RECOMMENDATIONS FOR THE EXPANSION OF COMMUTER TAX BENEFITS

ASSOCIATION FOR COMMUTER TRANSPORTATION (ACT)

JANUARY 2025

Association for Commuter Transportation

OVERVIEW OF COMMUTER TAX BENEFITS

The federal Qualified Transportation Fringe Benefit, most commonly referred to as the Commuter Tax Benefit or Employer Provided Transportation Benefit, is one of the most powerful Transportation Demand Management (TDM) strategies to encourage the use of transit and vanpools; two vital transportation modes that enable millions of Americans to access jobs from rural warehouses to suburban office parks to urban centers. The Association for Commuter Transportation (ACT), an international organization for TDM professionals and organizations, has been the leader in the development and use of this important benefit since its inception in 1993. As a result of this benefit, commuters have enjoyed **savings on their commute of as much as 30%**, while providing employers with lowered operating costs. Over the past 30 years, the benefit has gone mostly unchanged, even as we have seen new shared ride services and mobility options deployed, which offer significant potential for commuters while reducing harmful transportation emissions, alleviating congestion, and providing greater mobility for people and goods.

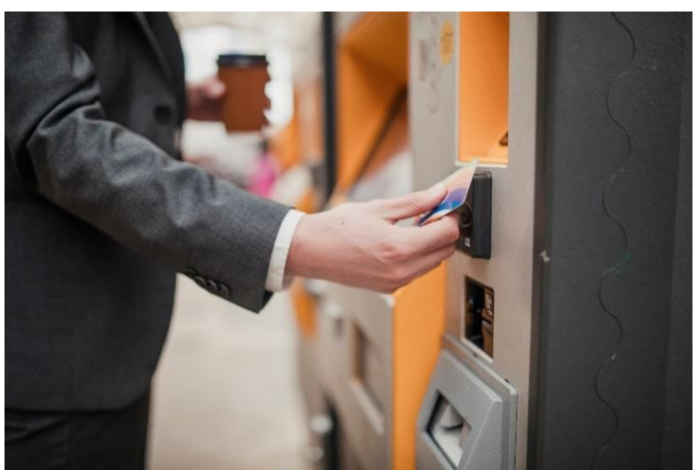
ACT believes that Commuter Tax Benefits should be updated and expanded to support these new options to achieve the benefit's full potential. If enacted, these recommendations will help to increase the use of transit by overcoming gaps in existing services and provide ways to more easily connect with regular route services. It would also serve to benefit businesses and communities across the country by reducing congestion, improving air quality, increasing business productivity and helping to attract and retain employees. In furtherance of these goals, ACT has developed comprehensive recommendations for expanding the benefit, eliminating unnecessary and outdated restrictions, and addressing some of the barriers to the use of the benefit.

ACT's recommendations would provide, for the first time, **tax savings for the use of carpooling**, a critical mode available to all employees, particularly those located in more rural and suburban communities where worksites are often underserved by transit. It would also accommodate bikesharing and other individual vehicle systems that have become available throughout the country. The recommendations include streamlining the definition of eligible vanpools and allow for a wide range of reimbursement mechanisms so more employers can adopt these programs.

Finally, the recommendations would **eliminate worksite parking as an eligible benefit but continue parking benefits at locations from which employees commute to work by transit** such as rail stations, carpools or vanpools. The existing worksite parking benefits are a major obstacle to the use of transit, carpools, vanpools, among other options, and are a major factor in causing congestion during commuting hours. The provision and maintenance of vast parking facilities increases costs for employers and reduces opportunities for new development of commercial, industrial, and residential space. Subsidizing parking at the worksite is no longer necessary or desirable.

In addition to the substantial transportation and air quality benefits that these recommendations would achieve, ACT's recommendations would provide important economic benefits to employers, central business districts, and main streets across the country. The working habits of employees have been impacted by the COVID-19 pandemic resulting in remote and hybrid work situations which have forever changed commuting patterns. As employers work to bring their employees back to the office, the use of an expanded Commuter Tax Benefit would help overcome the cost of commuting, a major factor in keeping employees from returning to the office, by providing tax savings for all efficient modes. Central business districts are also suffering from the lack of daytime economic activity where many employees are no longer in the office. Helping employers with their return to office efforts would also benefit these downtowns. Reducing demands on parking infrastructure will also boost Main Street business districts, opening up new parcels for development and increasing foot traffic. Commuter Tax Benefits that cover carpooling, for example, would also benefit employers located in areas not well-served by transit through attracting workers who are unable to commute to these locations by car or transit. Finally, ACT's recommendations could save the U.S. Treasury **as much as $7 billion annually** were the parking benefit to be restricted.

Commuter tax benefits not only bolster the economy but also advance TDM practices, supporting more efficient and cost-effective commuting solutions for all. These benefits would unlock significant advantages for businesses, employees, and the quality of life of communities around the country. It is for these reasons that ACT strongly supports their adoption.



ACT'S RECOMMENDATIONS FOR COMMUTER TAX BENEFITS

INTRODUCTION

ACT's Public Policy Committee created a Commuter Tax Benefit Working Group to develop legislative proposals to update the federal Commuter Tax Benefit Law, Internal Revenue Code Section 132(f) Qualified Transportation Fringe, to reflect developments in the shared ride and micromobility space since the original law was passed in 1992 as well as to improve the use of existing provisions.

Thirty-three ACT members volunteered to work on this project. The Working Group agreed to form four separate subgroups to focus on developing recommendations for updating benefit provisions on Transit, Vanpools and Carpools, Bicycling and Micromobility, and Parking.

Each subgroup met twice to discuss ways to bring their benefit provisions up-to-date and find ways to improve the impact of these benefits on reducing congestion, improving mobility and lowering emissions. The Working Group met on December 5, 2024, to review and provide final comments on the recommendations of the subgroups. These recommendations were submitted to ACT's Public Policy Committee on December 11, 2024, and were approved at its January 15 meeting to send to ACT's Board for adoption. The following are the final recommendations from ACT's Public Policy Committee.

FINAL RECOMMENDATIONS

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a. **Transit Recommendation** - Eliminate the restriction on the use of cash reimbursement in areas where vouchers and terminal-restricted debit cards are readily available. Emphasize that cash reimbursement has to be through a bona fide reimbursement system.

   Discussion: The restriction on the use of cash reimbursements was designed to support voucher type programs when the benefit was first enacted in 1993 but is no longer deemed necessary. Many transit operators now offer their own transit benefit programs using their transit passes and smart cards. In addition, the use of open-loop payment systems is growing that allow customers to tap into a system or onboard vehicles using their own debit or credit cards. The use of terminal-restricted debit cards to pay for eligible transit expenses is also widely available. Voucher programs are, therefore, no longer the only option to cash reimbursement. As a result, it is no longer necessary to protect the use of vouchers. Cash reimbursement would allow transit customers who use their own bank cards to ride the system to more easily participate in the benefit program. In many ways, this change would be similar to how flexible spending accounts (FSA) work with FSA debit card users also allowed to file for cash reimbursement in instances where their debit card is not available. Expanding the ways that employers can offer the benefit is likely to expand the use of transit benefits to smaller companies who don't use third party administrators for their benefits. Finally, members of the subgroup wanted to ensure that using cash reimbursement would not lead to abuse and undermine the benefit. It was recommended that language be included to emphasize the IRS's requirement that a bona fide reimbursement system be used for cash reimbursement programs involving receipts or electronic certifications.

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b. **Vanpooling and Carpooling Recommendations**

i. Vanpool - Modify the definition of commuter highway vehicle (vanpools) by eliminating the 50% occupancy requirement and reducing the seating capacity from 7 seats including the driver to 5 seats including the driver. Maintain the 80% mileage requirement.

Discussion: Several members raised the concern that it was becoming difficult to meet the requirement of having at least half of the passenger seats in a 7-seat vanpool (6 passengers + driver) occupied (an eligibility requirement of the tax provision) in light of hybrid workplace practices since the COVID pandemic. Many employees were only going to their worksites 3 or 4 days a week endangering the ability of vanpools to meet the occupancy requirement. Eliminating this requirement would allow vanpools to maintain their eligibility even on days when some members of the vanpool are working from home. In addition, requiring the use of a 7-seat van is expensive and contributes to excessive emissions. Reducing the minimum size of the vehicle to 5 seats would allow the use of more economical and sustainable vehicles and lower the cost of the commute.

ii. Carpool - Establish a new carpooling benefit for commuting with the following

elements:

1. Definition of carpooling - Carpooling means when two or more people including the driver make a noncommercial verifiable carpool trip to commute from their residences to a common or nearby worksites in the same passenger vehicle where the participants may share the cost of the trip.

2. Expense - Each carpool member is eligible for a standard $2/carpool trip benefit.

3. Verifiable Carpool Trip – A verifiable carpool trip shall mean a carpool trip verified using available technologies or employer-based verification practices that provide a reasonable way to determine whether two or more people including the driver are riding in the same vehicle for a trip to common or nearby destinations.

Discussion: There was strong support for creating a new benefit for carpooling. After much discussion it was decided that to manage the cost of adding a new benefit it should be limited to situations where all participants are using the carpool to commute to work. It was also agreed that the benefit should have a simple way to calculate the expense of using a carpool to reduce an employer's administration. It was decided to set a standard amount for each carpool trip. A $2/trip/participant was seen as a reasonable amount for this new benefit and keep the cost down to the U.S. Treasury. Finally, to ensure that the carpooling benefit would not be abused, a standard for verification was drafted that modified the definition of an eligible carpooling trip.

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c. **Bicycling and Micromobility Recommendations** – Eliminate the current bicycling commuting reimbursement and replace it with a simplified micromobility benefit as defined by FHWA.

Discussion: The current provision (suspended until 2026 by the 2017 Tax Cuts and Jobs Act) became effective in 2009 was not integrated into the benefit provision; it is a standalone benefit for a $20/month employer subsidy program that can't be used in conjunction with other benefits and is not indexed annually through increases in the CPI. The members agreed that this provision should be replaced with a micromobility benefit using the FHWA definition that includes bicycling, bikesharing, scooters and e-scooters, and similar vehicles, and clarifying that bikesharing and eScooters are included. In addition, the scope of the eligible expenses was expanded to include rental fees and safety equipment. Micromobility would be another eligible benefit similar to transit and vanpooling such that all other elements of the tax provision would apply such as allowing pretax in addition to subsidy, subject to the same monthly cap as transit and parking, and allowing employees to combine micromobility with other commuter tax benefits. Finally, members of the subgroup expressed concern that this provision could be interpreted to overrule some cities that prohibit the use of eScooter systems. A provision to clarify that this is not the intent of the provision is included. The following elements are recommended for the new benefit.

1. Add micromobility as a new benefit.

2. Definition of micromobility - The term "Micromobility" means any small, low-speed, human- or electric-powered transportation device, including bicycles,

scooters, electric-assist bicycles, electric scooters (e-scooters), and other small, lightweight, wheeled conveyances whether owned or rented including a bikeshare or e-scooter system.

3. Expenses - Reasonable expenses incurred by the employee for the use of micromobility shall include the purchase, improvement, repair, storage, rental, and safety equipment.

4. Provide that nothing in this section supersedes state and local laws regarding the use of micromobility systems.

5. All other elements of the tax provision apply to micromobility.

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d. **Qualified Parking Recommendations** – Eliminate the parking benefit at or near an employer's workplace but continue the parking benefit to locations from which an employee commutes to work by transit, vanpool or carpool.

Discussion: Parking benefits are a major loss to the U.S. Treasury costing over $7 billion annually. Free or subsidized parking at or near an employer's worksite has long been documented as a major obstacle to the use of other commuting modes like transit or carpooling. Parking benefits are a major cause of congestion, lead to an increase in harmful emissions and undermines the quality of life for many communities. The elimination of the worksite parking benefit will help reduce congestion and air pollution and help communities and employers meet their sustainability goals. It would also increase the attractiveness of using transit, carpools, vanpools and active transportation modes. Such a change would have limited impact on employers in suburban and rural areas who already provide free parking.

Parking at a location from which an employee commutes to work by transit, vanpools or carpools would be continued as it allows employees to pay for parking at these locations using tax-free monies and continue their commute on the train or bus, for example.

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e. **General Recommendations** – A number of general suggestions about the commuter tax benefit provisions were discussed during the subgroups' deliberations. One suggestion that garnered substantial support was to eliminate the current restriction on certain employees participating in the benefit. Under current law, the self-employed (e.g., contractors), partners and 2% shareholders of subchapter S corporations cannot participate. It is recommended that this limitation be eliminated since about 10% of the workforce are self-employed and contribute to congestion and air quality problems.