

Retroactive Transit Benefits

Congress recently took action to extend 55 tax code provisions that expired at the end of 2013. Congress acted to retroactively extend these provisions for 2014, but not to extend them into 2015.

- Parity between the transit/vanpool portion and the parking portion of the Commuter Benefit was included in this provision. As a result, the transit/vanpool benefit for 2014 will retroactively increase from \$130/month to \$250/month.

Will this provision actually help commuters?

- No, not really, the action taken has no impact on 2015 and will not help the majority of commuters for 2014 unless they elected to withhold funds above the cap.

How Does Retroactivity Work?

- This provision will only help those who:
 - Had their employer withhold, on a pre-tax basis, above the cap of \$130/month throughout 2014, or;
 - received a direct subsidy from their employer over \$130/month.

Unless the IRS alters its guidance, commuters who received transit benefits from their employer, but do not fall into one of the categories above, will not benefit from the Congressional action taken.

Has this happened before?

- Yes, in 2013, Congress retroactively established parity for 2012. At that time, the IRS released Notice 2013-08 to provide guidance to employers on how to account for the retroactive change. The notice provided a special administrative procedure that allowed employers to account for the increased excludable transit benefits they provided in 2012.

The guidance made clear that only those employees whose employer provided transit benefits above the cap and withheld taxes on that amount might be entitled to a refund. The guidance further made clear that cash reimbursement for funds not withheld was illegal. Further, IRS Rev Rule 14-32 made clear that cash reimbursement is not an appropriate way to provide the transit benefit.

What should employers be doing if they have withheld above the cap?

In 2013, the IRS developed a special administrative procedure that allowed employers to account for the increased excludable transit benefits they provided in 2012 on their 4th quarter 2012 Form 941. The Congressional action in 2013 took place after the end of the calendar year. In this case, the Congressional action will take place before the end of the calendar year. We advise employers to speak with their accounting and tax professionals. We have been in contact with the IRS and we expect them to develop an administrative procedure that will allow employers to account for the increase in excludable benefits for 2014. We will pass along additional information as it becomes available.

What does this mean for 2015?

On January 1st, 2015, the cap will fall back to \$130/month for transit/vanpool and will stay at \$250/month for parking. However, Congress will hopefully pass another 'tax-extenders' package before the end of the 2015. Employers can be prepared for that by allowing their employees to take post-tax deductions above the pre-tax cap.