Commuter Tax Benefits

The commuter tax benefit, formally called the Qualified Transportation Fringe Benefit, is a voluntary benefit program that allows employers the opportunity to provide discounted or pre-tax transportation benefits to their employees, as regulated by U.S. Internal Revenue Service Code Section 132(f). This voluntary benefit is one of eight types of statutory employee benefits that are excluded from gross income that would be subject to federal tax. Under the program, commuters are able to pay for qualifying transportation expenses with pre-tax income. These expenses include the following and apply whether the employer offers only one or several of these benefits:

- A ride in a commuter highway vehicle\(^1\) between the employee’s home and workplace (vanpool).
- A transit pass.
- Qualified parking.
- Qualified bicycle commuting (1).

These qualified transportation expenses are excluded from an employee’s gross income for income tax purposes and from an employee’s wages for calculation of employer payroll taxes (2). The maximum allowable benefit has changed over time. Currently, the maximum for transit and vanpool is $130 per month per commuter. The parking benefit is $250 per month. The bicycle commuter benefit, which was added to the federal law in 2000, is capped at $20 per month and can only be provided in addition to compensation.

The tax benefit can only be provided through an employer, who can offer it to employees in one of three ways:

1. Employers pay directly for employee transit, vanpool, or parking and receive a tax deduction for that amount, up to the federal monthly maximum per commuter (benefit in addition to compensation).
2. Employees pay using pre-tax income (up to the designated monthly maximum) through a payroll deduction. The employee pays no federal income or Federal Insurance Contributions Act (FICA) taxes on the benefit, and the employer benefits from lower payroll taxes (benefit in lieu of compensation).
3. Employee and employer share the cost, combining the two options above (3).

The sections that follow present detailed information on the history of this benefit, how it is operationalized at the federal level, how other states have implemented transit benefit programs, and what issues need to be considered for implementation in Texas.

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\(^1\) A commuter highway vehicle is any highway vehicle that seats at least six adults (not including the driver).
History of the Commuter Tax Benefit

In 1984, as a response to Internal Revenue Service (IRS) efforts to categorize employer-provided parking as a fringe benefit that could be taxed as income, Congress codified the exclusion of employer-provided parking from taxable income and allowed employer-paid transit benefits of up to $15. The policy discussion did not focus on transportation impacts but on the implementation of tax policy and the impacts on U.S. workers.

The Energy Policy Act of 1992 grouped the parking and transit benefits into “qualified transportation fringe benefits” and set the exclusions to $150 for parking and $60 for transit, as well as set both exclusions to adjust with inflation (4, 5). In 1998, the Transportation Equity Act for the 21st Century (TEA-21) expanded the commuter benefit so that employers could offer transit and vanpool benefits in lieu of and in addition to wages, options already allowed for parking. This meant that the commuter tax benefit could be offered as a pre-tax employee-paid benefit (6).

Between 1991 and 2009, transit and vanpool tax benefit maximums increased from $21 to $120 through various legislations (7). In 2009, a temporary provision of the American Recovery and Reinvestment Act (ARRA) raised the limit on transit and vanpool benefits to parity with the parking benefit, which was $230 per month. Originally set to expire in 2011, this parity provision was extended through 2013 (8). At the start of 2015, Congress retroactively increased the transit and vanpool benefit to $250 for 2014, creating parity with the parking benefit, which is set at $250. The parity provision did not extend to 2015. Currently, the maximum monthly deduction for parking in 2015 remains $250, while transit and vanpool benefits are capped at $130 (9).

Transit Benefit Program for Federal Agency Employees—Executive Order 13150

In 2000, the president ordered federal agencies to implement a transportation fringe benefit program for their employees “in order to reduce Federal employees’ contribution to traffic congestion and air pollution and to expand their commuting alternatives.” Executive Order 13150 required that all federal agencies implement a program that:

...offers qualified Federal employees the option to exclude from taxable wages and compensation, consistent with section 132 of title 26, United States Code, employee commuting costs incurred through the use of mass transportation and vanpools, not to exceed the maximum level allowed by law (26 U.S.C. 132 [f][2]) (10).

As a result, all federal agencies were required to offer the option for a pre-tax deduction for employees who commuted using transit or vanpool. The order also encouraged federal agencies to use nonmonetary incentives to encourage mass transportation and vanpool use. A more stringent requirement was imposed on federal agencies located in the National Capital Region surrounding the District of Columbia. These agencies were required to implement a transit pass...
benefit program in which the agency must purchase and provide to its employees some form of transit pass “approximately equal to employee commuting costs” up to the maximum amount allowed by the IRS.

**Supporting Legislation**

- Transportation Equity Act for the 21st Century (Public Law 105-178).
- Federal Employees Clean Air Incentives Act (Public Law 103-172).

**Federal Implementation**

Executive Order 13150 did not appropriate funds for the transit benefit program. Instead, agencies were instructed to “absorb the costs of implementing this order” (10). Office of Management and Budget (OMB) Circular A-11 (11) allowed for “subsidies for commuting costs, that is payments to subsidize the costs of Federal civilian employees in commuting by public transportation.”

If the benefit was employer provided, it had to be provided in the form of passes or vouchers, purchased by the agency and provided to the employee. If the benefit was provided as a pre-tax benefit, employees had to elect to reduce their pre-tax income by an amount equal to their transit or vanpool expenses up to the allowed maximum. The agency then collected these funds and distributed the appropriate pass or voucher to the employee. Under this executive order, federal agencies were free to develop their own procedures, as long as they followed the regulations set by the IRS.

At the time of this order, some federal agencies already had commuter tax benefit programs in place, including the United States Department of Transportation (USDOT). USDOT developed the TranServe program to distribute transit benefits to its employees in the 1990s. The TranServe program has since evolved to offer transit benefit distribution services to at least 26 other participating agencies serving over 250,000 federal employees (12). In 2011, TranServe launched an electronic fare media program that lowered administrative costs, contributed to a green government, and reduced opportunity for fraud or abuse. The updated program offers personalized debit cards that are electronically updated and can be used to purchase fare media (transit passes). It is estimated that this will save the federal government $270,000 per year in shipping and distribution costs (13).
Transit Benefit Programs at the State Level

As part of the research seeking to identify the congestion footprint of state employees in the Austin area, census data showed that Texas state employees working in the Austin downtown area were more likely to commute by non-single-occupant auto modes than other Austin downtown employees or even state workers in peer cities across the United States. At the same time, it was identified that no state agencies in Texas offer any type of transit-based commuter tax benefit program. This section presents the results of an in-depth investigation of other states that offer the transit tax benefit to their employees.

A total of 22 U.S. states offer some type of transit benefit to their employees; Texas is not one of them. Sixteen of these states offer the employee-paid pre-tax benefit as defined by the IRS regulation. Two states (Tennessee and Washington, D.C.) offer both a pre-tax benefit option as well as an employer-provided transit benefit. Tennessee operates a Swipe N Ride program, giving free transit passes to state employees in the Nashville and Memphis regions. The District of Columbia government pays $25 toward transit costs for eligible employees. Most of these states offer the tax benefit for vanpool and parking costs as well. Notably, New York, Oregon, and Tennessee do not offer a pre-tax benefit for parking costs. Virginia explicitly excludes parking costs from its program as well. Table 1 summarizes the transit benefits for all states.

<table>
<thead>
<tr>
<th>Benefit Type</th>
<th>No. of States</th>
<th>States</th>
</tr>
</thead>
<tbody>
<tr>
<td>States offering any kind of transit benefit or incentive</td>
<td>22</td>
<td>Connecticut, Delaware, Georgia, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Wisconsin</td>
</tr>
<tr>
<td>Employee-paid pre-tax transit benefit only</td>
<td>14</td>
<td>Arizona, California, Maryland, Vermont, Virginia, Washington</td>
</tr>
<tr>
<td>Employer-paid transit benefit</td>
<td>6</td>
<td>Tennessee, Washington, D.C.</td>
</tr>
<tr>
<td>Combination of both</td>
<td>2</td>
<td>Alabama, Alaska, Arkansas, Colorado, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, Wyoming</td>
</tr>
</tbody>
</table>

Table 1: Summary of State-Level Transit Benefits

Note: Michigan offers a pre-tax benefit for vanpool (and parking), and Utah offers discounted bus passes at the agency level. These are both counted among the 29 offering no transit benefit.

Program Administration

Various providers operate nationwide to provide commuter benefits for employers, often as part of a set of services to provide administrative support for the complete employee benefit package.
Table 2 provides examples of these third-party providers of transit benefits. WageWorks® exclusively provides commuter benefit services, for example, for New York State, which provides vouchers, prepaid credit cards, and transit passes. Two states, Tennessee and Rhode Island, administer transit benefit programs through a direct agreement with local transit authorities.

Table 2: Examples of Third-Party Providers of Transit Benefits

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Type of Service</th>
<th>States Contracted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ADP</strong></td>
<td>Payroll services, employee benefits</td>
<td>Washington, D.C.</td>
</tr>
<tr>
<td><strong>ASIFlex</strong></td>
<td>Several employee benefit programs: flexible spending accounts, dependent care spending accounts, commuter benefit programs</td>
<td>Delaware</td>
</tr>
<tr>
<td><strong>Benefit Strategies, LLC</strong></td>
<td>Employee benefit administration</td>
<td>Massachusetts</td>
</tr>
<tr>
<td><strong>EideBailly</strong></td>
<td>Certified public accountant services, accounting, employee benefits, etc.</td>
<td>Minnesota</td>
</tr>
<tr>
<td><strong>Progressive Benefit Solutions, LLC</strong></td>
<td>Employee benefit packages</td>
<td>Connecticut</td>
</tr>
<tr>
<td><strong>WageWorks</strong></td>
<td>Commuter benefits only</td>
<td>Illinois, New York, Ohio, Wisconsin</td>
</tr>
</tbody>
</table>

Many of these companies handle the payroll processing, compliance, and provision of transit cards or passes required to implement a transit benefit program. In another example, the Delaware Valley Regional Planning Commission (DVRPC) operates a program called RideECO. Figure 1 illustrates how the RideECO program works.

![How it works](Image)

Figure 1: RideECO Program Overview
Examples of State Employee Transit Benefit Programs

The states that do offer a commuter transit benefit reveal a range of strategies and mechanisms for its implementation. Many of these programs are focused on urban areas, often in state capital cities, to provide access to local transit service. In some cases (e.g., Tennessee), states may provide a transit subsidy or direct benefit in conjunction with access to the IRS tax benefit (this is still unclear for some states because it can be hard to find employee benefit information). Specific program examples are provided below.

**Arizona**

Arizona passed an Air Quality Bill (ARS 49-581 et seq.) in 1988 that requires all major employers to develop, implement, and maintain a travel reduction program in order to reduce traffic impacts on air pollution and emissions within Maricopa County. As an employer in Maricopa County, the State of Arizona is required to have such a program. Consequently, the Office of Travel Reduction Programs is responsible for the education, motivation, and implementation of alternate commute options for state employees. The office is divided into three main sections: Capitol Rideshare, State of Arizona Telework Program, and Agency Liaison Services. It serves more than 23,000 employees. Through Capitol Rideshare, the Platinum Pass Subsidy Program offers state employees a transit discount—by using a free electronic card to pay for light-rail and bus trips, 50 percent of employees’ transit expense is paid by the state.

Employers are asked to reduce single-occupant vehicle (SOV) trips and/or miles traveled to the work site by 10 percent a year for a total of five years, and then 5 percent for three additional years, or until a 60 percent rate of SOV travel is reached.

**California**

California offers a transit incentive program in which employees using authorized transportation methods, including public transportation and vanpool, are eligible for a non-taxable subsidy toward their monthly costs. Employees are eligible for 75 percent discounts on monthly public transit passes, which can be purchased from the California Department of Transportation cashiering offices, up to a maximum of $65 per month. Employees can also purchase transit passes or tickets from local agencies directly and remit claims for these travel expenses.

**Connecticut**

Connecticut offers a pre-tax transportation benefit through a program called the Qualified Transportation Account Plan. The benefit is governed by Title 5, Chapter 64a, State Employee’s Benefits and Protections of the Connecticut General Statutes, which was updated in 2002 by Public Act 02-123. Section 50141e, Deduct-A-Ride Program for State Employees, states the following:

*The Comptroller may offer to qualified state employees the option to exclude from taxable wages and compensation, consistent with Section 132 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of*
the United States, as from time to time amended, employee commuting costs incurred through the use of (1) transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee’s residence and place of employment, (2) any transit pass, or (3) qualified parking, in an amount not to exceed the maximum level allowed by 26 USC 132(f)(2), as from time to time amended, and regulations adopted pursuant to said section. The Comptroller may contract with an administrator for the management of this program. For purposes of this section, “state employees” includes members of the General Assembly.

Connecticut has contracted with a third-party provider called Progressive Benefit Solutions, LLC (PBS), which provides and administers the state’s flexible spending plans, including a medical flexible spending account, a dependent care assistance program, and the qualified transportation account. If an employee elects to participate in the plan, he or she can allocate pre-tax dollars for transit, vanpool, or parking expenses each month up to the IRS maximum. PBS offers a Prepaid Benefits Card Program, through which participants receive a prepaid benefits card that is automatically loaded with their payroll deduction dollars and can be used to purchase parking and transit expenses anywhere a MasterCard is accepted. A claim reimbursement option is available as well (14).

**Maryland**

Maryland allows permanent state employees to use certain transit services in the Baltimore metropolitan area at no charge with their state ID. This benefit does not apply to Maryland Area Regional Commuter trains, commuter buses, or special event buses (15).

**Rhode Island**

Rhode Island employees can elect to use a pre-tax (federal, state, and FICA) payroll deduction to purchase transit passes from the Rhode Island Public Transit Authority (RIPTA). Employees can choose from a 15-ride pass or a monthly pass at the standard RIPTA rates. The State Office of Accounts and Control compiles and collects the payroll deductions and transit pass requests, and then submits both to RIPTA. RIPTA provides transit passes to the Office of the General Treasurer for distribution to agency payroll offices. Transit passes are distributed to employees with their payroll checks prior to the start of the month for which the passes are effective (16).

Rhode Island General Laws Section 36-6-21 granted the state controller the authority to “make appropriate salary deductions effective January 1, 2008, and to adopt appropriate provisions to establish a transportation fringe benefit program that offers qualified state employees the option to exclude from taxable wages and compensation, consistent with section 132 of title 26 of the United States Code, employee commuting costs incurred from the purchase of RIPTA commuting passes, not to exceed the maximum level allowed by law” (16).
Tennessee

Tennessee offers the Swipe N Ride program, which provides transit passes to state employees in the Nashville and Memphis metropolitan areas. Swipe N Ride is funded by the Tennessee Department of Transportation and offered through a contract with the Nashville and Memphis area transit authorities. The current contract is in place through June 30, 2015. For other state employees, Tennessee also offers a Transportation and Parking Flexible Benefits Account. Employees can designate an amount, up to the IRS maximums for transit or parking, as a pre-tax benefit exempt from federal, state, and social security taxes. Unlike some flexible benefit accounts, there is no specific enrollment period. This account can be used to pay for qualified transportation expenses, as defined by the IRS (17).

The state’s other commuter benefits include priority parking for carpool and vanpool users, as well as secure bike racks, bike lockers (for a fee), and two shower facilities in the downtown area.

Vermont

Vermont’s Capital Commuter program offers a 50 percent discount for bus fare for state employees in the Montpelier region on select bus routes. Capital Commuter is a pilot project that includes nearly 500 state employees as of January 2015. Capital Commuter includes common commute solution program benefits such as access to a state fleet vehicle as part of a guaranteed ride home service, VIP parking for carpoolers and vanpoolers, a discount card for participating local businesses, and monthly raffle drawings (18).

Virginia

Virginia operates a Commuter Choice Program for state employees that is mandatory in certain counties and optional for the rest of the state. This program is unique for two reasons. First, it provides a benefit only for transit or vanpool; parking costs are not eligible. Second, the program only allows employers to provide tax-free transit benefits in addition to compensation. Even the agencies outside of the mandatory zone cannot offer the benefits as an employee-paid pre-tax deduction. This program was established by Governor Executive Order 71 (01) issued on August 23, 2000 (19).

Washington

Washington offers state agency employees in Thurston County free access to intercity transit routes. The State Agency Rider (STAR) Pass program uses agency ID cards affixed with a validated STAR Pass sticker. The IDs include employee photos, and the validation stickers are

Tennessee Employee Transit Card
Rules: Effective July 1, 2014

1. The transit card is not a right but a privilege authorized for state employees in good standing.
2. The transit card is ONLY for state employees and WORK-RELATED trips.
3. The transit card will expire after two years and must be renewed.
4. Upon exit from state service, the transit card is to be returned to the agency’s human resource contact.
5. All name changes and employees transferring to other state agencies must notify their agency human resource contact to report the change to the Tennessee Department of Transportation.
6. Employees are limited to 100 rides per month.
difficult to remove and are updated every few years to reduce the risk of misuse (20). STAR Passes are pre-paid by the state using parking funds (21). Other incentives include bike storage and a guaranteed ride home program.

In 1991, the Washington Legislature passed the Commute Trip Reduction (CTR) Law, incorporating it into the state’s existing Clean Air Act. The CTR obligates all major employees, meaning those with over 100 employees, including public agencies, in the state’s most populated counties to implement a commute trip reduction plan. Each plan must include a set of measures “designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction,” which includes measures for the “provision of subsidies for transit fares.” In 2006, the CTR Efficiency Act was passed to define affected worksites as those with 100 or more employees, regardless of the number of different agencies co-located at a worksite. Finally, in 2009, the CTR for State Agencies Act was passed to strengthen the leadership role of state agencies in the CTR (22). These requirements have also resulted in detailed guidelines for agencies looking to offer travel options and/or subsidies for their employees.

In the Revised Code of Washington, RCW 43.01.230 authorized agencies to use public funds to “financially assist agency-approved incentives for alternative commute modes, including the purchase of transit passes. Subsidies can be offered as non-taxable transit subsidy (for transit or vanpool) provided by voucher or monthly transit pass, or a taxable cash subsidy (for carpool, walking or biking)” (22).

Implementation of a Commuter Tax Benefit Program for Texas State Agency Employees

Implementation of a broad commuter tax benefit program, or even one that focuses specifically on a transit tax benefit, must consider enabling legislation, program funding, and other administration issues. These issues are presented in this section.

Enabling Legislation

As seen with the federal transit program, there must be enabling or supporting legislation to institute a new program for state agency employees. There are two existing sources of legislation that appear to be consistent with the provision of commuter tax benefits.

*Texas’s Supplemental Optional Benefits Program*

The State of Texas offers various voluntary deduction programs as part of its benefits and compensation packages for state officers and employees. One program is called the Supplemental Optional Benefits Program, under which the Employees Retirement System of Texas is authorized to designate programs for state agency employees (23). No supplemental optional benefits programs are currently offered; however, these benefits are authorized under Texas Government Code, Sections 659.101–659.102 and 659.106–659.108 (Subchapter G)
This existing legislation appears to provide a mechanism for offering commuter tax benefit programs.

**Texas Emissions Reduction Plan (TERP)**

TERP was established in 2001 (Chapters 386 and 387, Health and Safety Code, by Senate Bill 5, 77th Legislature) to address air quality issues. Through TERP, various programs are operated to reduce emissions from motor vehicles, encourage energy efficiency, and support research and technology related to these issues. The program also receives funds from various vehicle fees. It is possible that TERP can provide both authority and funding for a commuter tax benefit program.

**Program Funding**

Texas Government Code, Section 659.108, states that “the state may withhold from the employee’s salary or wage payment an administrative fee for making a deduction under this subchapter.” However, the fee may not exceed the lower of the actual administrative costs of making the deduction or the highest fee “charged by the state or institution, as appropriate, for making another similar deduction.” The language in 659.108 suggests that Texas state agencies may be able to charge a fee to administer a commuter tax benefit program. However, a cost-benefit analysis should be conducted to compare the administrative fee necessary to administer such a program against the federal and FICA tax savings for a Texas agency employee participating in that program.
Administration

With any type of tax benefit program, some administration is required. This administration can be handled by a third-party administrator, as used in other states; an agency’s payroll administrator; or someone from the human resources department. The administration typically takes place on a regular cycle, as illustrated in Figure 3, which shows the Delaware Valley Regional Planning Commission’s RideECO Program cycle.

![Figure 3: Typical Timeline for DVRPC RideECO Program](image)

The IRS code allows for this benefit to be applied differently to different employees or groups of employees. Several of the state examples in this report focus their benefit on state employees in a capital city or a downtown area only.

A Transit Cooperative Research Program report on commuter benefits suggests that a region with a single transit provider, such as Austin, is able to reduce the implementation costs of such a program by approaching the benefit as one entity (as opposed to each state agency individually coordinating with the transit provider) (20).

In Austin, the Capital Metropolitan Transportation Authority (Capital Metro) offers a program called MetroWorks, through which the transit provider partners with local and regional agencies, businesses, and academic institutions to provide discounted transit passes to employees and students (24). Participating employers purchase 31-day passes in bulk, and employees have the option of three pass types based on their travel needs. In addition to the fare discount (see Table 3), MetroWorks offers tools and training to support the service, including employee
announcement letters, frequently asked questions, program brochures, free information sessions at employee locations, and a Capital Metro trip-planning widget for agency websites and a related smartphone app. Capital Metro encourages people interested in the benefit but working for an employer unable to offer it (either due to company size or statute) to form a co-op with others in the same office building. These informal co-ops keep the administrative burden low for both Capital Metro and the participating co-ops (one order, one payment, and one coordinator in the building to manage orders and distribute passes) and provide the employees access to the MetroWorks passes.

Table 3: Capital Metro Discounted Passes for Government Employees

<table>
<thead>
<tr>
<th>31-Day Pass Type</th>
<th>Standard Fare</th>
<th>2015 Government Fare</th>
<th>Percent Discount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local</td>
<td>$41.25</td>
<td>$28.90</td>
<td>30%</td>
</tr>
<tr>
<td>Premium</td>
<td>$62.00</td>
<td>$43.40</td>
<td>30%</td>
</tr>
<tr>
<td>Commuter</td>
<td>$96.25</td>
<td>$67.40</td>
<td>30%</td>
</tr>
</tbody>
</table>

Conclusions

Commuter tax benefit programs serve many commuters across the United States, including hundreds of thousands of federal and state agency employees. Census data show that Texas state employees use transit for their daily commute at levels higher than their counterparts, without any type of subsidy or tax benefit. The higher transit usage among state employees working in the downtown Austin area suggests that adequate transit service exists to provide viable options that, when coupled with a tax benefit, could provide a way for state agencies to reduce their congestion footprint on Austin’s congestion levels.

Existing legislation appears to provide the authorization to offer such a benefit, although the cost of program administration should be considered to ensure that any program fees do not exceed the tax savings to the employees. One potential solution may be to partner with Capital Metro (Austin’s transit provider) in its existing MetroWorks program.
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