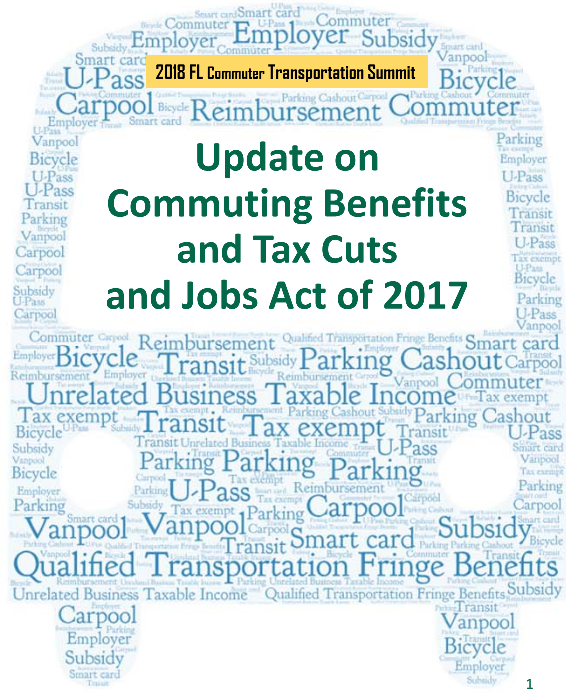
2018 Florida Commuter Transportation Summit



Philip L. Winters
Director, TDM Program
Center for Urban Transportation Research

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Tax and Legal Advice Disclaimer:

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Qualified Transportation Fringe Benefits

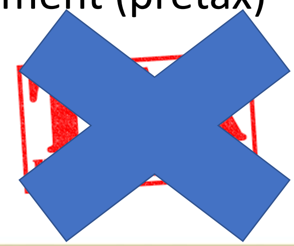
- Qualified transportation fringe benefits (QTFB) includes three categories of transportation benefits:
  - Transportation in a commuter highway vehicle
  - Transit passes; and
  - Qualified parking – employer provided parking on or near the business.
- Current limit is $260 per month for each of those categories
- Tax Cuts and Jobs Act of 2017 made some significant changes to qualified transportation fringe benefits

Qualified bicycle commuting reimbursement suspended

- Tax Cuts and Jobs Act of 2017 (TCJA) **suspended the exclusion of qualified bicycle commuting** reimbursements from an employee's income for any tax year beginning after December 31, 2017, and before January 1, 2026.
  - Prior to TCJA, an employer could reimburse up to $20 per month for qualified bicycle commuting

QTFB aren’t deductible for businesses anymore …

- **No business tax deduction is allowed** for qualified transportation fringe benefits incurred or paid after December 31, 2017 whether:
  - provided directly by employer,
  - through a bona fide reimbursement arrangement, or
  - through a compensation reduction agreement (pretax)



QTFB aren’t deductible for businesses anymore… except

No tax deduction is allowed for any expense incurred for providing any transportation, or any payment or reimbursement to employees, in connection with travel between the employee's residence and place of employment, **except as necessary for ensuring the safety of the employee**.

Qualified Transportation Fringe Benefits Remain Excludable from Income

- The fringe benefit exclusion rules <u>still apply</u> and the payments may be excluded from employee's wages.

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Treats QTFB as Unrelated Business Taxable Income for Tax-Exempt Employers

- Congress was trying to put employers, taxable and tax-exempt, in the same economic position
- Now treats expenses as unrelated business taxable income (UBTI) for a tax-exempt employer.
  - Would be non-deductible under section 274 if the employer were taxable; and
  - Are paid or incurred for any of three specific types of employee benefits
    - Qualified transportation fringe benefits;
    - Parking facilities used in connection with qualified parking; and
    - On-premises athletic facilities.

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Treatment of Parking is Murky

- The version of section 274 that was enacted only specifically refers to denying an employer deduction for expenses associated with qualified transportation fringe benefits.
- There's no specific reference to parking facilities which remained in section 512(a)(7) although they were dropped from the final section 274 amendments.
- So that leaves one to wonder how to interpret section 512(a)(7) – what parking expenses are taxable?

Do pre-tax employee contributions create UBTI for tax-exempt employers?

Employer is effectively reducing the amount of compensation being paid to the employee and is instead using those funds to provide the employee with a QTF benefit…

UBTI for Parking

… pre-tax employee contributions would be treated as an employer expense under section 274, which by extension means a pre-tax employee contribution would also be treated as an expense that gives rise to UBTI under section 512(a)(7).

Treatment of Employer's Own Parking Facility Expenses

- For many types of transportation fringes – notably, transit passes and parking at third-party facilities – the amount excluded from the employee's income equals the amount of the expense incurred by the employer.
- To determine the value of employer-provided parking for purposes of an employee's income exclusion, one looks to the fair market rental value of the parking spot.
- However, the fair rental value may depart significantly from the employer's expense of providing the parking.
- The employer's expenses may include maintenance, overhead, security, insurance, personnel costs and likely even depreciation.
- Parking facility expenses could greatly exceed the rental value.

“Free” Parking?

- Employer has provided its employees a QTFB, albeit one with a value of $0
- If that employer has provided its employees with a QTFB, then even though the value of the benefit received by the employees is $0, the employer would need to include as UBTI its expenses of providing that parking.

Example 1: For-Profit Employer

- The for-profit employer continues to pay for the QTFB and **forgo the tax deduction** while treating the benefit as a tax-free fringe benefit to the employee.
- The employer provides $100 per month for bus passes or parking benefits to its 25 employees during 2018. The value of these benefits (measured by their cost) is $30,000.
- Employees get 67% of the QTFB value

	Employee	Employer (For-Profit)
Value of benefits provided tax free to employees ($100 per month x 12 months x 25 employees)	$30,000	($30,000)
Tax rate	NA	21%
Additional taxes paid to Treasury	NA	($6,300)
Total benefit or (cost)	**$30,000**	**($36,300)**

Example 2: For- Profit Employer

- A tax-exempt organization provides \$100 per month in bus passes or parking benefits to its employees during 2018, but **treats the benefits as taxable wages**.
- The value of these benefits totals \$30,000.
- Assume that the employees are in the 25% personal tax bracket.
- Therefore, employees receive 67% of the QTFB value to purchase fare media or parking

	Employee	Employer
Value of Benefits (\$100 per month x 12 months x 25 employees)	\$30,000	(\$30,000)
Tax rate	25%	NA
Tax paid by employees	(\$7,500)	NA
FICA/Medicare taxes – Employee (7.65%)	(\$2,295)	NA
FICA/Medicare taxes – Employer (7.65%)	NA	(\$2,295)
Total benefit or (cost)	**\$20,205**	**(\$32,295)**

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Example 3: Tax-Exempt Organization

- A tax-exempt organization provides \$100 per month for bus passes or parking benefits to its 25 employees during 2018. The value of these benefits (measured by their cost) is \$30,000.
- Assuming no other UBTI items, the organization would be liable for \$6,090 of tax if it provides the benefits tax-free to the employees.
- As in the past, under this scenario the employees would not incur taxable income and would not be subject to any additional personal income tax.

	Employee	Employer (Tax Exempt)
Value of Benefits (\$100 per month x 12 months x 25 employees)	\$30,000	(\$30,000)
Less UBTI standard deduction	NA	(\$1,000)
Taxable UBTI	NA	\$29,000
Tax rate	NA	21%
Tax due	NA	(\$6,090)
Total benefit or (cost)	**\$30,000**	**(\$36,090)**

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What's Next

- Treasury and the IRS updated their joint Priority Guidance Plan recently to add two items from the TCJA to the list of exempt organization items they intend to address with some form of guidance before the end of June but these were not on the list.
- Monitor IRS actions

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