Association for Commuter Transportation

June 6, 2018

The Honorable Steven Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Mnuchin,

The Tax Cuts and Jobs Act (Public Law 115-97) made many changes and reforms to the Internal Revenue Code (IRC). Given that the changes are so complex, the Association for Commuter Transportation (ACT) would like to emphasize the specific concerns of our members that can be addressed through guidance from the U.S. Treasury as soon as possible.

Representing nearly 1,000 members across the United States, ACT brings together private and public-sector organizations working to improve the lives of commuters. This includes non-profit or tax-exempt employers like hospitals, universities, and museums, who are currently scrambling to understand all of the impacts the new law will have on their business. ACT members are particularly concerned with a provision from the Tax Cut and Jobs Act that disallows the deduction of expenses associated with section 132(f) of the IRC, the qualified transportation exclusion. The Tax Cuts and Jobs Act also makes expenditures by tax-exempt organizations on transportation fringe benefits subject to an unrelated business income tax (UBIT) of 21 percent. It will take time for employers to understand these rule changes and to fully gauge the impact of the new UBIT.

ACT is requesting a one-year delay in implementation, the issuance of detailed guidance that addresses our specific concerns, and an exemption for tax-exempts situated in localities that mandate such transportation benefits be provided. For tax-exempt organizations with very little or no unrelated business income, treating transportation fringe benefits as UBIT will result in new reporting requirements that they simply do not have the necessary guidance to comply. Guidance on this new tax is crucial to helping organizations understand what needs to be reported and filed. Additionally, a growing number of municipalities require, by law, that organizations of certain size provide transportation benefits to their employees. This list includes some of America's largest cities, including: New York City, Washington D.C., and San Francisco. The new UBIT provisions in the Tax Cut and Jobs Act would essentially be taxing organizations in these municipalities for following their local mandate.

It's clear from the confusion and volume of questions about how the new tax law impacts tax-exempt entities that we need more time and more guidance to fully understand our compliance obligations. Some specific concerns that we have heard from tax-exempt entities must be addressed in the guidance include:

1. What types of expenses are considered related to providing the benefit. Does it include:
    a. Expenses related to the cost of a third party administering the benefit for a company
    b. Staff time and material costs (like printing posters or hosting a lunch meeting) for administering the program or promoting the program to employees
2. How should employers value parking in the following scenarios? Is an audit required to determine the value?
    a. Owned parking lots
    b. Parking bundled in a lease
    c. Third party leased

3. Would the cost of dues to an organization (transportation management association, chamber of commerce, or business improvement district) that includes the provision of commuter shuttle services be included in UBIT calculation? If so, how will the organization determine the percent of dues that goes towards shuttle services? Will it be based on ridership numbers, percent of overall cost, or some other formula?
4. Would a university that makes a lump sum payment to a transit agency, which in return provides free transit to employees and students, where not all employees/students utilize the service be required to pay UBIT on the full payment to the agency or just the percent of the payment based on the percent of employees versus students?
5. Parking issues – Will employers have to include security, operations, maintenance and depreciation costs of parking lots and exclude that from allowable business deductions or subject to UBIT? If so, how should these costs be determined? What if costs for security, operations, and maintenance are bundled with other non-transportation related expenses like facilities management?
6. What kind of record keeping is required for expenses related to the cost of providing the benefit.
7. What is defined as eligible under the definition of safety for the exception to disallowing subsidy and other expenses related to providing the benefit for "necessary for ensuring the safety of the employee"
8. If a university is considered a state agency and deemed exempt, are all employees that work for the university exempt, or are there special criteria an employee does/doesn't meet that would determine the taxing of a benefit?
9. If an organization purchases annual passes directly from the transit agency for all employees at a discounted rate, knowing that not all employees are going to utilize the pass, what are the tax implications for the organization? Is the entire cost of the program regardless of program use, disallowed as a business deduction or subject to UBIT?

Thank you for your careful attention to this matter and we stand ready to meet should you have additional questions about these concerns.

Sincerely,

David Straus
Executive Director

Cc: The Honorable Orrin G. Hatch (Chair, Senate Committee on Finance)
The Honorable Ron Wyden (Ranking Minority Member, Senate Committee on Finance)
The Honorable Kevin P. Brady (Chair, House Committee on Ways & Means)
The Honorable Richard A. Neal (Ranking Minority Member, House Committee on Ways & Means)