Parking Is Now A Taxable Expense

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In the latest version of the Tax Cuts and Jobs Act that awaits the President's signature, employers will be taxed on amounts spent after December 31, 2017 on employee parking. For-profit employers that deduct expenses may not deduct costs for employee parking. Similarly, employers that do not deduct expenses (i.e., tax-exempt and governmental entities) will be subject to unrelated business taxable income on the expenses they incur for employee parking. For each of these entities, the results are the same: if you pay your employees $X in compensation and spend $Y on their parking, you will be subject to taxation on $Y. This may be good news to employers that require their employees to pay for their own parking, as more employers might shift to that model, but any employer that pays for or offsets the cost of employee parking is faced with the tough decision of incurring taxable expenses or passing the cost on to employees. **Potential Solutions** Employers that rent space from the same entity that owns the applicable parking facility might be able to renegotiate their lease in a way that includes free parking. Other employers that have been or are considering passing parking costs on to employees should consider establishing a "Qualified Transportation Compensation Reduction Plan." These arrangements have a lot of flexibility, but here is one way they can be implemented:

> Assume parking expenses are currently $260 per employee per month; an employer can establish an arrangement to permit employees to defer up to $260 per month into an account on a *pretax* basis to pay for parking; the employee may change their

> election on a monthly basis (so that if the employee is taking a vacation and will not incur all or the full parking expense, they can adjust their election; amounts not used up in one month roll over to the next; unused amounts that cannot be used because of a termination of employment are forfeited.

By establishing this pre-tax arrangement, employees that incur expenses enjoy a significant discount on their expenses. In addition, to the extent an employer is currently paying for parking, it can make this arrangement "revenue neutral" for current employees by increasing their compensation by the parking amount ($260 per month, in the above example). The employer gets the deduction for its full amount of employee compensation, and the use of a pretax parking arrangement means the employee's taxable compensation remains unchanged. Revealing the parking costs that were being absorbed by the employer might even trigger some additional employee appreciation — but don't get your hopes up! **Timing** As with most types of reimbursement arrangements, a Qualified Transportation Compensation Reduction Plan may only reimburse expenses incurred after the arrangement is formally established. So employers that want to use such an arrangement as of January 1, 2018 must adopt one and allow employees to make elections before that date. If you would like additional information about Qualified Transportation Compensation Reduction Plans, or have any questions, please do not hesitate to contact the author of this blog or the Carlton Fields attorney with whom you usually communicate.

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