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Final Tax Bill Impacts Transportation Fringe Benefit Plans

Late on December 15th, the House-Senate Conference Committee released the final tax bill. The House and Senate molded the differences between the previous House and Senate versions, with most of the Final Tax Bill looking very similar to the prior Senate version. The next step is for the House and Senate to each vote on the Final Tax Bill. As of today, the House is scheduled to vote Tuesday, December 19th on the Final Tax Bill, and the Senate vote may be the same day or the next day. If it is approved by both the House and Senate, the Final Tax Bill will become law once President Trump signs it. (Both House and Senate passage and the President's signature are expected.)

The prior House version (which we previously discussed on this blog) would have eliminated or severely restricted dependent care flexible spending arrangements, adoption assistance programs and tuition reimbursement programs. We are happy to report that the Final Tax Bill contains no such restrictions. Employer-sponsored dependent care flexible spending arrangements, adoption assistance programs and tuition reimbursement programs will be unchanged by the Final Tax Bill.

Qualified Transportation Fringe Benefits

The Final Tax Bill does change qualified transportation fringe benefits under Code Section 132(f). Those changes are as follows –

- Section 13304(c) of the Final Tax Bill disallows employer deductions relating to qualified transportation fringe benefits effective for tax years beginning after December 31, 2017; and
- Section 11047 of the Final Tax Bill provides that qualified bicycle commuting expenses will no longer be tax exempt to employees effective for tax years beginning after December 31, 2017.

The above changes mean that employers may still sponsor qualified transportation fringe benefit plans so that employees may continue to elect pre-tax salary reductions for qualified parking and transit passes (up to the regular monthly limits). However, to the extent that employees make such pre-tax elections, employers will not be able to deduct the costs of those benefits. Even though employers have lost the deduction, the deduction is worth less now that the maximum corporate tax rate will be 21%. At the same time the value of the income and employment tax exclusion to employees remains the same. Therefore, at this time, we see few, if any, employers terminating their pre-tax transportation fringe benefit plans solely due to these changes.

Once the Final Tax Bill becomes law, some transportation fringe benefit plans may need to be modified based on the above changes. For example, employers who were simply giving away parking and transit

passes in prior years, may want to switch to a pre-tax salary reduction plan starting in 2018.