Fringe Benefits

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What is a Fringe Benefit?

- A form of pay for the performance of services received as property, services, or cash
- **ALL** fringe benefits are taxable and must be included in an employee's income **unless** the law specifically excludes it
  - Report on Form W-2
  - Withhold for income and employment taxes

Fringe Benefit Examples

- Airline club memberships
- Car allowances
- Awards or prizes
- Cell phones
- Discounts
- Educational reimbursements
- Meals
- Subsidized lodging
- Company cars
- Holiday gifts
- Laptops
- Moving expense reimbursements
- Commuting benefits
- Parking
- Use of healthcare facilities
- Retirement gifts
- Uniform allowances
- Vacations

Objectives of Fringe Benefits

- Boost employee morale
- Entice quality candidates
- Motivate employees
- “Golden Handcuffs”
- Encourage certain behavior

Dangers of Fringe Benefits

- Often overlooked by employers in compliance checks
- Difficult to identify
- Difficult to value
- Uncertainty in reporting (i.e., taxable or not?)
- Lack of clear communication to employees
- Finance/payroll disconnect with HR

Tax Cuts and Jobs Act

- Known generally as "tax reform" Signed into law December 22, 2017 effective January 1, 2018
- Passed through budget reconciliation process
- Reduces ACA individual mandate penalty to $0, effective January 1, 2019
- Tax credit for employers voluntarily providing paid family and medical leave for employees (up to 25% of the cost of each hour of paid leave) The amount of the credit scales from 12.5% to 25% of the wages paid to the employee during the leave based on the level of wages paid during such time. The credit is available for only twelve weeks of paid leave and only with respect to amounts paid to employees that earned $72,000 or less in the preceding year. Furthermore, the credit is available only for tax years 2018 and 2019, after which time the provision terminates.
- Extends time frame for repayment of a retirement plan loan upon separation from service or plan termination
- Makes sweeping changes to fringe benefits

Moving Expenses

Prior to the Act, an individual could claim an above-the-line deduction (a non-itemized deduction) for moving expenses paid in connection with commencement of work at a new principal place of work. Alternatively, an employer could pay or reimburse an employee for moving expenses as a tax-free fringe benefit. Under IRS guidelines for moving expenses to be nontaxable, they must have been reasonable for the circumstances of the move. Those include: Moving your household goods and personal effects, and Traveling (including lodging but not meals) to your new home. Items that are "unreasonable" included: Any part of the purchase price of your new home, Car tags, Driver's license, Expenses of buying or selling a home (including closing costs, mortgage fees, and points), Expenses of entering into or breaking a lease, Home improvements to help sell your home, Real estate taxes, return trips to your former residence, Security deposits

Beginning in 2018, an employee can no longer deduct moving expenses nor can an employer pay or reimburse an employee's moving expenses on a tax-free basis.

If moving expenses were incurred in 2017 and you are just getting around to reimbursing, still tax-free.

Temporary change through 2025.

Qualified Transportation Benefits

Prior to the Act, the value of a "qualified transportation fringe" benefit provided by an employer to an employee was treated as tax-free, subject to monthly limits.

A "qualified transportation fringe" is defined as:

- transportation in a commuter highway vehicle for travel between the employee's residence and place of employment (Commuter highway vehicle means any highway vehicle that has a seating capacity of at least six adults excluding the driver and at least 80 percent of the mileage use must be for the purpose of transporting employees to and from work);
- transit passes (e.g., bus/train);
- qualified parking; and
- qualified bicycle commuting reimbursement.

Qualified Transportation Benefits Continued

Beginning in 2018, employers can still provide tax-free qualified transportation fringe benefits to employees (except for bicycle commuting reimbursements – discussed later).

However, an employer can no longer deduct: (1) the expenses incurred in providing tax-free transportation fringe benefits; or (2) any expenses for providing transportation for an employee to commute between his or her residence and place of employment, except as necessary for ensuring employee safety.

Bicycle Commuting Benefits

- **Prior to the Act**, the value of a "qualified transportation fringe" benefit provided by an employer to an employee was treated as tax-free, subject to monthly limits.
- **Beginning in 2018**, bicycle commuting reimbursements will be taxable to the employee but are deductible by employer
- Temporary change through 2025

Transportation Benefit Summary

Transit	Parking	Biking
• 2018 limit: $260 includes any and all transit benefits combined • Eliminates employer deduction (unless necessary for ensuring employee's safety) • Remains tax exempt for employees	• 2018 limit: $260 • Eliminates employer deduction (unless necessary for ensuring employee's safety) • Remains tax exempt for employees	• 2018 limit: $20 • Suspends exclusion from gross income and wages • Reimbursements are taxable and subject to payroll taxes and income withholding

Entertainment Expenses

Prior to the Act, employers were generally permitted to deduct 50% of entertainment, amusement, or recreation expenses that were directly related to the active conduct of the taxpayer's trade or business. e.g. ballgames and club memberships.

Beginning in 2018, no deduction is allowed for those entertainment, amusement, or recreation expenses.

Employers may continue to deduct 50% of food and beverage expenses associated with their trade or business and 50% of expenses related to providing food and beverages on-premises.

De Minimis Benefits

- No changes were made to the issues on the next couple of slides, but they are such a major problem for employers that I thought we'd throw them in anyways.
- De minimis benefits are those that are so small in value and frequency that accounting for them is impractical. An essential element of a de minimis benefit is that it is occasional or unusual in frequency. It also must not be a form of disguised compensation.
- Examples: occasional use of business copy machines and printers, meals, and holiday and birthday gifts of low value (also thanksgiving turkey, flowers for special occasions, picnics, cocktail parties, occasional event tickets)
- Cash and cash equivalents are <u>always</u> taxable. Employers always want to tell me that cash/gift cards are de minimis. Wrong. Gift certificates that are redeemable for general merchandise or have a cash equivalent value are not de minimis benefits and are taxable.

Gifts and Awards

- MAJOR issue for employers.
- Cash gifts and awards are ALWAYS included in gross income, including gift cards which are considered cash equivalents. NEVER de minimis.
  - No matter how small the amount
- Achievement awards: tangible non-cash achievement awards given for length of service or safety:
  - Must be presented with meaningful presentation
  - Maximum excludable award per employee is $1,600 per year ($400 per year if the award is given outside of an established written award program)
  - Length of service may not be during first 5 years of employment
  - The Act maintains this achievement award deduction but adds a definition of “tangible personal property.” The term explicitly excludes cash, gift certificates, vacations, coupons, vacations, meals, and lodging, among other things.
- Retirement awards often non-taxable because no expectation of future services (e.g., Rolex)

Fringe Benefit Review

- Employment tax audits are EXPENSIVE
- Costs can be alleviated by conducting regular comprehensive reviews of your fringe benefits:
  - Identify all fringe benefits offered
    - Keep a running list
  - Confirm benefit is properly reported and that taxes are withheld and deposited in a timely manner
    - Identify trouble areas and audit more frequently
    - Beware of multiple departments

Publication 15-B

- Employer’s Tax Guide to Fringe Benefits
- Updated annually
- Great resource for HR professionals and Plan Administrators

A Little about your Presenter

Ashley focuses her practice on Affordable Care Act (ACA) compliance, including employer reporting, employer mandate requirements, and employer shared responsibility payment assessment. Beyond the ACA, Ashley works hard to ensure that employer health and welfare plans are properly administered. If an error has already occurred, she has the expertise to develop and implement a solution.

As a member of the Firms' pension and employee benefits group, Ashley works diligently to condense and simplify the complicated and ultra-technical world of employee benefits into understandable, plain English advice for her clients. Ashley uses this straightforward approach to assist private, governmental, and nonprofit employers in the design, implementation, and maintenance of their employee benefit plans.

Ashley is dedicated to building long-standing, trusted relationships with her clients and understands that a single point of contact for timely resolution of employment-related issues is key. To that end, Ashley also spends a significant amount of her time helping clients navigate the prickly, and often unforgiving, landscape of the FLSA, HIPAA, COBRA, FMLA, ADA, and other employment-related legislation as well as everyday employment issues, like creation and application of employer policies and employee training.

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