The new 21 percent \textit{income} tax on \textit{expenses} for providing transportation benefits, such as transit passes and parking, is unfair, costly, and burdensome for charitable nonprofits, houses of worship, and other nonprofits. Enacted on a discredited concept of “parity” among employers, the tax applies not only to the expenses of nonprofit employers, but also to the pre-tax dollars employees ask to have withheld from their paychecks. The tax wrongly diverts needed resources away from missions of serving communities and must be repealed.

\textbf{How the Tax Works:} This new unrelated business income tax (UBIT) on nonprofit transportation benefits requires nonprofit employers to pay an additional 21 percent tax on top of the expenses they incur for providing subway and bus passes, parking, and ride-sharing. Even something as simple as providing a reserved parking space for the pastor, rabbi, or imam can trigger this tax. Since houses of worship are not currently required to seek IRS approval of their tax-exempt status or submit annual informational tax returns (Form 990s), the tax on transportation benefits forces them to hire accountants, file tax returns, and pay taxes for the first time.

\textbf{Tax on Pre-Tax Dollars:} The transportation tax isn’t limited to employer expenses. Inscrutably, the IRS holds the view that nonprofit employers must also pay the 21 percent tax on the amounts that employees request to be withheld from their paychecks pursuant to compensation reduction agreements. Employees voluntarily reduce their pay, and the employer must pay extra taxes.

\textbf{Flawed Concept of Parity:} The new tax on nonprofit transportation benefits reportedly was put in the law to parallel the loss of similar deductions for for-profit businesses. The concept of parity grew out of the notion that for-profit employers lost a tax deduction in tax reform so nonprofit employers must receive a similar tax cost or penalty – an income tax on expenses. Two key points demonstrate the flaw in the concept of parity:

- The loss of deductions came in exchange for large income tax cuts. For-profit employers got significant tax relief in the 2017 tax law; nonprofits did not.
- Nonprofits never could take advantage of a deduction for these expenses and never provided transportation benefits to gain a tax deduction. For nonprofits, the benefits truly were about attracting and retaining workers, reducing traffic, and promoting air quality; all things the tax now threatens.

\textbf{Tax on Mandated Benefits:} Most of the official explanatory materials claim the tax applies to “fringe benefits.” In many jurisdictions, there is nothing “fringe” – as in \textit{extra} or \textit{voluntarily provided} – about transportation benefits. Washington, DC, New York, San Francisco, and a growing number of cities mandate that organizations with a certain number of employees must provide the very benefits to which this new tax applies. To many, imposing a tax on mandated employment expenses is like penalizing employers for providing a safe workplace, properly administering family and medical leave, and fully complying with every other labor law. Bottom line – mandates should not be a target for taxes.

\textbf{Partial Guidance Falls Short:} In December 2018, the Treasury Department and IRS issued partial guidance (\textit{Notice 2018-99}) on how to calculate this new tax on just parking expenses, but assumes that all expenses for bus and transit passes are subject to the tax. The guidance requires organizations to conduct a four-step calculus for determining which parking spaces are taxable and by how much. In many cases, the cost of adding up the expenses will be higher than the amount of taxes paid. More than 600 tax-exempt organizations \textit{wrote Congress} highlighting that the interim guidance “is incomplete and raises more questions for tax-exempt organizations that struggle to comply.”

\textbf{The Legislative Solution}

The tax on nonprofit transportation benefits has no support in Congress and must be repealed immediately. In 2018, the House passed legislation that would have repealed the tax, and there are currently five bills in the House and Senate to repeal Section 512(a)(7) of the Internal Revenue Code. Every day that passes without repeal and every dollar paid for this tax is time and money diverted from nonprofit missions of serving communities.

\textbf{The Ask:} Will you cosponsor legislation to repeal the tax on nonprofit transportation benefits and urge your leadership to conduct a vote before August?

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\textbf{About Nonprofit Connect}

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