, the value of the lodging must be included in the employee's gross income. Additionally, cash payments for housing allowances are not included in this exclusion; only in-kind payments are allowed. If the University gives the employee a choice of University provided housing or a housing cash allowance, the housing is not excludable from the employee's income even if accepted.

Under §119(d), there is a special exclusion for employees of educational institutions. If qualified campus lodging is provided to an employee, it will be excluded from the employee's gross income if the employee pays rent equal or in excess of the lesser of 1) 5% of the appraised value of the lodging or 2) the average of rentals paid by individuals (other than students or employees) during the year for school-provided lodging comparable to qualified campus lodging provided to the employee. If the employee does not pay rent equal or lesser than this amount, the employee must include in his/her gross income the difference between the amount paid and the lesser of the two values. Qualified campus lodging is defined as lodging that:

- Does not qualify under §119(a)
- Is located on, or in the proximity of the campus and
- Is furnished to the employee, the employee's spouse, and any dependents by, or on behalf of, the institution for use as a residence.

### **3.151 On University Business Premises** [Back to Table of Contents](#)

Any housing located on University premises clearly satisfies the first element. The courts addressing the issue have also held that housing not located on University premises may still meet this element if the housing is an integral part of the University's operations or is a place where the employee performs a meaningful portion of his/her duties. The IRS has instead applied a strict interpretation of this element and held lodging provided one to three miles from campus was not on the college premises. Therefore no bright line test exists for this element, but close consideration is given to the employee's duties. Two examples of recent cases follow:

- *United States Junior Chamber of Commerce* – Organizational president was given an official residence while in office that was located three miles from the organization headquarters. The residence was used at night to conduct staff meetings and entertain for official business purposes. Because official activities were conducted there, the court held the residence was on the organization's business premises.
- *Winchell v. United States* – A college president was provided with a residence four miles from campus. He occasionally held meetings and conducted official business there, as well as entertained business guests. The court held these occasional activities were not enough for a finding of on the business premises of the University.

### **3.152 For the Convenience of the University** [Back to Table of Contents](#)

This element requires a “direct nexus” between the lodging furnished and the stated business interest of the employer. This is a question that must be answered based on the facts of the employee’s individual situation, but is usually met if it is necessary for the employee to be available for work for longer than normal working hours because of the university’s business.

### **3.153 Required as a Condition of Employment** [Back to Table of Contents](#)

This element has been determined to be essentially the same as the second element, and again requires the direct nexus (see above). Acceptance of the lodging does not need to be an express condition of the employee’s contract, as long as proper performance of the employee’s duties requires that the employee live on the business premises under an objective standard. In addition, if the employee is required to accept the lodging as a condition of employment, the value of any meal furnished without charge to the employee on the premises is also excluded.

## **3.2 Dues/Memberships** [Back to Table of Contents](#)

### **3.21 Club Memberships** [Back to Table of Contents](#)

Club memberships must be divided into those for business, pleasure, recreation, or other social purpose and those which are not. Treasury Regulation §1.274-2 defines those for business, pleasure, recreation or other social purpose as including country clubs, golf and athletic clubs, airline clubs, hotel clubs, and clubs operated to provide meals under circumstances generally considered to be conducive to business discussion. Those clubs not included in this definition are business leagues, trade associations, chambers of commerce, boards of trade, real estate boards, professional organizations and civic or public service organizations, unless a principal purpose of the organization is to conduct entertainment activities for members or guests or to provide members or guests with access to entertainment facilities.

IRC § 274(a) prohibits employers from deducting payments for the business, pleasure, recreation or other social purpose club memberships, but such payments that are made for business or trade purposes are still excludable from the employee’s gross income as a working condition fringe, as the employee is not prohibited from deducting such expenses him/herself under IRC §162. To be deductible under §162, the employee should substantiate the percentage of club dues that are used for a valid business purpose, with the time and place of the use, the amount of the dues, the business purpose of the use, and the name and business relationship of the person who was met or entertained. Any personal use by the employee of the club membership will be included in the employee’s gross income.

The following example is provided in Treasury Regulation §1.132-5(s)(3) for illustration:

*Ex 1. Assume Company X provides Employee B with a country club membership for which it paid \$ 20,000. B substantiates that the club was used 40 % for business purposes. The business use of the club (40 %) may be considered a working condition fringe benefit, notwithstanding that the employer’s deduction for the dues allocable to the business use is disallowed. Thus, B may exclude from gross income \$ 8,000 (40 % of the club dues, which reflects B’s business use). X must report \$ 12,000 as wages subject to withholding and payment of employment taxes (60 % of the value of the club dues, which reflects B’s personal use). B must include \$ 12,000 in gross income. X may deduct as compensation the amount it paid for the club dues which reflects B’s personal use provided the amount satisfies the other requirements for a salary or compensation deduction under § 162.*

### **3.22 Professional Dues, Publications, and Meetings** [Back to Table of Contents](#)

Any payments made by the University for professional dues, publications used by employees in their work activities, or attendance at professional/training meetings are excludable to the employee as working condition fringe benefits. This exclusion is due to the fact that if the employee had paid for such items on his/her own, they would be deductible to the employee under IRC §162.



### **3.3 Complementary and Discounted Tickets to Athletic and Entertainment Events** [Back to Table of Contents](#)

Such tickets may be considered an excludable fringe benefit under one of four methods, depending on the facts and circumstances involved. First, such tickets may be a de minimis fringe benefit if provided occasionally. This exclusion does not include season tickets. Second, if the ticket is provided to an employee in the department involved in the event and the employee would have had to otherwise pay for the ticket him/herself for a business purpose, the ticket is excludable as a working condition fringe benefit. For instance, when an athletic director receives a football ticket because he is required to attend the game for recruitment purposes, it is deductible as a working condition fringe. However, this working condition fringe benefit does not apply to the employee's spouse or dependent children.

Third, if the ticket is provided at a discount, the qualified employee discount rule for services may apply. Under this rule the gross income of the employee does not include the discount to the extent it does not exceed 20% of the price at which the University provides the ticket to nonemployee customers. Fourth, the value of free or discounted tickets may be excluded as a no-additional cost service. For such exclusion to be applicable, the University must show it did not incur any substantial additional cost because the event would have occurred regardless of the number of attendees. In addition, the university must show that any services provided to employees were incidental and the university did not lose any substantial revenue.

### **3.4 Communication Services** [Back to Table of Contents](#)

University provided free electronic mail services, internet access, and local and long-distance telephone service, are considered no-additional cost services fringe benefits, as the university is using excess capacity that it has already purchased. In addition, the university is not incurring any substantial additional cost in providing the service because the university does not spend a substantial amount of time in providing the service to employees, over that time spent in providing the service to its main customers, students.

### **3.5 Educational Assistance** [Back to Table of Contents](#)

IRC §127 governs the educational assistance given by employers to employees and states that employer-provided educational assistance under a qualified educational assistance program is not included in the employee's gross income. This is true regardless of whether the payment is made to the educational institution or as reimbursement to the employee. The amount of assistance that can be excluded is limited to \$5,250.

A qualified educational assistance program is a "separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance." Therefore the plan must be a written plan not part of another employee benefit plan for the exclusive benefit of employees, and cannot be provided to employee's children or spouses. The plan cannot discriminate in favor of highly compensated employees or as to benefits provided. All employees must receive reasonable notice of this plan and the plan cannot offer employees a choice between the educational assistance and taxable compensation.

Educational assistance includes payments for, but not limited to, tuition, fees, books, supplies, and equipment. It does not include payment for tools or supplies the employee can retain after course completion, meals, lodging or transportation, or any course involving sports, games or hobbies. Since 2001, §127 no longer contains an exception for graduate studies, so currently such studies are excludable under this section.

### **3.51 Tuition Reduction** [Back to Table of Contents](#)

A tuition reduction program is one under which the university reduces the amount of tuition that must be paid for a current, retired, or disabled employee, the employee's surviving spouse, or the employee's dependent children under IRC §117(d). This reduction in tuition is excluded from the employee's gross income; however, this exclusion only applies to undergraduate studies, not graduate level work. The reduction must also not discriminate in favor of highly compensated employees. Under this exclusion, a child is considered a dependent child if both parents have died, and the child is under age 25. In addition, a dependent of divorced parents is treated as the dependent of both parents. The dependent child definition includes a son, daughter, stepson, stepdaughter, or eligible foster child or adopted child.

### **3.6 Gifts, Awards, and Other Presentations** [Back to Table of Contents](#)

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Traditional holiday gifts or birthday gifts of property with a low fair market value are considered to be de minimis fringe benefits if given on an infrequent basis to the individual employee. This does not include gifts of cash or gift certificates, but does include flowers, fruit, books, or similar property given to employees under special circumstances, such as illness of the employee or family, family crisis, or outstanding performance on behalf of the employee.

#### **3.62 Awards and Other Presentations** [Back to Table of Contents](#)

Any prizes or awards from the university to an employee in recognition of some achievement in connection with employment must be included in the employee's wages/salary. Awards that are "in connection with employment" include those given for good or outstanding work or for suggestions made to the university, generally encompassing all awards connected with services performed for the university. However, there are two exceptions to this general rule of inclusion: employee achievement awards and de minimis fringe benefit awards.

#### **3.621 Employee Achievement Awards** [Back to Table of Contents](#)

There is an exclusion from an employee's gross income for employment achievement awards if the university's costs for the award do not exceed \$400, or if the award is a qualified plan award, \$1,600. A qualified plan award is given under a written plan that does not discriminate in favor of highly compensated employees. An employee achievement award is an award given for a length of service or safety achievement, but it must be presented as part of a meaningful presentation. The award must be of tangible personal property, so cash, gift certificates, intangible property, tickets to theater and sporting events, vacations and real property do not qualify for the exclusion. If the award qualifies but exceeds the dollar amount the employee must include in his/her gross income the excess of the greater of the fair market value or the university's cost of the award, over the \$400 or \$1600.

#### **3.621A Length of Service Awards** [Back to Table of Contents](#)

A length of service award does not qualify for the exclusion if it is received during the employee's first five years of employment or the employee has received a similar award during any of the previous four years. A retirement award will qualify here as long as it meets the cost limitations above.

#### **3.621B Safety Achievement Awards** [Back to Table of Contents](#)

A safety achievement award does not qualify for the exclusion if during that year similar awards have been given to more than 10% of other eligible employees or it is awarded to a manager, administrator, clerical employee or other professional employee. If more than 10% of eligible employees receive such an award, those awards given to employees before the 10% was exceeded are allowed to exclude the award.

#### **3.622 De Minimis Fringe Benefit Awards** [Back to Table of Contents](#)

There is a de minimis fringe benefit exclusion from an employee's gross income for awards given by the university that are of nominal value and for traditional retirement awards that are more expensive. Awards of nominal value are defined for Baylor University purposes as falling under the \$50 de minimis level. Traditional retirement awards do not have to meet this de minimis level. For example, if the university provides a gold watch to each employee that completes 25 years of service, this is excluded as a de minimis fringe benefit, (regardless of the length of service award qualifications). However, this watch would not be excludable if given for another purpose other than the completion of lengthy service to the university.

### **3.7 Moving Expenses** [Back to Table of Contents](#)

See [Section 2.6](#) above.

### **3.8 Travel and Entertainment Expense Reimbursements** [Back to Table of Contents](#)

#### **3.81 Entertainment and Meals Expenses** [Back to Table of Contents](#)

An entertainment or meal expense is deductible to the employee and not included in gross income if the expense is an ordinary and necessary business expense under IRC §162 and if it meets the substantiation requirements under IRC §274.

Under IRC §162 and §274, for an entertainment expense to be deductible, the employee must be present at the meal and it must

- be “directly related” to the conduct of the University’s business, or
- be “associated with” University business (meaning a clear business purpose exists) and directly precede or follow a substantial and bona fide business discussion.

“Directly related” has been held to mean an expense occurring during a business discussion that moves toward a business benefit at some time in the future with business actually being conducted during the entertainment period, or an expense that occurs during a clear business setting. Extravagant expenditures or reciprocal entertainment are not allowed. A meal or other entertainment expense is “associated with” the conduct of a taxpayer’s trade or business and therefore not taxable if there was a clear business purpose in making the expenditure and if it directly precedes or follows a substantial and bona fide business-related discussion.

The substantiation requirements of §274 must also be satisfied. Answers to the following questions must be documented and supported by any available receipts or other documentation: the amount of each expense, the date and time of each expense, the location of the expense, the business reason for the expense and the business relationship pertaining to the expense. If this documentation requirement is not satisfied, the employee will be denied the benefit exclusion.

#### **3.82 Travel Expenses** [Back to Table of Contents](#)

See Baylor Travel and Entertainment Policy

#### **3.83 Spousal Travel** [Back to Table of Contents](#)

Spousal travel expenses can be treated as a working condition fringe benefit if the employer has not treated such amounts as compensation, the amounts would otherwise be deductible as a business expense because the spouse’s presence had a bona fide business purpose, and the employee properly substantiates the expenses. The IRS has not been lenient on what qualifies as a bona fide business purpose. For example, if the spouse serves primarily a social purpose, even in a business setting, this does not qualify. In addition, a spouse’s business activities conducted on the trip must be more than incidental; typing notes and attending business functions have been held to be incidental.

If the spouse’s expenses are determined to not be deductible, the employee can still deduct those expenses that he would have incurred if traveling alone. For example, if the employee and his spouse shared a rental car, the entire cost of the car would still be deductible since the car would have been needed even if the employee traveled alone.

Substantiation of the travel expenses must be done by the employee following the guidelines under Treasury Regulation §1.132-5(t) and IRC §274(d). These guidelines require the following questions to be answered and documented, preferably by receipts: the amount of each expense, the date and time of each expense, the location of the expense, the business reason for the expense and the business relationship of persons involved pertaining to the expense. If these requirements are not satisfied, the employee will be denied the benefit exclusion.