

## IRM PROCEDURAL UPDATE

**DATE: 01/15/2015**

**NUMBER: WI-21-0115-0118**

**SUBJECT: Extensions to VOW Credit and Transit Benefit Party**

**AFFECTED IRM(s)/SUBSECTION(s): 21.7.2**

**CHANGE(s):**

**IRM 21.7.2.3.3(8) Revised to eliminate technical content and revise cross-reference due to changes in organization of material in the cross-reference.**

8. See IRM 21.7.2.5.23, *IRC Section 132(f) Transportation Benefit Exclusion*, for information regarding exclusion of qualified transit benefits from income.

**IRM 21.7.2.5.22(1) Revised to address extension of credit per the Tax Increase Prevention Act of 2014 (TIPA 2014).**

1. The VOW to Hire Heroes Act of 2011 expanded the Work Opportunity Credit (WOC) to businesses that hire certain eligible unemployed veterans who begin work before January 1, 2013. For the first time, this law also made the Work Opportunity Credit available to certain tax-exempt organizations who hire qualified veterans who begin work on or after November 22, 2011, and before January 1, 2013. Section 309 of the American Tax Relief Act of 2012 (ATRA 2012) extended the eligibility period to include qualified veterans who begin work on or after January 1, 2013 but before January 1, 2014. Section 119 of the Tax Increase Prevention Act of 2014 (TIPA 2014) extended the eligibility period to include qualified veterans who begin work on or after January 1, 2014 but before January 1, 2015. (See IRC 52(c)(2) and IRC 3111(e).) Qualified tax-exempt organizations (organizations described in IRC 501(c) and exempt from tax under IRC 501(a)) will claim this credit against the employer portion of social security tax on wages paid to all employees during the 1-year period beginning on the day a qualified veteran begins working for the organization.

**IRM 21.7.2.5.22.1(2) Revised list of valid periods for the credit as extended under the Tax Increase Prevention Act of 2014 (TIPA 2014).**

2. The credit applies to qualified tax-exempt organizations hiring certain eligible unemployed veterans who begin work on or after November 22, 2011, and before January 1, 2015. The valid claims tax periods for Form 5884-C are as follows:
  - o Form 941 (MFT 01): 201112 through 201512
  - o Form 943 (MFT 11): 201112 through 201512
  - o Form 944 (MFT 14): 201112 through 201512

**NOTE:** Forms 5884-C filed for other than valid tax periods will be formally disallowed.

**IRM 21.7.2.5.23 Retitled subsection and added new general content relative to transportation benefits excludable under IRC Section 132(f). Former content renumbered as IRM 21.7.2.5.23.1.**

**IRC Section 132(f) Transportation Benefit Exclusion**

1. Certain fringe benefits, subject to limitations, are excludable from gross income under IRC Section 132, including qualified transit benefits under IRC Section 132(f)(2). These amounts are also excluded from FICA and federal income tax withholding. See "Transportation (Commuting) Benefits" in Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, for more information.
2. As enacted, the excludable limit for combined commuter highway vehicle transportation and transit passes under (A) of IRC Section 132(f)(2) is less than the excludable limit for qualified parking under (B). However, legislation has equalized the excludable amounts (also termed transportation or transit benefit parity) under (A) and (B) of IRC Section 132(f)(2) for certain periods of time:
  - o Section 1151 of the American Recovery and Reinvestment Act of 2009 (ARRA 2009) equalized the excludable limits for the period March 2009 through December 31, 2010.
  - o Section 727 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 extended the equalization of excludable limits for the period of January 31, 2011 through December 2011.
  - o Section 203 of the American Tax Relief Act of 2012 (ATRA 2012) retroactively equalized the excludable limits for the period January 1, 2012 through December 31, 2012 and extended the equalization through December 31, 2013.
  - o Section 103 of the Tax Increase Prevention Act of 2014 (TIPA 2014) retroactively equalized the excludable limits for the period January 1, 2014 through December 31, 2014.

**NOTE:** For periods after December 31, 2014, the excludable limit for combined commuter highway vehicle transportation and transit passes under (A) of IRC Section 132(f)(2) is once again less than the excludable limit for qualified parking under (B). This IRM subsection will be updated if transit benefit parity is once again extended.

**CAUTION:** The amounts of excludable qualified transit benefits are adjusted annually for inflation. See "Transportation (Commuting) Benefits" in the appropriate year version of Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, for more information.

3. The two subsections which follow describe guidance that was provided to employers for applying retroactive transit benefit parity for 2012 under ATRA 2012 and for 2014 under TIPA 2014.

**IRM 21.7.2.5.23.1 Former IRM 21.7.2.5.23 content renumbered as IRM 21.7.2.5.23.1.**

**FICA Claims for Calendar Year 2012 Transit Benefit Exclusion**

1. Section 203 of the American Tax Relief Act of 2012 (ATRA 2012) retroactively increased the monthly transit benefit exclusion under IRC Section 132(f)(2)(A) from \$125 to \$240 per participating employee for the period of January 1 through December 31, 2012.
2. Notice 2013-8 provided guidance to employers regarding the retroactive application of the increased exclusion for 2012 and provided a special administrative procedure for employers to use in filing Form 941 (or other required employment or railroad retirement tax returns) for the fourth quarter of 2012 to reflect changes in the excludable amount for transit benefits provided in all quarters of 2012 and in filing Forms W-2. This special administrative procedure was for employers that provided transit benefits during 2012 in excess of \$125 per month up to \$240 per month (excess transit benefits).
3. Employers who repaid or reimbursed the overcollected FICA on the excess transit benefits for all four quarters of 2012 on or before filing the fourth quarter Form 941 (or other required employment or railroad retirement tax return) were permitted to reduce the fourth quarter Wages, tips, and compensation reported on line 2, Taxable social security wages on 5a, and Taxable Medicare wages and tips on line 5c (or equivalent lines on other required employment tax returns) by the excess transit benefits for all four quarters of 2012. By taking advantage of this special administrative rule, employers could avoid having to file a Form 941-X (or other required "X" form) for each quarter of 2012 and avoid having to file Forms W-2c.
4. Employers who filed the fourth quarter Form 941 (or other required employment or railroad retirement tax return) prior to the issuance of Notice 2013-8 , employers who chose not to follow the special administrative procedure, and employers who were unable to reimburse all or some of the

employees within the required timeframe, must use Form 941-X (or other required "X" form) to make an adjustment or claim a refund for any quarter with regard to overpayment of tax on the excess transit benefits after repaying or reimbursing employees or, for refund claims, securing consents from its employees.

**NOTE:** To ensure required tax liability schedules matched the tax reported on employment tax returns, employers following the special administrative procedure provided in Notice 2013-8 were advised to reduce the last liability reported on the tax liability schedule for the fourth quarter by the amount of the correction made to tax. If the correction made under the special administrative procedure exceeded the amount of the last tax liability, additional tax liabilities on the schedule were to be reduced in reverse date order until the full amount of the correction being made was absorbed.

**IRM 21.7.2.5.23.2 New subsection added with description of guidance provided to employers in Notice 2015-2 for applying retroactive transit benefit parity for tax year 2014.**

FICA Claims for Calendar Year 2014 Transit Benefit Exclusion

1. Section 103 of the Tax Increase Prevention Act of 2014 (TIPA 2014) retroactively increased the monthly transit benefit exclusion under IRC Section 132(f)(2)(A) from \$130 to \$250 per participating employee for the period of January 1 through December 31, 2014.
2. Notice 2015-2 provides guidance to employers regarding the retroactive application of the increased exclusion for 2014 and provides a special administrative procedure for employers to use in filing Form 941 (or other required employment or railroad retirement tax returns) for the fourth quarter of 2014 to reflect changes in the excludable amount for transit benefits provided in all quarters of 2014 and in filing Forms W-2. This special administrative procedure is for employers that provided transit benefits during 2014 in excess of \$130 per month up to \$250 per month (excess transit benefits).
3. Employers who repay or reimburse the overcollected FICA on the excess transit benefits for all four quarters of 2014 on or before filing the fourth quarter Form 941 (or other required employment or railroad retirement tax return) are permitted to reduce the fourth quarter Wages, tips, and compensation reported on line 2, Taxable social security wages on 5a, Taxable Medicare wages on line 5c, and Taxable wages and tips subject to Additional Medicare Tax withholding on line 5d (or equivalent lines on other required employment tax returns) by the excess transit benefits for all four quarters of 2014. By taking advantage of this special administrative rule, employers can avoid having to file a Form 941-X (or other required "X" form) for each quarter of 2014 and avoid having to file Forms W-2c.

4. Employers who filed the fourth quarter Form 941 (or other required employment or railroad retirement tax return) prior to the issuance of Notice 2015-2 , employers who choose not to follow the special administrative procedure, and employers who are unable to reimburse all or some of the employees within the required timeframe, must use Form 941-X (or other required "X" form) to make an adjustment or claim a refund for any quarter with regard to overpayment of tax on the excess transit benefits after repaying or reimbursing employees or, for refund claims, securing consents from its employees.

**NOTE:** To ensure required tax liability schedules matched the tax reported on employment tax returns, employers following the special administrative procedure provided in Notice 2015-2 are advised to reduce the last liability reported on the tax liability schedule for the fourth quarter by the amount of the correction made to tax. If the correction made under the special administrative procedure exceeds the amount of the last tax liability, additional tax liabilities on the schedule are to be reduced in reverse date order until the full amount of the correction being made is absorbed.

**IRM 21.7.2.6.4.2(10) Revised to eliminate technical content and revise cross-reference due to changes in organization of material in the cross-reference.**

10. See IRM 21.7.2.5.23, *IRC Section 132(f) Transportation Benefit Exclusion*, for information regarding exclusion of qualified transit benefits from income.