



Transportation fringe benefits

Plotting a course in the wake
of the Tax Cuts and Jobs Act



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In the years leading up to the Tax Cuts and Jobs Act (TCJA), Congress encouraged efforts to protect the environment by giving employees a tax break for mass transit and van pool benefits. By extending parity to parking and commuting benefits, the tax-favored status of transit and van pool benefits was first enacted under the [Energy Policy Act of 1992](#), and as an expiring provision, was reinstated numerous times until made permanent in 2015 under the [Protecting Americans from Tax Hikes Act](#) (Path Act).

For employees, the TCJA doesn't take away the tax-favored status of commuting benefits (other than bicycle commuting benefits repealed for 2018 through 2025) or the option to pay for them with pre-tax dollars. Instead, and effective January 1, 2018, businesses can no longer take a deduction for transportation fringe benefits (including employee parking at the regular workplace). Hence, for both profit and nonprofit businesses, the cost of providing these benefits is generally increased by the corporate income tax rate (21% effective January 1, 2018).

Now employers face a dilemma: Do they continue to provide transportation fringe benefits to their employees despite the loss of the business deduction, or do they discontinue making these benefits available?

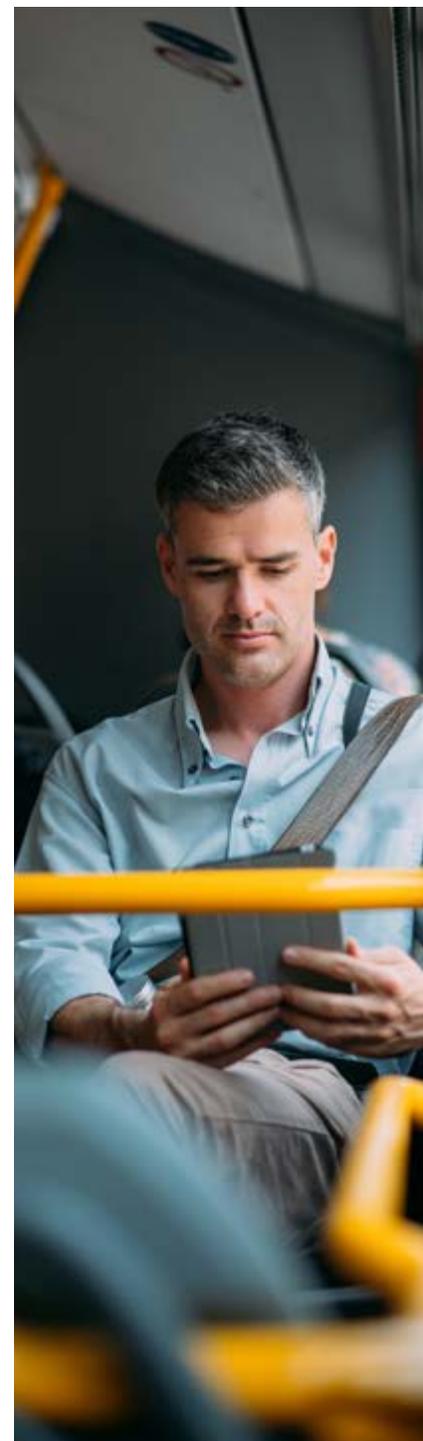
Each business will need to undergo a careful evaluation of the ultimate tax impact/cost of transportation benefits against their value in attracting and retaining workers; however, it is important in the decision-making process to consider whether local laws may preclude the option of completely discontinuing these benefits. Local laws, as explored later in this article, could require that employees are provided with transportation benefits.

Background

Effective January 1, 2018, [IRC §274](#) is amended to reflect that no business income tax deduction is allowed for any expense incurred for providing any transportation, or any payment or reimbursement for transportation fringe benefits except as necessary to ensure the safety of the employee. ([TCJA §13304](#).) A corresponding provision applies to nonprofit organizations, requiring that they include in unrelated business income the cost of qualified transportation fringe benefits. ([Ernst & Young LLP, Tax News Update, 12-20-2017](#).)

For 2018, the amount excluded from wages subject to federal income tax (FIT), federal income tax withholding (FITW), Social Security/Medicare (FICA) and federal unemployment insurance (FUTA) is capped at \$260 per month for parking and \$260 per month for transit and van pool benefits. Under [IRC §132\(f\)\(3\)](#), employers may establish a system whereby employees can purchase their transportation fringes with pretax dollars up to the statutory monthly limit. Pretax contributions for transportation fringe benefits are excluded from wages subject to FIT, FITW, FICA and FUTA.

For more information see our special report, [An employer's guide to the Tax Cuts and Jobs Act](#).





Local laws that require employer-provided transportation fringe benefits

The important correlation between employer-provided transportation fringe benefits and local laws is explored in a [recent article](#) by the Society for Human Resource Management. This point is very important. Before making any final policy decisions, employers should check for local ordinances in cities where employees work to determine if commuting benefits are required.

Below is a listing of some relevant local laws.

- ▶ **Berkeley, California.** Employers in [Berkeley](#) with 10 or more employees (full-time, part-time or temporary; anyone who works an average of 10 hours per week or more in Berkeley) must offer one or more of the following options: (1) a pretax plan under IRC §132(f) that allows employees to exclude transit, vanpool or bicycle commuting expenses¹ from taxable wages and compensation as allowed by federal tax law; (2) a transit subsidy equivalent to the value of an [AC Transit](#) regular (local) monthly pass; or (3) an employer-provided shuttle service. (B.M.C. 9.88 (TRACCC); [City of Berkeley FAQs](#).)
- ▶ **Los Angeles, California (plus Orange and non-desert portions of Riverside and San Bernardino counties).** Under [Rule 2202](#), an employer with 250 or more employees is required to register with the [South Coast Air Quality Management District](#) and to choose from options to reduce mobile source emissions generated from employee commutes. One option is the Employee Commute Reduction Program ([ECRP](#)) which incorporates various strategies to encourage employees to use alternative commuter options, such as bicycling, walking, public transit or carpools/vanpools.
- ▶ **New York City.** Under the New York City Commuter Benefits [Law](#), non-governmental employers with 20 or more full-time non-union employees working in New York City must offer their full-time employees the opportunity to use pretax income to pay for their transportation by public or privately owned mass transit or in a commuter highway vehicle (does not include parking expenses). Employers are not required to subsidize the program, but must only give employees the option to purchase qualified transportation fringe benefits with pretax income. (*Local laws of the City of New York*, §20-926; [NYC Commuter Benefits Law FAQs](#).)

¹ The Tax Cuts and Jobs Act repealed the provision of bicycle commuting benefits under IRC §132 effective January 1, 2018, and through December 31, 2025.

- ▶ **Richmond, California.** Employers in [Richmond](#) with 10 or more employees who work an average of at least 10 hours per week must offer one of the following options: (1) a pretax plan under IRC §132(f) that allows employees to elect to exclude from taxable wages transit passes, vanpool charges or bicycle commuting expenses² as allowed by federal tax law; (2) an employer-paid benefit whereby the employer supplies a transit pass or reimbursement for equivalent vanpool charges at least equal in value to the purchase price of an adult monthly transit pass for the local transit agency system(s) requested by each employee to complete the trip to the workplace; (3) employer-provided transportation furnished by the employer at no cost to the employee in a vanpool, bus or similar multi-passenger vehicle operated by or for the employer; or (4) an alternative commuter benefit that must be pre-approved by the city. (*City of Richmond Municipal Code, Chapter 9.62; Richmond Commuter Benefits Compliance Guide.*)
- ▶ **San Francisco, California.** Businesses with a location in [San Francisco](#) (including nonprofit organizations) with 20 or more employees nationwide must offer one of the following options: (1) a monthly pretax plan under IRC §132(f) to pay for transit or vanpool expenses; (2) an employer-paid monthly benefit equivalent to the price of the San Francisco Muni Fast Pass (including BART travel); (3) employer-provided transportation in a company-furnished bus or van service to and from the workplace; or (4) any combination of numbers (1)-(3). (*San Francisco Ordinance No. 199-08; Guide for San Francisco employers.*)
- ▶ **San Francisco Bay Area, California.** Businesses with 50 or more employees in the San Francisco Bay area must register with the Bay Area Commuter Benefits Program and offer one of the following options: (1) a pretax benefit under IRC §132(f) to pay for transit or vanpool expenses; (2) an employer-provided subsidy to reduce or cover employees' monthly transit or vanpool costs; (3) an employer-provided free or low-cost transit service for employees, such as a bus, shuttle or vanpool service; or (4) an alternative commuter benefit that is as effective in reducing single-occupancy commute trips as options (1)-(3). (*Regulation 14; Bay Area Commuting Benefits Program Employer Guide.*)
- ▶ **Washington, D.C.** Employers of 20 or more employees are required to offer one of the following options: (1) a pretax election for employee-paid transportation fringe benefits program under IRC §132(f) to pay for mass transit or vanpool expenses; (2) an employer-paid tax-free subsidy that either provides employees with a transit pass for the public transit system or reimbursement of vanpool costs in an amount at least equal to the purchase price for an equivalent trip on a public transit system; or (3) an employer-provided vanpool or bus service at no cost to employees. For more information, go to the goDCgo [website](#). (*Sustainable DC Omnibus Amendment Act of 2014; Employer Commuting Benefits Toolkit.*)

Ernst & Young LLP insights

Legislators pointed to the permanent corporate income tax rate reduction from 35% to 21% as an offset to eliminating the various deductions, such as that previously allowed for transportation fringe benefits.

One point to note is that although employers have lost the business tax deduction, the exclusion from taxable wages that continues to apply also reduces the employer's portion of FICA and FUTA taxes on those benefits.

²The Tax Cuts and Jobs Act repealed the provision of bicycle commuting benefits under IRC §132 effective January 1, 2018, and through December 31, 2025.

Tax Reform Employer Support Services

Helping businesses administer changes under the Tax Cuts and Jobs Act (TCJA)



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