



## New Jersey Becomes First State to Require Pre-Tax Transportation Benefits

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New Jersey employers will soon be required to offer pre-tax transportation benefits. What's more, as we noted in our previous [Client Alert](#), employers may no longer deduct payments made for this type of transportation benefit from their federal income taxes. Also notable is that the New Jersey law currently does not exclude all tax-exempt organizations, which means that most tax-exempt employers may be required to pay a 21% tax on these benefits.

### The New Jersey Law and Other Local Mandates

The New Jersey law applies to employers whose employees perform services in New Jersey, and it requires most employers with 20 or more employees to offer pre-tax transportation benefits. This means that employers must allow their employees to set aside wages, on a pre-tax basis, for the purchase of certain eligible transportation services (e.g. transit passes and commuter highway vehicle travel, but not single-occupancy vehicles). Employers are required to set the benefit at the maximum allowable amount under federal law, which is \$265 per month for 2019. The law does not specifically require employers to offer qualified parking, even though qualified parking remains an available transportation fringe benefit under the Internal Revenue Code. The law will become operative on March 1, 2020, or upon the effective date of regulations that are currently being developed by the state of New Jersey, whichever comes first.

Even though New Jersey is the first state to require employers to offer pre-tax transportation benefits, several cities have already done so at the local level. For example, Washington, D.C., New York City, Seattle, and multiple California cities (Los Angeles, San Francisco, Berkeley, and Richmond) require similar transportation fringe benefit programs.

### No Employer Deduction for Pre-Tax Transportation Benefits

Employers may no longer deduct the costs of qualified transportation benefits from their business income taxes, regardless of whether an employer provides the benefit directly, through a reimbursement program, or through a compensation reduction agreement. The Tax Cuts and Jobs Act of 2017 (the "TCJA") amended the Internal Revenue Code (the "Code") and repealed the employer deduction for these benefits. Our previous [Client Alert](#) discusses this repeal along with other important impacts on different employee benefits. There are limited exceptions for employee safety and bicycling benefits, but there is no exception for compliance with state or local requirements.

Although employers may not deduct the cost of transportation benefits, employees may continue to exclude transportation benefits from their wages for federal tax purposes.

### Application to Tax-Exempt Organizations

Another important change from the TCJA is that tax-exempt entities must include transportation benefits within their unrelated business income tax ("UBIT"). Now, under the Code, both reimbursements and pre-tax

salary reductions for qualified transportation benefits offered by tax-exempt employers are subject to a 21% tax. It is possible that New Jersey will exclude tax-exempt employers through subsequent regulations, but the text of the law does not currently provide for such an exemption. It is important to note that unlike the New Jersey law, most of the local mandates exempt local governmental and tax-exempt employers.

## Next Steps

With the repeal of the employer deduction, many employers have made policy decisions regarding terminating transportation benefits. Employers should review their current transportation benefits, if any, to verify compliance with applicable local and state laws surrounding transportation benefits. Specifically, any employer offering, discontinuing, or adjusting a transportation benefits program in 2019 should:

- Determine whether its current tax reporting is consistent with the changes made by the TCJA;
- Establish a compliant transportation benefits package for employees within New Jersey during the coming year; and
- Check local ordinances to see if transportation benefits are required and what options are permitted.

## Additional Information

If you have any questions regarding transportation benefits, or if you would like assistance in structuring your transportation benefit program to comply with applicable laws, please contact a member of our Employee Benefits Practice Group listed below. For more information concerning our employee benefits practice, please visit us at [www.KutakRock.com](http://www.KutakRock.com).

John E. Schembari	Omaha	(402) 231-8886	<a href="mailto:John.Schembari@KutakRock.com">John.Schembari@KutakRock.com</a>
Michelle M. Ueding	Omaha	(402) 661-8613	<a href="mailto:Michelle.Ueding@KutakRock.com">Michelle.Ueding@KutakRock.com</a>
William C. McCartney	Irvine	(949) 852-5052	<a href="mailto:William.McCartney@KutakRock.com">William.McCartney@KutakRock.com</a>
P. Brian Bartels	Omaha	(402) 231-8897	<a href="mailto:P.Brian.Bartels@KutakRock.com">P.Brian.Bartels@KutakRock.com</a>
David S. Anderson	Minneapolis	(612) 334-5000	<a href="mailto:David.Anderson@KutakRock.com">David.Anderson@KutakRock.com</a>
Cindy L. Davis	Minneapolis	(612) 334-5000	<a href="mailto:Cindy.Davis@KutakRock.com">Cindy.Davis@KutakRock.com</a>
Ruth C. Marcott	Minneapolis	(612) 334-5044	<a href="mailto:Ruth.Marcott@KutakRock.com">Ruth.Marcott@KutakRock.com</a>
Amanda R. Cefalu	Minneapolis	(612) 334-5000	<a href="mailto:Amanda.Cefalu@KutakRock.com">Amanda.Cefalu@KutakRock.com</a>
Alexis L. Pappas	Omaha	(402) 661-8646	<a href="mailto:Alexis.Pappas@KutakRock.com">Alexis.Pappas@KutakRock.com</a>
Jeffrey J. McGuire	Omaha	(402) 661-8647	<a href="mailto:Jeffrey.McGuire@KutakRock.com">Jeffrey.McGuire@KutakRock.com</a>
Sevawn S. Foster	Little Rock	(501) 975-3120	<a href="mailto:Sevawn.Foster@KutakRock.com">Sevawn.Foster@KutakRock.com</a>
Alexander G. Engelkamp	Omaha	(402) 231-8842	<a href="mailto:Alexander.Engelkamp@KutakRock.com">Alexander.Engelkamp@KutakRock.com</a>
Heather C. Panick	Omaha	(402) 661-8667	<a href="mailto:Heather.Panick@KutakRock.com">Heather.Panick@KutakRock.com</a>
Nathan T. Boone	Minneapolis	(612) 334-5000	<a href="mailto:Nathan.Boone@KutakRock.com">Nathan.Boone@KutakRock.com</a>

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