

Date: December 17th. 2017

Contact: Jason Pavluchuk – Pavluchuk@actweb.org – 202.285.6414

Tax Reform - Changes to the Transit Benefit - Myths & Realities

This document provides information on how the House and Senate versions of tax reform will impact transportation fringe benefits. There has been a lot of misinformation and confusion in the press and other outlets. If you have any questions, please contact Jason Pavluchuk – Pavluchuk@actweb.org

Preface:

Under existing law transportation fringe benefits can be provided 4 ways:

- Pre-tax – Employers elect to withhold an amount to pay for parking /transit (up to \$255/month)
 - Employer does not pay payroll taxes on pre-tax amount withheld
 - Employee does not pay personal tax or payroll tax on amount withheld
- Subsidy – Employers provide subsidy for parking/transit costs in addition to salary
 - Employers write-off amount subsidized for corporate taxes and do not pay payroll taxes on subsidized amount
 - Employee does not pay personal tax or payroll tax on amount subsidized
- Combo Pre-tax/Subsidy – Employer contributes some, and the rest pre-tax
- Direct provision of service – only applies when an employer directly provides parking, which it owns
 - Employer – Generally, there are no costs associated with providing free parking and capital costs associated with the property it owns is dealt with in other parts of the tax code
 - Employees do not pay individual or payroll tax on the free parking provided so long as the value of the free parking does not exceed \$260/month in value.

ACT is working on getting specific numbers, from conversations thus far its clear that a majority of employers provide transit benefits as a pre-tax benefit, only a few provide some subsidy – and many of those are regionally concentrated (Seattle, San Fran, DC) – and very few cover all transit costs, but many subsidize all parking costs.

What the Conference Report Does:

- DOES NOT touch section 132(f) – which is the section that deals with transportation fringe benefits – so there is no change on the individual side of commuter benefits
- The House bill does eliminate deductibility of subsidy programs. Said a different way, employers who subsidize transit (or parking) can no longer write off those subsidies for corporate tax purposes. **HOWEVER**, the amount subsidized is still exempt for payroll tax purposes.
- For employers who provide a pre-tax program (a majority) there is no change. This represents a majority of transit benefit programs.

Example 1:

ACNE corp. has \$100 in revenue

of that revenue - \$5 is spent to subsidize employee parking and transit

Under current law:

The employer would have a \$95 tax liability for corporate tax purposes

The employer would not pay payroll taxes on the \$5 in subsidized benefits it provides

The employee would not pay payroll taxes or individual taxes on the amount provided above salary

Under HR 1:

The employer would not be able to write off the \$5, so its corporate tax liability is \$100

The employer still would not pay payroll taxes on the \$5 in subsidized benefits it provides

The employee still would not pay payroll taxes or individual taxes on the amount provided above salary

Example 2:

ACNE corp. has \$100 in revenue, it provides employees a pre-tax option which every employee uses on avg. of \$5

Under current law:

The employer would have a \$100 tax liability for corporate tax purposes because the money provided is pre-tax, not subsidy, so its not spending any additional money on benefits

However, the employer would not pay payroll taxes on the \$5 per employee that takes advantage of the pre-tax program

The employee would not pay payroll taxes or individual taxes on the amount it withholds

Under HR 1:

The employer would still have a \$100 tax liability for corporate tax purposes because the money provided is pre-tax, not subsidy, so its not spending any additional money on benefits

The employer still would not pay payroll taxes on the \$5 per employee that takes advantage of the pre-tax program

The employee still would not pay payroll taxes or individual taxes on the amount it withholds

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Summary:

Subsidy programs are effective at getting individuals to shift habits, but few employers offer subsidy and the pre-tax option is also VERY effective at changing behavior

The change under HR 1 impacts parking and transit equally, more employers subsidize or provide free parking, thus, one could argue there is an opportunity for transit supporters to take advantage of the change because more employers will be impacted by the inability to write off parking than employers impacted by the ability to write off transit.

ACT's public policy director has spoken with a number of employers who do subsidize transit and all of them indicated that it would unlikely they would change what they offer based upon the change in law, largely because:

- 1) They would likely have to subsidize (and get taxed on) parking
- 2) The reasons for providing the subsidy rise above monetary callings (i.e. mobility, employee recruitment/retention, good governance)
- 3) There is a disconnect between their budgets and corporate tax – also the payroll tax deduction is still very attractive
- 4) They understand that's the price of poker for corporate taxes being reduced from 35% to 20%