

Fiscal Fact

Income Tax Code No Longer Favors Parking over Transit...For Now

By

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On January 3, President Obama signed the American Taxpayer Relief Act into law, averting much of the fiscal cliff of higher taxes and expiring provisions.¹ About 56 pages of the 157-page bill consisted of the “tax extenders,” a grab bag of provisions that regularly expire and are regularly renewed by Congress.²

A higher tax-free monthly transit benefit is one of these provisions. Section 132(f) of the Internal Revenue Code establishes a “qualified transportation fringe,” excluding from tax any income (up to a cap) paid by the employer for the employee’s parking, transit passes, commuter vehicles, or bicycle commuting expenses. An employee may take any or all of the amounts, which are then withheld from his or her paycheck. Until 2009, the monthly parking cap was roughly twice the monthly transit pass cap, with both growing as the amounts were annually adjusted for inflation (see Table 1).

The 2009 stimulus bill eliminated this disparity, equalizing tax treatment of parking and transit commuting expenses at \$230 per month each. (A new \$20 per month bicycle commuting expense reimbursement provision was added for 2009 as part of a 2008 bill.) The parity between parking and transit was a temporary provision, however, running only from March 1, 2009 to December 31, 2010.³ Congress subsequently extended it through the end of 2011, when it finally expired. Throughout 2012, therefore, commuters could exempt \$240 in parking benefits per month, but only \$125 in transit benefits per month.

The 2013 law restores parity between parking and transit, at \$240 per month. However, there are two wrinkles in this law.

¹ See Joseph Henchman, *Details of the Fiscal Cliff Tax Deal*, TAX FOUNDATION TAX POLICY BLOG, Jan. 1, 2013, <http://taxfoundation.org/blog/details-fiscal-cliff-tax-deal>.

² See, e.g., Tim Carney, *How the corporate tax credits got in the ‘cliff’ deal*, WASHINGTON EXAMINER (Jan. 2, 2013) (explaining that the provisions were pasted from a Senate bill marked up in July 2012), <http://washingtonexaminer.com/tim-carney-how-corporate-tax-credits-got-in-the-cliff-deal/article/2517397#.UOWImW Ad8E>.

³ See Joseph Henchman, *Income Tax Code No Longer Favors Parking Over Transit*, TAX FOUNDATION TAX POLICY BLOG, Mar. 3, 2009, <http://taxfoundation.org/blog/income-tax-code-no-longer-favors-parking-over-transit>.

First, the provision is once again temporary. The transit reimbursement will again fall to roughly half the parking exclusion at the beginning of 2014 unless the provision is renewed. A permanent provision would reduce federal income tax and payroll tax revenue by approximately \$160 million per year.⁴

Second, the law retroactively restores parity to the 2012 calendar year. Transit commuters during 2012 could exclude amounts up to a monthly cap of \$125, but may now retroactively exclude amounts up to \$240 per month. Precisely how this unprecedented provision is to be operationalized will be determined by the Internal Revenue Service (IRS), as the normal method of withholding amounts from salary is not possible since 2012 has ended. One option is to permit employers to withhold smaller amounts from 2013 salary while providing the same level of benefits. Another option is to permit transit commuters to deduct relevant amounts when filing their 2012 income taxes this spring, as the IRS did once with excess telephone excise tax collections.⁵

Table I: Monthly Commuting Amounts Excluded from Income Tax under “Qualified Transportation Fringe” Provision

Year	Parking	Transit Passes & Commuter Vehicles	Bicycle Commuting Reimbursement
1999	\$155	\$60	-
2000	\$175	\$65	-
2001	\$180	\$65	-
2002	\$185	\$100	-
2003	\$190	\$100	-
2004	\$195	\$100	-
2005	\$200	\$105	-
2006	\$205	\$105	-
2007	\$215	\$110	-
2008	\$220	\$115	-
2009 (through February 28)	\$230	\$120	\$20 x qualified months
2009 (from March 1)	\$230	\$230	\$20 x qualified months
2010	\$230	\$230	\$20 x qualified months
2011	\$230	\$230	\$20 x qualified months
2012 (during the year)	\$240	\$125	\$20 x qualified months
2012 (retroactive)	\$240	\$240	\$20 x qualified months
2013	\$240	\$240	\$20 x qualified months

If Congress were to amend this provision to make the parity permanent, it might consider a unified exclusion of all transportation commuting expenses. This would resolve the confusing, costly, and long-delayed implementation this year of a 2006 IRS directive that the transit benefit cannot be used for parking at transit stations.⁶ Transit agencies have thus been forced to separate out amounts paid by commuters for

⁴ See Margot L. Crandall-Hollick, *An Overview of Tax Provisions Expiring in 2012*, CONGRESSIONAL RESEARCH SERVICE (Table 2) (Sep. 24, 2012), <http://www.fas.org/sgp/crs/misc/R42485.pdf>.

⁵ See, e.g., Mark Robyn & Gerald Prante, *Small Problems in 2007 Tax Filing Could Be Huge in 2008*, TAX FOUNDATION FISCAL FACT NO. 107 (Oct. 25, 2007), <http://taxfoundation.org/article/small-problems-2007-tax-filing-could-be-huge-2008>.

⁶ Rev. Rul. 2006-57 (Nov. 20, 2006); Notice 2008-74 (delaying implementation until Jan. 1, 2010); Notice 2010-94 (delaying implementation until Jan. 1, 2012); Notice 2012-38 (reviewing implementation issues).

transit passes from amounts paid for parking at transit stations. A unified exclusion for all transportation commuting expenses would also substitute neutrality for the current arbitrary encouragement of driving over carpooling, transit use, and bicycling.

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