Compliance Alert

Fiscal Cliff Legislation Impacts Qualified Transportation Benefits
Release Date: February 1, 2013

The American Taxpayer Relief Act of 2012 (ATRA), passed by Congress and signed into law by President Obama on January 2, 2013, brought the country back from the "fiscal cliff," but within its pages it also made changes to a benefit offered by many employers: qualified transportation benefits.

Background
Since 1985, employers have been able to provide employees transit passes, qualified parking and commuter highway vehicle transportation (i.e., vanpooling) on a tax-free basis. In 1993 these tax-favored benefits were consolidated under Internal Revenue Code §132(f) under the title "qualified transportation benefits." Under the 1993 rules, an indexed dollar limitation was imposed with the combined maximum for transit passes and vanpooling typically being approximately half of that allowed for qualified parking. From 2009 through 2011, Congress altered the prior relationship and instead set the maximum for both categories of expenses at $230 per month. Unfortunately this adjustment was temporary and in 2012 the limits reverted to $125 for transit passes/vanpooling and $240 for qualified parking.

American Taxpayer Relief Act (ATRA)
ATRA retroactively reinstated the transit "parity rule" that had expired in 2011, extended it for a two-year period through the end of 2013 and set the 2012 maximum for both transit passes/vanpooling and qualified parking at $240 per month. The IRS recently announced that the 2013 maximum for both categories of transportation expenses would be $245.

The law also extends the parity rule retroactively for 2012, raising countless administrative issues for any employer that allowed 2012 transit pass/vanpooling expenses in excess of the pre-ATRA limit of $125 (regardless of whether through employer funds or employee pre-tax contributions).

On January 16 the IRS issued IRS Notice 2013-8 that explains how those employers that provided transit pass/vanpooling benefits in excess of the pre-ATRA limit can retroactively correct both the appropriate FICA tax overpayments (on after-tax transit pass/vanpooling benefits that now could have been pre-tax) and the related income and tax reporting adjustments.

Employer Response
No action is required for employers that limited transit pass/vanpooling benefits to the pre-ATRA limits of $125 per month. Employers that did not limit transit pass/vanpooling benefits to the pre-ATRA limits can still make a retroactive 2012 adjustment, but the correction must be made by filing Form 941-X and following the usual procedures for over-payments.

Notice 2013-8 also identifies three possible situations related to employees' Form W-2:

- If Forms W-2 have not yet been provided to employees, the forms should be revised to reflect the now permitted exclusion and the over-collected FICA tax must be returned to employees.
- If the required FICA tax repayments are made to employees after Forms W-2 have been distributed but before they are filed with the Social Security Administration, corrected Forms W-2 must be distributed to employees.
- If the forms have already been filed with the Social Security Administration, the required corrections can only be made by using Form W-2c.