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The New Tax Law Changes Tax Treatment of Certain Transportation Fringe Benefits and Eliminates Individual Mandate Penalty

The Tax Cuts and Jobs Act (TCJA) was signed by President Trump on December 22, 2017. The law modifies the tax treatment of certain common employee fringe benefits, most notably the qualified transportation fringe benefit, effective January 1, 2018, and also eliminates the excise tax on individuals who fail to maintain minimum essential coverage effective January 1, 2019. Employers will want to consult with tax advisors to address other changes in the law that could affect their tax liability.

Transportation Fringe Benefits

Prior to the TCJA, employees were permitted to exclude employer-provided qualified transportation expenses from their taxable income up to a certain limit. In addition, employers were permitted to deduct any expenses related to these fringe programs from their taxable income. Internal Revenue Code Section 132(f) defines a "qualified transportation fringe" as:

1. Transportation in a commuter highway vehicle for travel between the employee's residence and place of employment;
2. Transit passes;
3. Qualified parking; and
4. Qualified bicycle commuting reimbursement.

Transportation Assistance other than Bicycling Commuting

Effective January 1, 2018, the TCJA eliminates the employer deduction for most qualified transportation fringe benefits. ***The exclusion for employees remains in place. Employees are still permitted to exclude from taxable income the value of a transportation fringe benefit, whether paid directly by the employer or through pre-tax salary reduction arrangement.***

Bicycle Commuter Benefits

The converse is true for bicycling commuting benefits, at least for several years. From 2018 through 2025, the TCJA suspends the employee income exclusion for bicycle commuter related reimbursements, but retains the employer deduction for those benefits. In other words, an employer can continue to reimburse its employees' bicycle commuter related expenses on a tax advantageous basis, but the value of those reimbursements would be included in the employee's income.

Type of Benefit	Deductible to Employer?	Includible in Gross Income to Employee?
Qualified Transportation Fringe Benefits Other Than Bicycle Commuting	No, as of 1/1/18.	No, as of 1/1/18.

Bicycle Commuting	Yes, may be deducted during the period 1/1/18-12/31/25	Yes. The tax exclusion for bicycle commuting reimbursements is suspended (not allowed) between 1/1/18-12/31/25.

Note that these changes also impact tax exempt employers which will now pay unrelated business income tax (UBIT) on any employer provided transportation assistance benefit.

Alliant Insight: What Does This Mean for Employers Who Are Required to Offer Commuter Benefits Under Local Law? The TCJA does not alter any existing obligation an employer may have to comply with local laws that require employers to provide transportation benefits to employees (San Francisco/Bay Area, Washington, D.C. New York City), including the requirement that employees be permitted to pay for these expenses on a pre-tax basis. However, it does change the employers' ability to treat these benefits as deductible expenses for federal tax purposes. These expenses may still be deductible for state tax purposes. Employers in regions with commuter benefit requirements should consult with their tax advisors for additional information.

Elimination of the Individual Mandate Penalty—Potential Impact on Exchange and Employer Plan Enrollment

Under the Affordable Care Act (ACA), most individuals must maintain minimum essential coverage or pay a monthly shared responsibility payment (individual mandate penalty). Effective 2019, the TCJA eliminates the shared responsibility payment by reducing the penalty to zero. The elimination of individual mandate penalties could have an adverse effect on Exchange enrollment. Individuals with health conditions without access to employer-sponsored plans, Medicare, Medicaid, or TRICARE, will likely continue to seek coverage through Exchanges. Healthier individuals (particularly younger populations) may forego coverage altogether. Exchange open enrollment for 2018 has closed in most states, but this could alter the 2019 Exchange risk pool and inject continued uncertainty into the market as insurance carriers price plans for 2019. Employers may also see similar changes in their plan enrollment—healthier and younger employees may be less likely to enroll in employer plans, particularly plan options that are costly, and low wage earners may be less likely to enroll in employer coverage altogether, even when their portion of the premium is modest.

Alliant Insight: Note that the elimination of the individual mandate penalty does not impact the availability of subsidies in the Exchange or the employer mandate penalties, and does not yet change ACA reporting obligations. Please continue to comply with Pay or Play and your ACA reporting obligations.

Please contact your Alliant representative with any questions about this Alert.

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