

## New tax will punish your local nonprofit, charitable, and religious organizations, and increase congestion

Tax-exempt, nonprofit organizations across the country may be shocked this year to discover that, possibly for the first time, they must pay taxes, simply for providing employees with access to transit and parking. Specifically targeted within the Tax Cuts and Jobs Act passed in early 2018, these employee benefit programs are now subject to a 21 percent tax costing the average charity \$12,000 in 2018, according to a recent survey conducted by Independent Sector. Large universities and hospitals may see costs in the millions of dollars, threatening the delivery of their core services. The impacts of this tax goes beyond the bottom line of these charities – employees may lose an affordable way to commute to work, all commuters may see increased congestion and commute times, and at a time when according to the White House's own National Climate Assessment, carbon emissions from transportation represent the largest contributor to greenhouse gas emissions.

The qualified transportation fringe benefit has been available to commuters for over two decades and provides them with an opportunity to utilize pre-tax dollars to purchase transit passes and vanpool fares, reducing the out of pocket cost for employees, the same way they use pre-tax dollars to purchase health insurance, dental insurance, and invest in their 401k plans. The only catch is that the program must be administered through their employer.

Traditionally, nonprofit organizations such as public charities, houses of worship, universities, hospitals, associations, and foundations were not subject to taxes on employee benefit programs. Congress enacted this exorbitant tax as part of the Tax Cuts and Jobs Act of 2017 by re-designating employee transportation benefit programs to be subject to the Unrelated Business Income Tax (UBIT). UBIT is typically reserved for business carried out that is not substantially related to the purpose of the organization. Income from leasing out office space in a building owned by a non-profit, selling television broadcast rights for a university football team, or renting out lab space in a hospital for commercial use are examples of unrelated business income. Providing assistance to employees through the provision of a transit pass should not be considered unrelated business income. First, this is an expense and, in many cases, simply a pass through of funds from the employee to the transit agency. Second, by assigning employee transit benefits to this category, Congress is essentially saying employees getting to and from work is not relevant to the operation of the organization.

For nonprofit organizations with little or no unrelated business income, subjecting qualified transportation fringe benefits to UBIT will also result in increased administrative expenses, and new reporting requirements diverting funds from already cash-strapped charitable groups, meaning they must either choose to cut their public services or slash employee transit benefits. Either decision will hurt our communities.

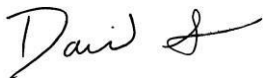
To be clear, the 21 percent tax increase on nonprofit organizations hurts everyone. This is an issue for nonprofits across the country, from Boston to Anchorage and Dallas to Chicago. Nonprofits are now faced with the decision to cut these programs and become less competitive in attracting and retaining employees that can still receive these benefits from for-profit companies or cut costs elsewhere. Additionally, organizations that cut these transportation benefit programs, to avoid the tax burden, will cause increased congestion and pollution in their communities. Not all organizations will have the option to cut transportation benefit programs. A growing number of municipalities require, by law, that employers of a certain size provide transportation benefits to their employees. This list includes some of America's largest hubs of nonprofit organizations, including: New York City, Washington D.C., the San Francisco Bay area, and just recently Los Angeles and Seattle. The new tax is essentially penalizing organizations in these areas for following their local laws. Requiring employers to simply provide employees with the

ability to purchase their transit pass through pre-tax dollars is a win-win and helps communities increase the efficiency of their transportation infrastructure. Congress should be supporting these efforts not taxing them.

The Association for Commuter Transportation, which represents over 1,000 professionals representing major employers, state and local governments, commuter services organizations, and transportation providers; objects to the unfair treatment of nonprofits offering commuter transportation benefit programs. These programs benefit both employees and the public by reducing congestion, carbon emissions, and the cost of transportation. ACT is working hard to delay and reverse this policy change. Our elected officials must take swift action to repeal this destructive tax increase.

Thankfully, several pieces of legislation to repeal the inclusion of transit benefits in the calculation of unrelated business income have been introduced by Republicans and Democrats, but movement has been slow. With the 2018 tax year now coming to a close, Congress must act quickly so that the thousands of nonprofits that are impacted by this change won't need to make the difficult choice of taking away employee benefits or cutting important programs and services. We encourage the 116<sup>th</sup> Congress to prioritize the repeal of this tax increase and enable exempt organizations to continue to support their employees with using public transit and vanpooling to get to work.

Sincerely,

A handwritten signature in black ink, appearing to read "David Straus". The signature is fluid and cursive, with a large initial "D" and a stylized "S" at the end.

David Straus  
Executive Director  
Association for Commuter Transportation (ACT)