
IRS provides guidance to employers for applying the retroactive increase in excludable transit benefits— January 31, 2013 deadlines approach

January 18, 2013

In brief

Notice 2013-8 provides guidance to employers with respect to the enactment of section 203 of the American Taxpayer Relief Act (ATRA) which increased retroactively, the monthly transit benefit exclusion under section 132(f)(2)(A) from \$125 per participating employee to \$240 per participating employee for the period of January 1, 2012 through December 31, 2012. Employers are facing January 31, 2013 deadlines for both the fourth Quarter Form 941, Employer's Quarterly Federal Tax Return, and for issuing Forms W-2, Wage and Tax Statements, to employees. The Notice provides employers additional information needed to understand their requirements relative to the retroactive application of the increased exclusion for 2012. The IRS indicated that the Notice intends to reduce filing and reporting burdens. The Notice clarifies how the increase applies for 2012 and provides a special administrative procedure for employers to use in filing Form 941, for the fourth quarter of 2012 to reflect changes in the excludable amount for transit benefits provided in all quarters of 2012, and in filing Forms W-2.

In detail

Section 132(a)(5) provides for an exclusion from gross income of qualified transportation fringes, including employer-provided commuter highway vehicle transportation and transit pass benefits ('transit benefits'). Prior to enactment of ATRA, the adjusted maximum monthly excludable amount for 2012 for these transit benefits was \$125. ATRA amended section 132(f)(2) to increase the

maximum monthly excludable amount for transit benefits effective retroactively beginning on January 1, 2012. Rev. Proc. 2013-15 previously clarified that the maximum monthly excludable amount for employer-provided commuter highway vehicle transportation and transit pass benefits for 2012 is \$240. (An exclusion is also available for qualified parking under qualified transportation fringes but ATRA did not impact the allowable

exclusion for 2012, which was already \$240 per month.)

Amounts which are excluded from gross income under section 132 are also excluded from Federal Insurance Contributions Act (FICA) taxes (both social security and Medicare) and Federal income tax withholding.

The exclusion applies whether the employer provided the transit benefits out of its own

funds or whether the transit benefits were provided through salary reduction arrangements.

Corrections of overpayments of FICA tax and Federal income tax withholding can be complicated and depend on when the error was ascertained and whether the relevant calendar year, in which the wages being adjusted were earned, has closed. The Notice adopts the long-held principle that federal income tax withholding generally cannot be adjusted after the calendar year in which it was withheld. Under the Notice, employers will generally follow the usual procedures for making corrections. However, the Notice provides employers that have not filed their fourth quarter Form 941 for 2012 an option to use a 'Special Administrative Procedure' that is different from the usual correction procedures and that employers may find less burdensome in implementing in their correction process.

Special administrative procedure

Employers, who originally included excess transit benefits in wages, and withheld income taxes and FICA taxes, would normally be required to file Form 941-X for each quarter to correct the error. The Notice provides a special administrative procedure for employers that have not yet filed their fourth quarter Form 941 for 2012. Employers who desire to use this special administrative procedure must repay or reimburse their employees the overcollected FICA tax on the excess transit benefits for all four quarters of 2012 on or before filing the fourth quarter Form 941. On its fourth quarter Form 941, the employer, reports the reduced taxable wages on line 2, Taxable social security wages reported on line 5a, and Medicare wages and tips reported on line 5c, by the excess transit benefits *for all four quarters of 2012*. By taking advantage of this special administrative

procedure, employers will avoid having to file Forms 941-X, and will also avoid having to file Forms W-2c as discussed below.

Under this special administrative procedure, employers may only correct the employer share of FICA tax that corresponds to the employees' share of FICA tax that has been repaid or reimbursed to the employees. Employers using this special procedure do not need to obtain written statements from their employees confirming, that the employee did not make a claim (or if the employee did make a claim, the claim was rejected) and will not make a claim for refund of FICA tax overcollected in a prior year.

Normal procedures apply if the special administrative procedure is not available

Employers that have filed the fourth quarter Form 941 or that have not repaid or reimbursed affected employees must follow normal correction procedures using Form 941-X for each quarter in 2012 that needs to be adjusted. Employers must first repay or reimburse the employees or, for refund claims, secure consents from its employees.

Forms W-2

Employers that have not furnished 2012 Forms W-2 to their employees should take into account the increased exclusion for transit benefits in calculating the amount of wages reported in box 1, Wages, tips, other compensation; box 3, Social security wages; and box 5, Medicare wages and tips.

Employers that have repaid or reimbursed their employees for the overcollected FICA taxes prior to furnishing Form W-2 should reduce the amounts of withheld tax reported in box 4, Social security tax withheld, and box 6, Medicare tax withheld, by

the amounts of the repayments or reimbursements.

In all cases, however, employers must report in box 2, Federal income tax withheld, the amount of income tax actually withheld during 2012. The additional income tax withholding will be applied against the taxes shown on the employee's individual income tax return (Form 1040, U.S. Individual Income Tax Return).

Employers that repaid or reimbursed their employees for the overcollected FICA taxes after furnishing Forms W-2 to their employees but before filing Forms W-2 with the Social Security Administration (SSA), should check the 'Void' box at the top of each incorrect Form W-2 (Copy A) and furnish corrected Forms to employees. The employer should ensure that the corrected information is used when filing Forms W-2 with the SSA.

Employers that have already filed 2012 Forms W-2 with SSA will need to file Forms W-2c, Corrected Wage and Tax Statement, to take into account the increased exclusion for transit benefits.

See the 2012 Instructions for Forms W-2 and W-3.

The takeaway

ATRA's retroactive increase of the transit benefit exclusion requires every employer that provided the transit benefit to take action to ensure that changes have been implemented. The procedures an employer will use to affect the retroactive transit benefit exclusion depend in significant part on where the employer is in its 2012 payroll tax reporting process. Employers who have not yet filed the fourth quarter Form 941 may, prior to the January 31, 2013 filing deadline, take advantage of the special administrative procedure provided in the Notice that allows employers to

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repay or refund the excess FICA to affected employees and to consolidate all adjustments into the fourth quarter return. In any instance the implementation of ATRA's retroactive

increase of the transit benefit exclusion requires every employer who provided these transit benefits to employees to ensure that excess FICA amounts have been repaid or

refunded to employees and that the Quarterly Forms 941 and Forms W-2 properly reflect the increased exclusion.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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