

FYI[®] Alert

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IRS Releases Guidance on Retroactive Increase to 2015 Transit Benefits

The IRS issued guidance yesterday on the retroactive increase of the 2015 monthly limit on excludable transit benefits from \$130 to \$250. The guidance addresses employer questions on the retroactive application of the increased exclusion, establishes a special administrative procedure designed to alleviate reporting burdens for employers that allowed after-tax contributions for transit benefits in excess of \$130, and instructs employers on Form W-2 adjustments. This guidance follows the same process as last year for the retroactive increase in 2014. Employers that capped employees' 2015 elections at \$130 are not impacted by this guidance.

Background

IRC Section 132 permits employers to provide “qualified transportation benefits” to their employees on a tax-favored basis. Under the law as originally enacted, the amount that could be excluded from an employee’s gross income for transit benefits was lower than the limit for qualified parking. The American Recovery and Reinvestment Act (ARRA) made the maximum exclusion amounts equal through 2010. (See our [March 4, 2009 For Your Information.](#)) Since then, Congress has extended the parity provision several times, most recently through the end of 2014. (See our [December 18, 2014 For Your Information.](#)) Until last month, however, Congress had not yet done so for 2015. Thus, the amount an employee could exclude from gross income and wages for 2015 was capped at \$130 per month for transit benefits and \$250 per month for qualified parking. (See our [October 21, 2015 For Your Information.](#)) Some employers allowed employees to make additional after-tax contributions for transit benefits in excess of the \$130 limit during 2015.

On December 18, 2015, President Obama signed into law the Consolidated Appropriations Act, 2016 (Act), which extended parity for transit and parking benefits by retroactively increasing the transit benefit for 2015 from \$130 to \$250. The Act also provided permanent parity for 2016 and future years for transit and parking benefits. For more information on the Act, please see our [December 21, 2015 Legislate.](#)



The monthly limits for 2015 and 2016 are:

	2016	2015
Commuter highway vehicle and transit pass	\$ 255	\$ 250
Qualified parking	\$ 255	\$ 250

IRS Addresses Employer Questions, Provides Special Administrative Procedure

The IRS released [Notice 2016-6](#) yesterday, addressing employer questions about the retroactive application of the increased 2015 exclusion, providing a special administrative procedure for employers to use in filing [Form 941, Employer's QUARTERLY Federal Tax Return](#), and setting forth instructions for Form W-2. This guidance affects employers that allowed employees to make after-tax contributions for transit benefits in excess of the monthly \$130 pre-tax limit during 2015.

Application of Retroactive Increase

The guidance confirmed the following:

- The retroactive exclusion for 2015 transit benefits applies whether the employer provided the transit benefits out of its own funds or through a salary reduction arrangement.
- Employers need not provide additional transit benefits to their employees for 2015.
- Any additional benefits provided to employees in 2016 to compensate employees for transit expenses incurred in 2015 are not automatically excludable from income.
- Employees may not retroactively increase their 2015 compensation reduction to take advantage of the increase in the exclusion.
- The Act does not change other requirements of IRC Section 132, including the limitation on providing cash reimbursements when transit passes are readily available. (See our [December 22, 2014 For Your Information.](#))

Special Administrative Procedure

Normally, an employer would be required to file [Form 941-X](#) for each quarter to correct previous reporting of "excess transit benefits" (the difference between the amended 2015 monthly limit of \$250 and the original monthly limit of \$130) as includable in gross income and tax withholding. Given the timing of the increased exclusion, the IRS is allowing employers that repay or reimburse their employees for overcollected FICA tax (including any additional Medicare tax) on the excess transit benefits for all four quarters of 2015 on or before filing their fourth quarter Form 941 to make appropriate reporting adjustments for the entire year on that filing. Employers using this special procedure need not obtain written statements from employees confirming that they did not and will not make a claim for a refund of overcollected FICA tax, as employers would have to do if using Form 941-X. This special administrative procedure works the same way as the 2014 retroactive benefit limit increase. (See our [January 9, 2015 For Your Information.](#))

Employers that have already filed their fourth quarter Form 941, or do not repay or reimburse employees who received excess transit benefits in 2015 prior to that filing, must use Form 941-X and follow normal procedures to make an adjustment or claim a refund with respect to those benefits — including obtaining employee statements.

Employer Instruction for Form W-2

The guidance also addresses relevant adjustments to employees' Forms W-2 and corresponding reporting obligations. Employers that paid excess transit benefits and have not yet provided 2015 Forms W-2 to their employees must reflect the increased exclusion on the forms. The reported amounts of FICA taxes withheld must be reduced by the amounts the employer has repaid or reimbursed to employees. Additional income tax withheld will be applied against the taxes on the employee's individual income tax return.

Employers that repaid or reimbursed employees for overcollected FICA taxes after providing their 2015 W-2s but before filing the forms with the Social Security Administration (SSA) must furnish corrected copies to both the SSA and their employees. Employers that have already filed 2015 Forms W-2 with the SSA must file [Forms W-2c](#) and provide copies to the employees.

In Closing

In response to this guidance, employers that allowed their employees to make after-tax transit benefit contributions over \$130 per month in 2015 should make all necessary adjustments to their tax reporting and Forms W-2. Taking advantage of the special administrative procedure will alleviate some of the burden associated with adjusting for the retroactive exclusion. Employers that capped employees' 2015 elections at \$130 need not make any corrections.

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