

One Minute Memo[®]



Mass Transit Passes Excludible from Income - Retroactively

On January 2, 2013, President Obama signed the American Taxpayer Relief Act of 2012 which increased the monthly amount an employee could exclude from gross income for employer-provided commuter highway transportation and transit passes (collectively "transit benefits") from \$125 to \$240 for 2012. (The maximum excludable amount for 2013 is \$245 per month.) To address the retroactive application of the exclusion, the Internal Revenue Service has issued Notice 2013-8.

Amounts excluded from gross income are also excluded from FICA taxes (both social security and Medicare) and from federal income tax withholding. Employers who provided transit benefits in excess of \$125 up to \$240 per month ("excess benefits") in 2012 should take the following steps to correct employee overpayments of FICA.

1. Form 941

- **Before 4th Quarter Form 941 is Filed.** A special administrative procedure is available to employers on or before the date they file the 4th quarter Form 941. Under this procedure, employers must reimburse employees the FICA tax collected on excess benefits for all four quarters of 2012, and then reduce the 4th quarter wages tips and compensation reported on line 2, the taxable social security wages reported on line 5a, and the Medicare wages reported on line 5c by the total excess benefits. Employers will not have to obtain a statement from employees, or file corrected Forms 941-X or W-2c.
- **After 4th Quarter Form 941 is Filed.** After the 4th quarter Form 941 is filed, employers must still repay or reimburse employees the FICA tax it collected on the excess benefit. In addition, the employee's consent must be obtained, presumably following the normal procedures for correcting overpayments. Then, employers will have to file a Form 941-X to make an adjustment or claim a refund for any quarter in 2012 with regard to the overpayment of tax on the excess benefits.

2. Form W-2

- **Before Issuing 2012 Form W-2s.** Employers that reimbursed employees for over-collected FICA taxes, but have not furnished 2012 W-2s should reduce both the amounts of social security tax withheld in box 4 and Medicare tax withheld in box 6, by amounts reimbursed. However, employers must report the actual amount of federal income tax withheld during throughout 2012 in box 2. The additional tax will be applied against the taxes shown on the employee's individual income tax return.
- **After Issuing 2012 W-2s.** Employers that reimbursed employees for over-collected FICA taxes after furnishing Forms W-2 to employees but before filing them with the Social Security Administration (SSA) should prepare new W-2s with the correct information and send the corrected Form W-2s to the SSA. The employees' copies should be labeled "CORRECTED" and furnished to affected employees. Employers that have already filed 2012 W-2s with the SSA will need to file Forms W-2c, Corrected Wage and Tax Statements.

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