

Payrollnews

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Are Employee Gift Cards Taxable Income? ... And, the ACA Unconstitutional?

Are gift cards to employees a fringe benefit, or are they really taxable income? Is the Affordable Care Act unconstitutional? At **Data Management Payroll Services**, it's our job to make sure our clients have the facts.

The Internal Revenue Code Section 61 defines gross income, which is the starting point for determining which items of income are taxable for federal income tax purposes in the United States.

Code of Federal Regulations, Section 102(c), states that any amount transferred by employer to employee is included in income, subject to income tax withholding, and included on *Form W-2*.

All forms of compensation are subject to tax unless specifically excluded by the tax code. Cash and gift cards given to employees are taxable income. Any benefit provided regularly is taxable as wages.

Section 13310 of enrolled bill H.R.1-115th Congress (2017-2018), strictly prohibits employee "achievement awards" in the form

of cash, gift cards, and other non-tangible personal property.

Non-tangible personal property includes cash, cash equivalents, gift cards, gift coupons, or gift certificates, vacations, meals,

vacation lodging, tickets to theater or sporting events, stocks, bonds, others securities, and similar items.

To help determine what is, and what is not taxable, employers must always consider the frequency, value, and the facts and circumstances surrounding each item.

De Minimis Fringe Benefits

According to the IRS, "In general, a de minimis [minimal] benefit is one for which, considering its value and the frequency with which it is provided, is so small as to make accounting for it unreasonable or impractical," and is excluded from taxable income.

Excludable from taxable income, as de minimis fringe benefits, are occasional items including the use of company copy machine, group meals or parties

for employees and guests, theater or sporting events, coffee, doughnuts, soft drinks, local telephone calls, and gifts of flowers, fruit and books.

Also excludable are certificates that allow employees to receive a specified item of personal property that is minimal in value, like certificates for turkeys, provided infrequently.

Employers can still provide holiday parties with gifts of tangible items of very small value – all excluded from taxable income. However, any gifts or prizes provided, valued at large dollar amounts like tablets, televisions, etc., will NEVER qualify as de minimis fringe benefits, and are taxable income.

There is no defined value to support excluding any specific dollar amount as de minimis, or excluding it from wages and taxable income.

Cash or cash equivalents provided by an employer are indeed taxable income, and NOT a de minimis fringe benefit, and are NEVER excludable from income, including memberships, season tickets, or commuting use of employer vehicle for more than one day a month.

For all the details on the exclusion rules, and more, read

continued on next page



Taxable Income...

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and print **IRS Publication 15-B Employer's Guide to Fringe Benefits** at <https://www.irs.gov/pub/irs-pdf/p15b.pdf>.

ACA Unconstitutional?

Congress passed a new law recently that repeals the individual mandate penalty (for individuals without health insurance) from \$695 to \$0.

The U.S. Supreme Court states that this mandate is crucial to the ACA, and "admitted that an individual mandate without a tax penalty is unconstitutional."

Twenty states have filed suit in a district court in Texas, arguing that Congress' recent repeal of the provision deems the ACA unconstitutional.

Click the healthcare source link for more details on the ACA lawsuits filed, and the uncertain future of the ACA.

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Sources: <https://www.congress.gov/bill/115th-congress/house-bill/1/text>, <https://www.irs.gov/government-entities/federal-state-local-governments/de-minimis-fringe-benefits>, <https://www.law.cornell.edu/cfr/text/26/1.132-6>, <https://www.irs.gov/pub/irs-pdf/p15b.pdf>, and <http://thehill.com/policy/healthcare/375760-20-states-file-lawsuit-alleging-obamacare-is-unconstitutional>.

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IRS Tax Forum Registration

Register for the 3-day IRS Tax Forum 2018, in five states from July to September!

<https://irstaxforum.com/index>

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