

Transit Pass and Vanpool Benefits to Shrink to \$125 Per Month in 2012

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Millions of people across the United States will experience a significant increase in the cost of their daily commute to work, and many employers will suffer a corresponding increase in payroll taxes for 2012 and beyond, unless U.S. Congress acts before the end of 2011. The reduction will also restore a significant gap between the exclusion limit for employer-provided transit pass or vanpool benefits and qualified parking benefits, and creates an *unintended* economic subsidy that may influence some commuters' choice to drive themselves to work over using mass transit.

Unless U.S. Congress acts before the end of 2011, the monthly tax exclusion for employer-provided transit pass and vanpool benefits will shrink to \$125 in 2012, from the current \$230. This reduction could mean the loss of hundreds of dollars of annual tax savings for employees who use these benefits. Meanwhile, the monthly tax exclusion for employer-provided parking benefits is scheduled to increase by \$10 to \$240 for 2012.

Background

Section 132(a)(5) of the Internal Revenue Code generally provides that qualified transportation fringe benefits provided by an employer, including parking, transit passes, vanpool benefits and qualified bicycle commuting reimbursements, are excluded from an employee's taxable wages. In practice, qualified transportation fringe benefits may be provided to employees as a direct benefit in addition to employee wages, as part of an employee pre-tax salary reduction agreement, or as any combination of the two.

2009 and 2010 Legislation

The transportation fringe benefit provisions were first sponsored as an initiative of the Environmental Protection Agency (EPA) to reduce both pollution and traffic by creating incentives for more commuters to use mass transit. Prior to February 17, 2009, there was a significant gap between the exclusion limit for employer-provided transit pass or vanpool benefits (\$100/month) and qualified parking benefits (\$175/month). The American Recovery and Reinvestment Act of 2009 temporarily increased (through December 31, 2010) the transit pass and vanpool limit to be equal to the parking limit of \$230/month, to eliminate an *unintended* economic subsidy that may influence some commuters to choose to drive themselves to work over using mass transit. Near the end of 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 temporarily extended the \$230 limit through 2011 for transit passes and vanpools.

IRS Rev. Proc. 2011-52 “Inflation Adjusted Items for 2012”

Starting in 2012, Revenue Procedure 2011-52 provides that the monthly exclusion under Code Section 132(f)(2)(A) for employer-provided transit pass or vanpool benefits is \$125. The monthly exclusion under Code Section 132(f)(2)(B) for qualified parking benefits is \$240.

The Joint Committee on Taxation has estimated the cost of maintaining parity between the exclusion for employer-provided mass transit and parking benefits to be \$119 million for 2012.

What Should Employers Do Now?

Employers providing transit pass or vanpool benefits need to decide whether to restrict to \$125 employees' monthly salary deductions for 2012, or instead allow employee salary deductions of up to \$240 per month. If salary deductions for transit passes and vanpool benefits are permitted up to \$240 per month and the law does not change, amounts in excess of \$125 per month will be taxable for 2012.

Congress could act to increase the monthly limit for transit passes and vanpools. If Congress were to retroactively increase the monthly limit later in 2012, and if monthly employee salary deductions in 2012 will have been restricted to \$125, the new limit could be applied going forward, but current tax rules would not permit employees to catch up to the higher limit for the portion of 2012 that already would have elapsed.

A last minute change in the law would present additional challenges to employers in certain jurisdictions. For example, the City and County of San Francisco, and the nearby cities of Berkeley and Richmond, California, generally require that employers with 20 or more employees offer qualified transportation fringe benefits to employees, including at least a pre-tax salary deduction election consistent with the *maximum* limitation under federal tax law. Thus, if the monthly transit pass limit is increased later in 2012 (and perhaps retroactively), employers in these jurisdictions and localities with similar legislation may be required to make adjustments to the maximum levels permitted under the tax rules.

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