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## Tax Flash

New federal tax developments  
from Grant Thornton's Washington National Tax Office

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### **IRS issues time-sensitive guidance for applying retroactive increase in tax-free transit benefit**

The IRS has issued time-sensitive guidance for employers (Notice 2013-8) on the retroactive increase in the amount of transit benefits that employees may exclude from income in 2012. The guidance includes a special administrative procedure for employers who have not yet filed Form 941 for the fourth quarter of 2012 and who will reimburse employee FICA tax overpayments before filing. Otherwise, employers will need to file a Form 941-X for each quarter of 2012. The fourth-quarter Form 941 is due Jan. 31.

#### **Transit fringe benefit**

Section 132(f)(2)(A) provides an exclusion from employee income for employer-provided transit benefits. These benefits include transportation in a commuter highway vehicle between home and work, and any transit pass. The exclusion applies whether an employer provides the transit benefits out of its own funds or provides them through salary reduction arrangements.

The American Taxpayer Relief Act of 2012 (ATRA) was enacted on Jan. 2, 2013, and retroactively increases the allowable tax-free monthly benefit for 2012 from \$125 per month to \$240. The monthly limit is

increased to \$245 for 2013. Any transit benefits provided by an employer to an employee in 2012 in excess of \$125 (the former maximum monthly excludable amount) up to \$240 (the amended maximum monthly excludable amount) is now excluded from the employee's gross income and wages.

Notice 2013-8 provides guidance and procedures for refund on the FICA tax on these "excess transit benefits" and reporting to the IRS. Income tax withholding on the excess transit benefits is not refunded or otherwise corrected under the notice. Employees will receive credit for the income tax withholding on their 2012 individual income tax returns.

#### **Employers who have not yet filed Form 941**

The IRS is providing a special administrative procedure for employers who treated excess transit benefits as wages and who have not yet filed their fourth-quarter Form 941 for 2012. To use this procedure, employers must repay or reimburse their employees the overcollected FICA tax on the excess transit benefits for all four quarters of 2012

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on or before filing the fourth-quarter Form 941, which is due Jan. 31, 2013.

The procedure allows employers to reduce the fourth-quarter wages, tips and compensation reported 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 Form 941-X and Form W-2c.

As noted previously, this procedure can be used only to the extent that employers repay their employees for the employee share of FICA tax attributable to the excess transit benefits. **Under this special administrative procedure, employers may correct only 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, for each employee, 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.

The repayment or reimbursement of overwithheld Social Security tax and the corresponding reduction for wages reported on Form 941, line 5a, taxable Social Security wages, must take into account that refunds or credits of Social Security tax are limited to the amount paid on that portion of the excess transit benefits that, when added to other wages

for the year, did not exceed the Social Security wage base for 2012 (\$110,100).

The same procedures are available to filers of other employment tax returns reporting FICA taxes (e.g., the related Spanish-language return or return for U.S. possessions) and to filers of employment tax returns reporting taxes under the Railroad Retirement Tax Act.

### **Employers who have already filed fourth-quarter Form 941 or do not reimburse employees before filing**

Employers who have already filed the fourth-quarter Form 941 must use Form 941-X to make an adjustment or claim a refund for any quarter in 2012 that now includes an overpayment of FICA tax. If seeking a refund on the Form 941-X for tax that has not yet been reimbursed to employees, employers must secure written consent from the employees.

Similarly, employers who have not reimbursed some or all employees who received excess transit benefits in 2012 must use Form 941-X to make an adjustment or claim for refund with respect to the excess transit benefits provided to those employees and must follow the normal procedures.

### **Forms W-2**

Notice 2013-8 also provides guidance on Form W-2 issues.

Employers who 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 who have repaid or reimbursed

their employees for the overcollected FICA taxes prior to furnishing Forms 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 who 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). The employer should prepare new Forms W-2 with the correct information and send these new Forms W-2 (Copy A) to the SSA. The employers should write "CORRECTED" on the employees' new copies (B, C and 2), and furnish them to the employees. See the *2012 Instructions for Forms W-2 and W-3*.

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

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