

NEW JERSEY DIVISION OF TAXATION

TECHNICAL BULLETIN

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TAX: GROSS INCOME TAX

**TOPIC: EMPLOYEE TAX INCENTIVES FOR EMPLOYER-PROVIDED
COMMUTER TRANSPORTATION BENEFITS**

Background

The Gross Income Tax exclusion for individuals receiving commuter transportation benefits from their employer, found at N.J.S.A. 54A:6-23, was enacted pursuant to P.L. 1993, c. 108. When enacted, the exclusion was connected with the New Jersey Traffic Congestion and Air Pollution Control Act (P.L. 1992, c. 32), most of which was repealed by P.L. 1996, c. 121. The current provisions are explained below.

Employee Benefits

N.J.S.A. 54A:6-23.a. provides a Gross Income Tax exclusion for “employer provided commuter transportation benefits as defined pursuant to section 3 of P.L. 1992, c. 32 (C.27:26A-3), up to and including the limit per taxable year ... pursuant to subsection b. of this section.”

Exclusion Dollar Limit - The dollar limit for the exclusion is adjusted, annually, so that it is the same as the dollar limit for the commuter transportation benefits allowed pursuant to federal income tax. See N.J.S.A. 54A:6-23.b and I.R.C. section 132. For information on the New Jersey exclusion limit for a particular tax year, please see the Division of Taxation notice at <http://www.state.nj.us/treasury/taxation/cmnr.shtml>.

The New Jersey exclusion differs from the federal exclusion primarily in one way. For the New Jersey tax exclusion, the benefit must be provided ***in addition to regular compensation and not pursuant to a compensation reduction plan or agreement***. See N.J.S.A. 54A:6-23.c.

Therefore, if an employer provides commuter transportation benefits pursuant to a compensation reduction plan or agreement, the salary or wage amount set aside for the “account” is **taxable** for New Jersey Gross Income Tax purposes. In other words, for Gross Income Tax, employee withholding tax is based on wages ***before*** any deduction for commuter transportation benefits. (For Gross Income Tax, a payroll deduction for a commuter transportation account **cannot** be treated as “pre-tax”.) This treatment may be changed only if amendatory legislation is passed.

For determining benefits that are taxable for Gross Income Tax, the treatment may be summarized as follows. Commuter transportation benefits that are taxable for federal income tax generally are taxable for New Jersey Gross Income Tax (for example, when benefits are “in excess of” the excludable amount). Further, amounts deducted from regular compensation, and put towards commuter transportation benefits, are part of New Jersey taxable wages.

Definitions

Alternative means of commuting is travel between a person’s place of residence and place of employment other than in a motor vehicle occupied by one person. Some alternatives are public transportation, carpools, van pools, bus pools, ferries, bicycles and walking.

Commuter transportation benefit is the cost to employers of providing benefits to an employee for using an alternative means of commuting and the cost of providing services and facilities which would encourage or facilitate use by the employee, including the costs of parking at park-and-ride lots. See N.J.S.A. 27:26A-3.

Employer Benefits

The tax credit and special income reduction benefits provided to *businesses* in conjunction with the New Jersey Traffic Congestion and Air Pollution Control Act have now expired; the 2007 tax year was the last tax year that those benefits were allowed to employers. See N.J.S.A. 27:26A-15.a.

Reporting Guidelines

Each employee who receives money towards commuter transportation benefits must furnish the employer with suitable proof, in the form of receipts, ticket stubs or other documentation, to show that the employer-provided money was used for an alternative means of commuting. Compliance with federal requirements for documentation will satisfy the New Jersey requirements.

W-2 Reporting -- Federal guidelines for the W-2 instruct employers to include any taxable commuter transportation benefits in the taxable wage amount entered in box 1 of the W-2. Similarly, on the *State* copy or boxes of the W-2, New Jersey employers must include New Jersey taxable benefits (see above) in the total taxable wage amount. Employers are not required to show the benefit amount as a separate figure on the W-2.* (See IRS *Instructions for Forms W-2 and W-3*.) The taxable amount for New Jersey may be higher than the federal taxable amount (see above). If an employee believes the W-2 State wage box amount is incorrect, the employee should request a corrected W-2 from the employer.

Additional Information Concerning Parking and Bicycling Benefits

Since the inception of the Gross Income Tax, New Jersey has followed the federal tax exclusion for the value of parking provided “at or near the employer’s premises” (e.g. parking where one works.) In addition, N.J.S.A. 54A:6-23.d. has provisions to exempt “qualified parking fringe benefits.” Therefore, if parking “at or near” the employer’s premises is tax-excluded for federal income tax, it is also tax-excluded for Gross Income Tax. Similarly, New Jersey will follow the

federal exclusion for the value of “park & ride” parking benefits (as long as they are not provided through a salary reduction plan.) See N.J.S.A. 54A:6-23.d.

Bicycle Commuting Benefits – The federal and New Jersey requirements for excluding bicycle commuting benefits are comparable. Therefore, if a bicycling benefit is excludable for federal income tax, it is also excludable for New Jersey gross income tax purposes.

* Legislative history for the GIT exclusion indicates a legislative intent to “reduce user compliance confusion” by generally following federal requirements.

*Issued by Regulatory Services Branch
New Jersey Division of Taxation*