

The End of (Tax) Free Parking?

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THE TAX CUTS AND JOBS ACT OF 2017 was instituted into law Jan. 1. The sweeping revision to the U.S. Internal Revenue Code has ushered in changes to the treatment of benefits that were once tax-deductible. Experts are only beginning to understand the implications of the tax code changes and the resulting implications in day-to-day life. For example, certain fringe benefits once offered by employers, including free parking, no longer qualify for a tax deduction by employers. The new tax implications of employer-provided parking will certainly have an effect on the parking industry.

Tax Code Changes

The new tax code has drastically reduced the business income tax rate from 35 percent to 21 percent, resulting in the elimination of specific tax deductions and tax breaks for employers. The Tax Cut and Jobs Act eliminated the tax deduction benefit that has long been available to employers to subsidize their employees' qualified transit, commuting, and parking expenses.

Under the new tax code, employers can continue to provide parking or transit passes to employees, but the employer will no longer get to deduct the costs of providing the benefit. This revision removes the incentive for employers to offer free parking and other transportation fringe benefits to their employees.

Under the prior tax code, employers could provide or pay for parking or transit passes for an amount not to exceed \$255 per month as a tax-free benefit to help pay for their employees' commuting expenses and then deduct those costs from their business taxable income. Any arrangement where the employer pays for employee parking will now constitute a nondeductible expense for the employer. Under the previous guidance from the IRS in the prior tax code, parking is employer-provided if:

- It is on property owned or leased by the employer.
- The employer pays a third party, such as a parking garage operator, for the parking, or
- The employer reimburses the employee directly for parking expenses.

Section 274(a) of the Internal Revenue Code includes a new provision that expressly disallows deductions for "the expense of any qualified transportation fringe (as defined in section 132(f)) provided to the employee of the taxpayer." The qualified transportation fringe has historically included commuter parking expenses. Moreover, amended Section 274(l) disallows deductions for any expense incurred for providing transportation, payment, or reimbursement to an employee relating to an employee's commute, including parking expenses.

The new Section 274(l) includes two small exceptions to the deduction of qualified transportation expenses:

- Commuting expenses "necessary for ensuring the safety of the employee."
- Expenses incurred "for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment."

For now, there is no guidance from the IRS as to what expenses qualify as "necessary for ensuring the safety of the employee," but it is doubtful that the narrow exception will apply to parking expenses.

What It Means

While the changes to the tax code greatly reduced employers' deductions of parking and other commuter expenses, employees will continue to receive parking and commuter expenses offered by employers on a tax-free basis. Employees will not be required to report parking expenses paid for by the employer as income. However, without the tax deduction available, employers may not continue to provide free parking or reimbursement for other commuting expenses, resulting in employees spending more post-tax dollars on parking and commuting to work. Under the new tax code, employers can continue to provide parking or transit passes to employees, but the employer will no longer get to deduct the costs of

providing the benefit. This revision removes the incentive for employers to offer free parking and other transportation fringe benefits to their employees.

With each new amendment to the tax code, clever and creative tax professionals invent new arrangements to overcome the shift in tax policy that affects the bottom line. Employers who provide parking are encouraged to consult with a tax professional who can provide additional guidance on the future treatment of the transportation expense deduction. Parking operators should be aware of this change in tax policy as parking agreements expire. Negotiations with employers for employee parking must account for the change in tax status. [P](#)



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