

New Filing Guidance Regarding the Retroactive Commuter Benefit Increase

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To help those employers that allowed employees to exclude more than \$130 in nontaxable monthly transit benefits for 2015, the IRS issued [Notice 2016-6](#) to facilitate their adjustment of employees' federal nontaxable wages following the recent retroactive increase in excludable transit benefits. On December 18, 2015, the President signed the Consolidated Appropriations Act, 2016, Public Law No. 114-113 (the "Act") which included an amendment to §132(f)(2) of the Internal Revenue Code. The amendment creates parity between the transit benefit exclusion for qualified parking and the exclusion for transportation in a commuter highway vehicle and any transit pass, effective for periods after December 31, 2014. This means that the monthly exclusion for commuter highway/transit pass benefits increased from \$130 per participating employee to \$250 per participating employee for 2015. (Note: For 2016, the monthly nontaxable benefit amount for each type of benefit (*i.e.*, qualified parking and transit commuter/transit) is \$255.)

Special Process for Adjusting Taxable Wages

As a result of the retroactive increase, employers who provided transit benefits during 2015 to an employee in excess of \$130 (the former maximum monthly excludable amount) and up to \$250 (the amended maximum amount) withheld excess income and FICA taxes from the employee's gross income and wages. Notice 2016-6 provides a special administrative procedure for employers who have not yet filed [Form 941](#), Employer's Quarterly Federal Tax Return, for the fourth quarter of 2015, to reflect changes in the excludable amount for transit benefits provided in all quarters of 2015, and in filing Forms W-2, Wage and Tax Statement. By using the special administrative procedures, an employer can avoid following the more onerous "normal" procedure for adjusting federal nontaxable wages described below.

To be eligible to use this special procedure, the employer must repay or reimburse employees for their overcollected FICA tax (including any Additional Medicare Tax) on the excess transit benefits for all four quarters of 2015 before filing the fourth quarter Form 941. The employer can then complete the fourth quarter Form 941 by reducing the following amounts by the excess transit benefits for all quarters of 2015: (1) the fourth quarter wages, tips and compensation reported on line 2, (2) the taxable social security wages reported on line 5a, (3) the taxable Medicare Wages and tips reported on line 5c, and (4) the taxable wages and tips subject to Additional Medicare Tax withholding reported on line 5d. Notice 2016-6 also provides instructions for reconciling the total taxes reported on line 10 of Form 941 with the total liability for the quarter reported on line 14 (for a monthly schedule depositor) or Schedule B (for a semiweekly schedule depositor).

Normal Process for Adjusting Nontaxable Wage

If the special procedure described above is not pursued, an employer must use the “normal” process for adjusting nontaxable wages. This means that the employer must file corrected [Form 941-X](#), and obtain a written statement from each employee confirming that the employee did not or will not make a claim for refund of FICA tax overcollected in a prior year. In addition, the employer may not repay or reimburse, make an adjustment with respect to, or seek a refund of Additional Medicare Tax or income tax deducted or withheld from the employee in 2015.

Form W-2 Guidance

Employers that paid excess transit benefits in 2015 and have not furnished 2015 Forms W-2 to their employees must take into account the increased exclusion for 2015 transit benefits in calculating the amount of wages reported in boxes 1, 3, and 5. Employers that have already repaid or reimbursed their employees for the overcollected FICA taxes prior to furnishing Forms W-2 (under either the normal or special procedures) must reduce the amounts of withheld tax reported in boxes 4 and 6. In all cases, employers must report the amount of income tax actually withheld during 2015 in box 2, Federal income tax withheld. The additional income tax withholding will be applied against the taxes shown on the employee’s individual income tax return (Form 1040).

Employers that repaid or reimbursed their employees for overcollected FICA taxes after furnishing W-2s to employees but before filing the W-2s with the Social Security Administration (“SSA”) must check “void” at the top of each incorrect W-2, prepare new W-2s with the correct information, and send these new forms to the SSA. The employers must write “CORRECTED” on the employees’ new copies and then furnish them to employees. In contrast, employers that have already filed 2015 Forms W-2 with the SSA must file Forms W-2s, Corrected Wage and Tax Statements, and furnish copies of the Forms W-2c to employees.

2016 Transit Benefits

For 2016, the monthly exclusion for each type of benefit (*i.e.*, qualified parking or commuter highway/transit pass) is \$255. Although employers generally are not required to offer the maximum amount of pretax benefits, employers in certain locations (including the Bay Area, New York, and the District of Columbia) may be subject to local laws with heightened requirements. For example, if an employer in the Bay Area has 50 or more full time employees and chooses to offer pretax benefits, it must offer up to the maximum amount allowed under federal law.

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