

## USE OF PUBLIC FUNDS IN STATE AGENCY CTR PROGRAMS

The following guidelines are supplemental to the August 21, 1996 Informal Opinion regarding the use of public funds for state agency commute trip reduction (CTR) programs. They are designed to provide clarity to the informal opinion and have been verified as to their accuracy by the authors of the Informal Opinion: Mary Ellen Combo, Assistant Attorney General for the Department of General Administration; and Mary Jo Diaz, Assistant Attorney General for the Office of the State Auditor.

Agencies are reminded that an informal opinion is not a formal opinion from the Office of the Attorney General. Therefore, agencies are advised to review the opinion with their own Assistant Attorney General or Auditor. Agencies that receive different advice from their respective Assistant Attorney General or Auditor are asked to forward the information to Ellen Combo at (360) 753-0864, and/or Mary Jo Diaz at (360) 753-7815; or Joan Cullen, State Agency CTR Program Manager at (360) 902-7318.

### Background

RCW 43.01.230 authorizes state agencies to use public funds to “financially assist agency-approved incentives for alternative commute modes, including but not limited to carpools, vanpools, purchase of transit and ferry passes, and guaranteed ride home programs, if the financial assistance is an element of the agency’s commute trip reduction program as required under RCW 70.94.521 through 70.94.551.” Agencies are also required to comply with IRS codes.

Specific sources of funding for State Agency CTR programs are:

- ◇ *State Agency Parking Account* – Fund 277 (RCW 43.01.240): Agencies are authorized to establish parking fees or increase parking fees where already imposed, including a surcharge on fees paid to the Department of General Administration at state owned facilities (i.e. on the Capitol Campus). Funds may be used to support the agencies’ CTR programs, parking programs, and parking facilities. Funds from the State Agency Parking Account are allocated back to the contributing agencies through the Office of Financial Management.
- ◇ *Internal funds*: Agencies are allowed to use other public funds for statutorily designated CTR subsidies/incentives.

Allowable expenditures for CTR programs are set forth in RCW 70.94.531(2)(d) (*attachment A*) and include measures to achieve CTR goals. The list includes items the Legislature determined would be appropriate measures to help reduce single-occupancy vehicle use. The language “may include but are not limited to” does not set limitations on appropriate measures, but allows inclusion of other measures that may not be specifically listed.

To determine the legislative intent and to assess whether other measures that are not specifically enumerated in the statute are appropriate, the legislative history of the CTR statute was researched, including legislative hearing tapes, archives, etc. According to the legislative history, the intent of the CTR statute is to:

- ◇ Reduce the number of commute trips by single-occupancy vehicles to reduce air pollution, traffic congestion, and energy use.
- ◇ Reduce the number of vehicle miles traveled.
- ◇ Allow state agencies to use public funds for programs that encourage employees to use carpools, vanpools, public transit, etc.
- ◇ Create an Interagency Task Force to recommend policies that would encourage state employees to walk, bike, or use other alternative commute modes.

## Rules of Statutory Construction

To determine what other types of subsidies/incentives are appropriate, the *ejusdem generis theory* is used. “Ejusdem generis” means “of the same kind, class, or nature.” In this case, additional CTR measures that are allowed must be of the same kind, class, or nature as those specifically listed in RCW 70.94.531 (d). (*Attachment A*)

**Clarifications Regarding the Informal Opinion** (From public discussion held with the Assistant Attorneys General on October 16, 1996.)

1. *Are parking fees collected by state agencies under RCW 43.01.225 considered public funds once collected by the agency?*

Yes. Parking fees collected at state-owned or leased buildings are public funds and are subject to allocation by the Office of Financial Management. Because they are public funds, they are subject to the same restrictions as other public funds, and must be used for statutory purposes.

2. *Can CTR or other public funds be used to purchase CTR promotional items?*

Yes, as long as the item:

- ◇ **Is of minimal value; AND,**
- ◇ **Can be “directly connected” to a commute mode; OR,**
- ◇ **Contains a CTR logo and/or slogan that “directly spreads the word” about the CTR program.**

Agencies have powers that are expressly given to them by the legislature and, in some circumstances, an implied authority as a result of a statute or legislation. In this case, agencies are required to develop and implement effective CTR programs. Inherent in the authority to develop programs is the authority to advertise the existence of those programs. Therefore, agencies must have the ability to advertise and promote the existence of their CTR program to their employees.

3. *What are the tax implications associated with CTR incentives and subsidies?*

The federal government (IRS rules) allows *qualified transportation fringe benefits* (something that employers can give to employees that does not have to be included as part of their gross income). They include:

- a) *Transportation in a commuter highway vehicle (vanpool) between the employee's residence and place of employment or providing transit passes for rail, bus, or, ferry.* The allowable tax-free subsidy for certified vanpools, transit passes (rail, bus or ferry) is \$105 per employee per month (1/1/06). If the subsidy provided is for more than \$105 a month, any amount **over** \$105 is taxable to the employee. **Note:** Subsidies for carpooling, walking, and bicycling are **not** considered a fringe benefit exemption and are taxable to the employee.
- b) *Qualified parking at or near an employer's business, or at a location where an employee can connect to public transportation (i.e., Park-and-Ride lots).* The allowable tax-free parking equivalent is \$205 per month (1/1/06). **Note:** If the value of an employee's parking is valued at more than \$205 per month and provided free to the employee, any amount over \$205 is taxable to the employee.

The IRS code provides an exemption for “de minimus fringe benefits” defined as “any property or service whose value is so small that accounting for it is unreasonable or administratively impracticable.” Items of minimal value that are provided as promotional tools for CTR programs would fall under this exclusion. Promotional items of minimal value would be too costly and cumbersome for an agency to track, thus fall under a de-minimus fringe benefit and would not be taxable to the employee.

4. *What kinds of CTR promotional items are allowable?*

Items designed to make the program known to employees such as pencils, coffee mugs, inexpensive T-shirts, or magnets that have a CTR-type logo imprinted on them; written materials for distribution; or other items that make employees aware of CTR programs that are available to them. All items must be of minimal value.

Certain items such as bicycle racks, rideshare parking signs, CTR tracking software, and commuter information boards are definitely linked to encouraging and creating opportunities for people to commute using alternative modes and are an appropriate use of CTR funds. A Guaranteed Ride Home Program is another example of an appropriate use of CTR funds and is an element listed in Attachment A.

Promotional items (such as a gift certificate for a dinner or a latte) that are not associated directly with “spreading the word” about the CTR program or connected directly to a commute mode are not appropriate promotional items. Donated items may be used because agency funds are not used to purchase them.

5. *“In my opinion, a certificate for a \$2 latte does more to promote the CTR program than a pencil with a message about CTR imprinted on it. Word of mouth is a highly-effective way to spread the word about CTR. Employees will tell others that they received a free latte. Others will then want to know how they can get one. ‘I got my free latte because I participated in Wheel Options.’ This helps to encourage others to give alternative commuting a try. Why is this unacceptable?”*

The kinds of promotional items that are allowed under the CTR statute must be considered as advertisement for the program. To give an employee something that is unconnected to the program to encourage them to be part of the program is not a promotional item in the true sense. A certificate for a latte does not fall under the traditional definition of a promotional item. The CTR statute provides a list of program elements considered by the Legislature to be employee subsidies or incentives. The Legislature did not anticipate having to attract people with prizes. However, it is implied that agencies’ ability to create CTR programs allows the agency the ability to advertise the availability of the program and provide promotional items that are connected to the program. Otherwise agencies have no statutory authority to give gifts to employees. Gifts of public funds without statutory authority are specifically prohibited by the State Constitution.

6. *How can we determine when it is allowable to give promotional items to employees?*

Drawings are allowable as long as the prizes are items that *directly* promote the CTR program, are connected to or seen as benefiting an alternative commute mode, *and* are of minimal value.

In addition, some criteria needs to be met by the employee, such as filling out a rideshare form; completing the CTR survey; or using an alternate commute mode a specific number of times a week, month, or length of a specific promotion such as Wheel Options.

To remain a de minimus benefit, drawings must be random so that the same employee is not the winner each month.

7. *Can promotional items be used as prizes in drawings, or do they need to be given to everybody? Can public funds be used to purchase prizes to encourage employees to attend a presentation about commute trip reduction or as an encouragement to try alternative commuting? Are drawings for prizes allowable?*

Promotional items can be given to all employees (such as a pencil to fill out the CTR survey or to attend a CTR presentation) or as awards to individuals who have met certain criteria for a drawing. Prizes should not be given at random, but rather as a reward to someone who has met some criteria for participating in the CTR program or attendance at a CTR promotional event.

**Note:** If prizes are only given to the top performers in a category, (as the criteria) the same people could be winning every month and the “prize” (reward) could then be considered a subsidy. This practice may also discourage other employees from participating in the program.

An effective way to promote the CTR program and encourage employees to try alternative commuting is to hold drawings for those that participate. This is an acceptable method if employees are eligible for the drawing only if they have met criteria established for a minimum amount of participation in alternate commuting. For example, only those employees that use an alternative commute mode at least once a week, or once a month, or during a promotional event are eligible for the drawing.

Prizes used for drawings must directly promote the program (i.e. a CTR logo or message imprinted on them) and/or be a type of item that can be utilized in alternative commute modes, and must be of minimal value. Types of prizes that ARE NOT allowable include weekend trips, dinner for two, televisions, etc. (even if embossed with a CTR logo).

Refer to the list of items allowed in RCW 70.94.531 (Attachment A) and the list of subsidies/incentives allowed in RCW 43.01.230. Additionally, if you follow the ejusdem generis theory, any additional items must be of the same kind, nature, or class as those in the list.

8. *How can we determine what types of “prizes” are allowable?*

Begin by thinking of them as “promotional items.” If it is something that **directly promotes** your CTR program, then it is probably allowable. The following general guidelines can be used to assist in determining what promotional items are allowable:

- ◇ Does the item have a minimal value? All allowable promotional items must have a minimal value.
- ◇ Does the item directly promote or advertise the CTR program? Allowable promotional items must:
  - ◆ Advertise the CTR program (i.e., include a logo or imprint about the CTR program or promote a specific alternate commute mode); **OR**
  - ◆ Be an item that can be utilized by the employee using an alternative mode of transportation.

10. *“Is it allowable to give gift certificates to state employees?”*

Gift certificates that are donated to the agency are allowable. Gift certificates *purchased* by the agency, unless of minimal value and directly connected to an alternate commute mode, cannot be purchased with CTR funds. Gift certificates are a taxable item even if no public funds are used to purchase them. (They have a cash value and could be traded for cash). Again, the de minimus rule for taxes may apply in this situation.

11. *Is a gift certificate/voucher for a bike shop an acceptable prize?*

Yes, because the gift certificate would be used to purchase something to assist the employee in using an alternative commute mode. However, it would be taxable unless the de minimus rule applies.

12. *Can light refreshments be purchased as part of a promotional event?*

It depends on the source of funds used to pay for the refreshments. Under OFM regulations, coffee and light refreshments can be purchased, as long as they are integral to the program or promotional event. If it falls within the parameters of OFM regulations, it is appropriate to use public funds for light refreshments. However, funds specifically earmarked for CTR purposes can not be used for this purpose. Agencies need to use other available funding sources for light refreshments at CTR events.

13. *How can an agency determine whether serving light refreshments at a CTR promotional event is authorized?*

According to OFM regulations, the refreshments must be an integral part of the function; in other words, the function or event could not successfully happen without the refreshments. It could depend upon the time of day or the size of the function.

14. *“Our agency has a drawing each month for those employees that submit their CTR Track calendars. To be eligible for the drawing, employees must use an alternative commute mode at least 25% during the month. Is this acceptable?”*

Yes, because employees must meet minimum criteria to be eligible, and because the prizes are directly related to alternative commuting and have a minimal value. Prizes must be directly connected to an alternate commute mode and/or directly promote CTR and be of minimal value.

15. *“Our agency is planning to implement a CTR incentive program. Employees would earn points for using alternative commute modes and would receive gift certificates for gas purchases at specific gas stations. The certificates have no cash value; they must be used to purchase X number of gallons of gas, with no cash back. Is this allowable?”*

CTR funds can be used to purchase these certificates since gas is connected to an alternate commute mode (carpooling). Gift certificates are considered a cash equivalent and are taxable. If given in a drawing and are of minimal value and directly connected to a commute mode they may be allowable as a de minimus benefit. However, if the “certificates” or vouchers are given to the same people every month, it would then be considered an incentive/subsidy, and the employee would be required to pay taxes on its value (unless the voucher can only be redeemed for a transit or vanpool pass valued at \$100 or less).

16. *Can an agency use RCW 41.60.150 (Recognition Award Provision) as a basis of authority to use public monies to provide recognition to alternate commute mode users?*

Yes, “if”: Agencies, through their recognition program, could recognize CTR achievements providing that other agency funds (not CTR funds) are utilized to purchase the awards.

RCW 41.60.150 authorizes agencies to recognize employees for accomplishments including outstanding achievement, safety performance, and longevity. Agencies are authorized to provide awards that do not exceed \$100, and the statute includes a list of the kinds of items that can be given to employees as incentive awards. CTR

achievements could be included as an outstanding achievement. For example, the agency could present an award to the person who logged the most bicycle miles, and use agency general funds to purchase the award.

CTR-identified funds can only be used for subsidies/incentives that are like those listed in RCW 70.94.531. This does not mean that agencies can not use other available funds to acknowledge and recognize CTR as an achievement by employees and give awards like those mentioned in RCW 41.60.150.

Adopted by the Interagency Task Force for Commute Trip Reduction, January 15, 1997  
Affirmed by the Interagency CTR Board, January 11, 2007

**Attachment A**  
**Use of Public Funds for CTR Purposes**

**RCW 70.94.531 (2):**

A commute trip reduction program shall consist of, at a minimum . . . (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures *may include but are not limited to*:

- (i) Provision of preferential parking or reduced parking charges, or both, for high-occupancy vehicles;
- (ii) Instituting or increasing parking charges for single-occupant vehicles;
- (iii) Provision of commuter ridematching services to facilitate employee ridesharing for commute trips;
- (iv) Provision of subsidies for transit fares;
- (v) Provision of vans for vanpools;
- (vi) Provision of subsidies for carpooling or vanpooling;
- (vii) Permitting the use of the employer's vehicles for carpooling or vanpooling;
- (viii) Permitting flexible work schedules to facilitate employee's use of transit, carpools, or vanpools;
- (ix) Cooperation with transportation providers to provide additional regular or express service to the worksite;
- (x) Construction of special loading and unloading facilities for transit, carpool, and vanpool users;
- (xi) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
- (xii) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facility;
- (xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes;
- (xiv) Establishment of a program of alternative work schedules such as compressed work week schedules which reduce commuting;
- (xv) Implementation of other measures designed to facilitate the use of high-occupancy vehicles such as on-site day care facilities and emergency taxi services.