# New Tax Law Brings Changes To Certain Benefits

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On January 2, 2013, President Obama signed the American Taxpayer Relief Act of 2012 (ATRA) into law. ATRA was passed by Congress to address the combination of tax increases and automatic spending cuts popularly known as the "fiscal cliff." In addition to the tax and spending-related changes, ATRA also made several important changes affecting certain employee benefits. The changes with respect to in-plan Roth-contribution transfers are discussed in another article in this *Benefits Update*. Other employer-provided benefits that were affected by ATRA are summarized below:

*Qualified Transportation Plans*

Some or all of employer-provided transportation benefits, such as qualified parking, transit passes, and transportation between the employee's residence and place of employment in a commuter highway vehicle (also known as "vanpooling") may be provided to employees on a tax-free basis. The amount of transportation fringe benefits that an employee can exclude from income is subject to a statutory limit, which is adjusted each year for inflation.

There were temporary statutory provisions, which expired as of Dec. 31, 2011, that made the limit for the combined transit pass and vanpooling expenses the same as the limit for qualified parking (or $230 per month in 2011). Because these temporary provisions expired, the 2012 combined monthly limit for transit pass and vanpooling expenses became $125, while the limit for parking increased to $240. ATRA extended the expiration date for these provisions from Dec. 31, 2011 to Dec. 31,2013, which retroactively increased the 2012 combined limit for transit pass and vanpooling benefits from $125 per month to $240 per month. The 2013 limit has not yet been announced. Employers may need to correct 2012 Form W-2 reporting.

***Qualified Adoption Assistance Benefits***

Amounts paid by an employer (subject to dollar limits and other requirements) for qualified adoption expenses incurred in connection with an employee's adoption of a child are excludable from an employee's gross income if furnished pursuant to an "adoption-assistance program" sponsored by the employer. The maximum amount that can be excluded from the employee's gross income is the employer. The maximum amount that can be excluded from the employee's gross income is subject to both a dollar amount limit ($13,360 for 2011 and $12,650 for 2012) and an income limit, which phases out the dollar limit if the taxpayer's "modified adjusted gross income" falls within a specified range ($185,210 - $225,210 for 2011; $189,710 - $229,710 for 2012). If the taxpayer's modified adjusted gross income exceeds the higher amount of the range, the income exclusion amount is $0.

But these adoption assistance income exclusion provisions were subject to the sunset provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), a prior federal law, and were scheduled to expire at the end of 2012. ATRA deleted the EGTRRA sunset provisions, restoring the adoption-assistance income-exclusion provisions and making them permanent. In addition to the adoption-assistance exclusion from income, an employee may claim a tax credit for qualified adoption expenses; however, both the tax credit and income exclusion cannot be claimed for the same expense.

***Qualified Educational Assistance Programs***

Excludable educational assistance to an employee that is paid under the employer's qualified educational-assistance program is not included in the gross income of the employee. Excludable educational assistance includes not only the employer's payment of educational expenses incurred by or on behalf of an employee (such as tuition, fees, books, supplies, and equipment), but also the cost of employer-provided courses of instruction for an employee, including books, supplies, and equipment. The exclusion for payments under a qualified educational-assistance program was also subject to EGTRRA's sunset date and would have expired at the end of 2012. ATRA's deletion of the EGTRRA sunset date restores the exclusion and makes it permanent.

***Employer-Provided Child Care***

An employer tax credit up to a maximum of $150,000 per year was created by EGTRRA for employers that provide child-care services. This credit was subject to the sunset provisions of EGTRRA and was scheduled to expire at the end of 2012. By deleting the EGTRRA sunset date, ATRA makes the credit permanent.

***Dependent Care Assistance Programs/Dependent Care Tax Credit***

Under a dependent-care assistance program, payment can only be made for employment-related dependent care expenses. There are two conditions required for a dependent care expense to be employment related. The first condition is that the employee must incur the expense to enable the employee and the employee's spouse to be "gainfully employed," and the second condition is that the expense must be for the "care" of one or more "qualifying individuals."

If a spouse is not gainfully employed (which may include looking for work), the spouse can be deemed to be gainfully employed for any month in which he or she is either a full-time student or mentally or physically incapable of self-care with the same principal place of abode as the employee for more than half of the year. The employee’s spouse would have deemed earned income of $250 per month for one qualifying individual or $500 per month for two or more qualifying individuals.

Effective January 1, 2013, the deemed earned income amounts would have fallen to $200 and $400, respectively, but ATRA has retained the higher amounts.  These same deemed earned income provisions apply for the Dependent Care Tax Credit under IRS Code §21.  In addition, other EGTRRA limits applicable to the dependent care tax credit, including the maximum amount of the tax credit ($3,000 for one qualifying individual, and $6,000 for two or more qualifying individuals); the percentage for determining the credit (35%); and the income level at which the credit begins to phase out ($15,000) were subject to the sunset provisions of EGTRRA and were scheduled to expire at the end of 2012.

By deleting the EGTRRA sunset date, ATRA makes these provisions permanent.  Note:  other changes to a taxpayer’s earned-income tax credit and child tax credit have also been extended or made permanent by ATRA, which may be relevant when calculating a participant's federal income tax savings from claiming the DCTC.

These are obviously convoluted and complex changes, but could have a significant tax effect both on employees and employers.  To discuss how they might specifically affect your operations, contact any member of the Fisher Phillips Employee Benefit Practice Group.