

Understanding Tax Code Changes for Commuter Fringe Benefits

Background

Commuter fringe benefits are a feature that employers can offer that allows an employee to opt to have pre-tax money withheld from their paychecks to cover the cost of commuting. According to Best Workplace for Commuters, qualified transportation fringe benefits (Section 132(f) of the Internal Revenue Code) or “Commuter Tax Benefits” are like money in the bank. Employers save on payroll related taxes. Employees save on federal income taxes. It is also a benefit that encourages employees to begin the process of “smart commuting” and eliminating the single driver vehicle and road congestion. Not only do commuter fringe benefits encourage employee retention but it also attracts potential employees.

Human resources consulting firm Robert Half surveyed over 2,800 Americans across 28 major U.S. cities and found that 23 percent of workers have quit a job because of a bad commute. According to the U.S. Census, in 1990 the average commute time was less than 22 minutes. Today, Americans spend just over 26 minutes commuting to work each way.

As traffic increases in the Monterey Bay region, employers are turning to commuter benefit programs as one tool that can improve employee morale and productivity by decreasing the time they spend in the car driving alone. Commuter fringe benefits also allow employers to save on payroll-related taxes. Under the Transportation Equity Act, IRS code 132(f), and California state law, employers are allowed to offer payroll tax savings for transportation assistance. Employers also have the option of subsidizing part of their employees’ commuting costs and allowing employees to pay for the remainder with pre-tax dollars.¹ Recent tax law changes, however, affect how employers can calculate these benefits.

The following information is intended to help identify and clarify areas of the law around commuter fringe benefits. Always consult your tax advisor for guidance on your situation. Information in this document is meant to be informative only and not tax advice.

Changes to Qualified Commuter Fringe Benefits

As of January 1, 2018 the Tax Cuts and Jobs Act made amendments to eliminate or limit the tax deductions for expenses related to certain employer-provided qualified transportation fringe benefits (including employee parking at the regular workplace). The good news is that Section 132(f) allows employees to pay for qualified transit expenses on a pre-tax basis. These transit expenses must be for the purpose of enabling the employee to commute between home and his/her place of employment using transportation on a public or private

¹Corporate Tax Benefit Information <https://rideshare.org/tax-benefits/>

mass-transit facility or in a “commuter highway vehicle” (i.e., “vanpool”).² Within the bill, there is language that effectively provides that the unrelated business taxable income of an exempt organization be increased by the amount of the benefit (pre-tax and subsidy) provided to employees. As a result, non-profits (hospitals, universities, museums, etc.) providing a commuter transportation benefit will be hit hard, as they now will have to pay an unrelated business income tax (UBIT), equal to 21% of the total value of the transportation and parking benefits provided as a subsidy to employees or funded through a pretax payroll deduction.³

In addition, for bike commuters, under the new tax law, employers can deduct qualified bicycle commuting reimbursements as a business expense for 2018 through 2025. The new tax law does however suspend the exclusion of qualified bicycle commuting reimbursements from an employee’s income for 2018 through 2025 -- employers must now include these reimbursements in the employee’s wages.⁴

Below is a summary of current categories to help identify areas of qualified commuter fringe benefits:

Category	Transit	Commuter Highway Vehicle (e.g., vanpool)	Qualified Parking	Qualified Bicycle Commuting Reimbursement
Incentive Levels	Up to \$265/month* for transit expenses	Up to \$265/month* for commute trip in a commuter vehicle	Up to \$265/month** for parking at or near an employer’s worksite, or at a facility from which employee commutes via transit, vanpool, or carpool	Qualified Bicycle*** Commuting Benefit remains ineligible as a tax free benefit.
Employer	Employers may give their employees up to \$265/month for transit vouchers, commuter highway vehicle fares and/or commuter parking fees.			Qualified Bicycle Commuting Benefit remains ineligible as a tax free benefit.
	Employers may allow employees to use up to \$265 per month in pre-tax income to pay for transit vouchers, commuter highway vehicle fares and/or parking fees.			
Employee	Most employees may receive up to \$265/month for purchase of transit vouchers, commuter highway vehicle fares and/or parking fees from his or her employer. This subsidy value will not appear on their W-2 form as income.			Qualified Bicycle Commuting Benefit remains ineligible as a tax free benefit.
	Employee pays for commute benefit with the pre-tax income up to the \$265/month statutory limit and receives more after-tax spendable income.			
	Employee may combine the pre-tax benefit with employer subsidies up to \$265/month for each to pay for transit vouchers, commuter highway vehicle fares and/or parking fees.			

* tax free transit and vanpool benefit limit increased from \$260 per month in 2018. It was raised to \$265 per month for beginning January 1, 2019.

² Treas. Reg. §1.132-9, <https://www.irs.gov/pub/irs-drop/rr-14-32.pdf>

³ QUALIFIED TRANSPORTATION FRINGE BENEFIT, <http://actweb.org/qualified-transportation-fringe-benefit/>

⁴ Tax reform changes to fringe benefit deductions affect business’s bottom line, <https://www.irs.gov/newsroom/tax-reform-changes-to-fringe-benefit-deductions-affect-businesss-bottom-line>

** tax free parking benefit limit increases from \$260 per month in 2018 to \$265 per month beginning January 1, 2019⁵

***P.L. 115-97 suspends the exclusion of qualified bicycle commuting reimbursements from your employee's income for tax years beginning after 2017 and before 2026.

Who Pays for Commuter Benefits

When looking for options on how to pay for benefits here are some options:

- Pre-tax withholding. At the employee's request, the employer withholds part of the employee's paycheck to let them pay transportation costs with pre-tax dollars. This is called a "compensation reduction plan." According to the Association for Commuter Transportation, it is the most commonly offered variety of commuter benefits program.
- Employer subsidy. The employer provides funds directly to employees in addition to salary. Employees don't count the designated transportation subsidy as taxable income—it's going straight to transit/parking costs—so employers still don't pay payroll taxes on it.
- Combination pre-tax and subsidy. The employer contributes some of the cost, and the rest is paid with the employee's pre-tax withholding.
- Employer-provided. The employer can also provide parking and/or transportation directly. As long as the value doesn't exceed the specified monthly limit, the employee can exclude this fringe benefit from income.⁶

Commuter Terminology Clarification

Qualified parking exclusion and commuter transportation benefit

- A ride in a commuter highway vehicle between the employee's home and work place
- A transit pass
- Qualified parking

Commuter highway vehicle

A commuter highway vehicle is any highway vehicle that seats at least 6 adults (not including the driver), with at least 80 percent of the vehicle's mileage for a year is reasonably expected to be for commuting and on trips during which the number of employees transported for commuting is at least one-half of the seating capacity of the vehicle (excluding the driver).

⁵ Qualified Transportation Fringe Benefit Summary Table,
<https://www.bestworkplaces.org/resource-center/qualified-transportation-fringe-benefits/>

⁶ How To Create A Commuter Benefits Program in 2018
<https://blog.abacus.com/create-commuter-benefits-program-2018/>

Transit pass

A transit pass is any pass, token, farecard, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate, on one of the following. (Mass transit may be publicly or privately operated and includes bus, rail, or ferry.)

- On mass transit.
- In a vehicle that seats at least 6 adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it.

Qualified parking

Qualified parking is parking you provide to your employees on or near your business premises. [Notice 2018-99](#) provides interim guidance with respect to the calculation of parking expenses for qualified transportation fringes that are now nondeductible under Internal Revenue Code Section 274(a)(4) (the “disallowance”). Notice 2018-100, which provides a waiver for certain tax-exempt organizations for underpayment of estimated income tax payments resulting from the changes to the tax treatment of qualified transportation fringes.⁷

Micro-mobility

Personal vehicles that can carry one or two passengers. Electric bicycles and scooters are the most common examples. Currently not eligible for commuter benefit.

UBIT

Providing Certain Fringe Benefits Now Results in UBIT for Tax-Exempt Organizations. The Tax Cuts and Jobs Act (the “Act”) contains a provision that requires tax-exempt organizations to recognize unrelated business income tax (UBIT) on certain fringe benefits offered to their employees.

Where to Go for More Information

Please consult your tax professional for guidance in complying with the TCJA requirements and the interim guidance.

For more information please refer to IRS website: <https://www.irs.gov/pub/irs-drop/rp-18-57.pdf>

⁷ Qualified Transportation Fringe Benefit Summary Table,
<https://www.bestworkplaces.org/resource-center/qualified-transportation-fringe-benefits/>