Coalition for SMARTER TRANSPORTATION

# CoaST Review of IRS Guidance Related to Parking and Parking Fringe Benefits

CommuteCon – Feb 13, 2019

Coalition for SMARTER TRANSPORTATION

www.smartertransportation.org
info@Smartertransportation.org

# Agenda

- Background
- Review of Guidance
- Next Steps – How you can get engaged

# WARNING

*The slides and presentation are not to be considered tax advice.*

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# About CoaST

Coalition for Smarter Transportation

Purpose

- Analyze
- Advance
- Educate
- Communicate


# Parking Guidance

- On December 10th, 2018 the Internal Revenue Service released Notice 2018-99 related to parking expenses for qualified transportation fringe benefits. The notice addressed issues for both ‘for-profit’ organizations as well as ‘tax-exempt’ organizations.

**Notice 2018-99**

- The notice provided by the IRS establishes interim guidance for taxpayers to determine the amount of parking expenses that are non-deductible and the amount that tax-exempt organizations increase their UBTI.

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# Interim Guidance

- **This document is interim**

The IRS announced that they intend to publish proposed regulations including guidance on how to determine non-deductible parking expenses. The proposed regulations will include guidance.

  - The timing of the proposed new regulations is not outlined
  - There is no discussion on stakeholder input prior to release of proposed regulations, however, this document requests comments (more below)

# Scenario A – Employer Pays a 3rd Party

*The guidance lays out several scenarios and provides guidance on how to determine the non-deductible amount of parking expenses as well as amounts treated as increasing UBTI.*

**Scenario A – <u>Employer Pays a Third-Party for Employee Parking Spots</u>**

- The amount that is not allowed to be written off is the amount paid by the employer. However, if the amount paid exceeds the \$265/month limit per employee, the amount above \$265/month may be written off.

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# Scenario 1

Employer pays a third party parking garage $100/month for 50 employee parking spots and is not enrolled in a formal parking benefit

| | Parking Spots | Monthly Cost of Parking | Total Parking Expense |
|---|---|---|---|
| Inputs | 50 | $100 | $60,000 |

Under this scenario, the employer expense is $60,000 and the none of that amount is able to be written off. As a result, ACME CORP has an additional $60,000 tax liability

| | Additional Tax Liability | Corporate Tax | Additional Tax |
|---|---|---|---|
| Inputs | $60,000 | 21% | $12,600 |

# Scenario 1
# Reducing Parking Tax Liability

## Option 1 – Enter into Pre-Tax Transit Benefit Program

Employer pays a third party parking garage $100/month for 50 employee parking spots and is not enrolled in a formal parking benefit

| | Parking Spots | Monthly Cost of Parking | Total Parking Expense |
|---|---|---|---|
| Inputs | 50 | $100 | $60,000 |

Under this scenario, the employer expense is $60,000 and the none of that amount is able to be written off. As a result, ACME CORP has an additional $60,000 tax liability

| | Additional Tax Liability | Corporate Tax | Additional Tax |
|---|---|---|---|
| Inputs | $60,000 | 21% | $12,600 |

If an employer entered into a formal parking benefit program, the employer would not pay payroll taxes on the amount provided, cutting the additional tax liability by 1/3rd

| | Annual Cost of Parking Spot | Payroll Tax Savings | Savings Per Spot | # Parking Spots | Total Savings |
|---|---|---|---|---|---|
| Inputs | $1,200 | 7.65% | $92 | 50 | $4,590 |

Scenario 1

Option 1 – Enter into Pre-Tax Transit Benefit Program

| | Parking Spots | Monthly Cost of Parking | Total Parking Expense | Corporate Tax Rate | Payroll Tax Rate |
|---|---|---|---|---|---|
| Inputs | 50 | $100 | $60,000 | 21% | 7.65% |

| Additional Tax Liability w/o Parking Benefit | Additional Tax Liability w/ Parking Benefit |
|---|---|
| $12,600 | $8,010.00 |

| Amount Saved by entering into parking benefit program |
|---|
| $4,590.00 |

# Scenario B – Employer Owns or Leases Parking

- The IRS states that the disallowance may be calculated using any reasonable method and lays out a four step process.
- The scenario says that using the value of employee parking is NOT a reasonable method because the legislative language disallows the expense, not the value.

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# Scenario B – Employer Owns or Leases Parking

- Total parking expenses include:
  - Repairs
  - Maintenance
  - Utility costs
  - Insurance
  - Property tax
  - Interest
  - Snow/ice removal
  - Leaf removal
  - Trash removal
  - Cleaning
  - Landscape costs
  - Attendant/staff expenses
  - Security
  - ***<u>Rent or lease payments or a portion of a rent or lease payment if not broken out separately</u>***
- Capital depreciation can be written off

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# Scenario 2

## Employer owns or leases a parking lot

Part 1 Inputs

1.1 Identify all expenses related to providing parking this includes:

Repairs
Maintenance
Utility costs
Insurance
Property tax
Interest
Snow/ice removal
Leaf removal
Trash removal
Cleaning
Landscape costs
Attendant/staff expenses
Security
***<u>Rent or lease payments or a portion of a rent or lease payment if not broken out separately</u>***

# Scenario 2

## Employer owns or leases a parking lot

Part 1 Inputs

1.2 Identify Total Number of Parking Spots
1.3 Identify Number of Spots Reserved for Employees
1.4 Identify Number of Spots Reserved for Visitors/Non-employees
1.5 Identify Number of Open Spots
1.6 Identify Maximum Number of Spots Used by Employees at any given time

Part 2

| | | |
|---|---|---|
| Step 1 | Identifying Tax Liability | |
| | 1.1 | Find percentage of parking spaces that are reserved |
| | 1.2 | Multiply the percentage of parking spaces that are reserved by total parking expenses, this provides you with additional tax liability |
| | 1.3 | Multiply the additional tax liability by corporate tax rate 21% |
| Step 2 | 2.1 | Find percentage of unreserved parking spaces that are used by employees |
| | 2.2 | If the percentage of employee used unreserved spots is over 50% of all unreserved parking spaces proceed to step 2.3, if not you are finished |
| | 2.3 | Multiply the percentage of employee used unreserved parking spaces by total unreserved parking expenses, this provides you with additional tax liability |
| | 2.4 | Multiply the additional tax liability by corporate tax rate 21% |
| Step 3 | 3.1 | Sum 2.1 & 2.2 |

# Scenario 2

| Inputs | |
|---|---|
| Total Parking Expenses | 250000 |
| Total Parking Spots | 100 |
| Spots Reserved for Employees | 10 |
| Number of Spots Reserved for Visitors/Non-employees | 10 |
| Open Spots | 80 |
| Open Spots Used by Employees | 50 |

| Part 1 | |
|---|---|
| Inputs | |
| Step 1 | Identify Parking Expenses |
| Step 2 | Identify Total Number of Parking Spots |
| Step 3 | Indetify Number of Spots Reserved for Employees |
| Step 4 | Identify Number of Spots Reserved for Visitors/Non-employees |
| Step 5 | Identify Number of Remaining Open Spots |
| Step 6 | Identify Maximum Number of remaining opening spots used by employ |

Part 2.1 - Tax Liability from Reserved Spots

| Total Parking Expenses | Employee Reserved Spots | % total reserved spots | Total Tax Liability | Corporate Tax Rax | Parking Tax |
|---|---|---|---|---|---|
| 250000 | 10 | 0.1 | 25000 | 21% | $ 5,250.00 |

Part 2.2 - Tax Liability from Unreserved Employee Spots

| Total Parking Expenses | Open spots | Open spots used by emplo | Percentage of employee used | Total Tax Liability | Corporate Tax Rax | Parking Tax |
|---|---|---|---|---|---|---|
| 250000 | 80 | 50 | 0.625 | 125000 | 21% | $ 26,250.00 |

**Total Parking Tax**

$ 31,500.00

| Part 2.1 | Identifying Tax Liability | |
|---|---|---|
| | Step 1 | Find percentage of parking spaces that are reserved |
| | Step 2 | Multiply the percentage of parking spaces that are reserved by total pa |
| | Step 3 | Multiply the additional tax liability by corporate tax rate 21% |

| Part 2.2 | | |
|---|---|---|
| | Step 1 | Find percentage of unreserved parking spaces that are used by employe |
| | Step 2 | If the percentage of employee used unreserved spots is over 50% of all |
| | Step 3 | Multiply the percentage of employee used unresevered parking space |
| | Step 4 | Multiply the additional tax liability by corporate tax rate 21% |

## Options to Reduce Liability – Reduce Drive Alone Rate

### Option 1 – Reduce Drive Alone Rates

In the following scenario, the employer incentivizes employees to take transit, carpool, or telework. As a result, the number of employees who drive to work and park in open/unreserved spaces falls from 50 to 39.

Now, employees use 39 of the 80 unreserved parking spaces, or 48.75% of the unreserved spaces. Thus, the primary use test required by the IRS stipulates that the primary purpose of the parking facility is not employee parking and as such, no additional tax liability is found.

By incentivizing transit, carpooling, and telework, the employer has reduced its tax liability by $26,250

| Tax Liability with 60 employees parking (50 in the 80 unreserved spots) | Tax Liability with 49 employees parking (39 in the 80 unreserved spots) | Reduced Tax Burden |
|---|---|---|
| $31,500 | $5,250 | $26,250 |

# Scenario 2 – Options to Reduce Liability – Reduce Drive Alone Rate

| Inputs | |
|---|---|
| Total Parking Expenses | 250000 |
| Total Parking Spots | 100 |
| Spots Reserved for Employees | 10 |
| Number of Spots Reserved for Visitors/Non-employees | 10 |
| Open Spots | 80 |
| Open Spots Used by Employees | 39 |

| Part 1 | |
|---|---|
| Inputs | |
| Step 1 | Identify Parking Expenses |
| Step 2 | Identify Total Number of Parking Spots |
| Step 3 | Indetify Number of Spots Reserved for Employees |
| Step 4 | Identify Number of Spots Reserved for Visitors/Non-employees |
| Step 5 | Identify Number of Remaining Open Spots |
| Step 6 | Identify Maximum Number of remaining opening spots used by employ |

| Part 2.1 - Tax Liability from Reserved Spots | | | | | |
|---|---|---|---|---|---|
| Total Parking Expenses | Employee Reserved Spots | % total reserved spots | Total Tax Liability | Corporate Tax Rax | Parking Tax |
| 250000 | 10 | 0.1 | 25000 | 21% | $ 5,250.00 |

| Part 2.2 - Tax Liability from Unreserved Employee Spots | | | | | | |
|---|---|---|---|---|---|---|
| Total Parking Expenses | Open spots | Open spots used by empl | Percentage of employee used | Total Tax Liability | Corporate Tax Rax | Parking Tax |
| 250000 | 80 | 39 | 0.4875 | N/A | N/A | $ - |

| Total Parking Tax |
|---|
| $ 5,250.00 |

| Part 2.1 | Identifying Tax Liability | |
|---|---|---|
| | Step 1 | Find percentage of parking spaces that are reserved |
| | Step 2 | Multiply the percentage of parking spaces that are reserved by total pa |
| | Step 3 | Multiply the additional tax liability by corporate tax rate 21% |

| Part 2.2 | | |
|---|---|---|
| | Step 1 | Find percentage of unreserved parking spaces that are used by employ |
| | Step 2 | If the percentage of employee used unreserved spots is over 50% of all |
| | Step 3 | Multiply the percentage of employee used unreseverved parking space |
| | Step 4 | Multiply the additional tax liability by corporate tax rate 21% |

# Options to Reduce Liability – Reduce Drive Alone Rate

## Option 2 – Enter into a Formal Parking Benefit Arrangement

In the following scenario, the employer enters into a formal parking benefit arrangement

Note*** Employers are taxed on the direct expenses of parking provided while a transportation fringe benefit is provided based upon value of the parking spot. If there is no assigned value, an employer may make their best judgement and assign a value of the spot based upon the expenses tied to such spot.

| | Annual Cost of Parking Spot | Payroll Tax Savings | Savings Per Spot | # Parking Spots | Total Savings |
|---|---|---|---|---|---|
| Inputs | $2,500 | 7.65% | $191 | 60 | $11,475 |

| Tax Liability with 60 employees parking (50 in the 80 unreserved spots) w/o formal parking benefit | Tax Liability with 60 employees parking (39 in the 80 unreserved spots) | Reduced Tax Burden |
|---|---|---|
| $31,500 | $20,025 | $11,475 |

# Additional Information

- The guidance also adds that if the additional UBTI is not more than $1,000 then tax-exempt organizations do not need to file.
- **This document is interim** - The IRS announced that they intend to publish proposed regulations including guidance on how to determine non-deductible parking expenses. The proposed regulations will include guidance.
    - The timing of the proposed new regulations is not outlined
- **Use of reasonable methods** - Until the IRS releases proposed regulations, taxpayers are expected to use 'any reasonable method' – with some rules (to be discussed later) – to calculate the amount owed.
- **Increased tax liability is based on 'expense' not 'value'** – The IRS has stated that in determining the amount that cannot be deducted (or for tax-exempt organizations - added to UBTI) – entities must take into consideration the amount expended, not the value of benefit.
    - While this makes accounting easier for employers, it creates a great inequity between transit benefits and parking benefits. With transit the expense is the value, however, for parking the costs can easily be hidden and the capital expense never accounted for, creating in essence an inequity that favors employers providing free parking.
- **Expenses above the monthly cap –** The IRS has determined that if an employer's expenses exceed the monthly cap of $265/month for an employee, the amount expended over and above $265/month may continue to be deducted by employers, but only the amount above $265/month.

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# Initial Thoughts

- Inadvertently creates land-use guidance
    - The guidance rewards empty parking
- Use-test not a good or fair test to use for parking
- Guidance does not clearly discuss the situation in which employers lease office space and parking is bundled into the cost of office space. It does reference the ‘Rent or lease payments or a portion of a rent or lease payment if not broken out separately’
- Leaves much room for fraud and abuse
- Use could be # of employees who park – if employer does not want to take steps to survey employees then use AVO of 1.1 and establish formula that assumes 91% drive alone rate.

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# Request for Comments

The Treasury Department and the IRS request comments for future guidance to further clarify the treatment of QTFs under §§ 274 and 512. In particular, the Treasury Department and the IRS request comments about the definitions of “primary use” and “general public” and whether primary use should be used to determine the extent to which parking is made available to the general public. The Treasury Department and the IRS request comments on other methods for determining the use of the parking spots and the related expenses allocable to employee parking.

- **Public comments should be submitted by February 22, 2019** and should include a reference to Notice 2018-99. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2018-0038 in the search field on the regulations.gov homepage to find this notice and submit comments).

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# Why Join CoaST

## *Advance*

- CoaST is making an impact in City Hall, the State House, and Capitol Hill.

## Examples of What CoaST is doing:

- Providing technical assistance and advocating for Transit Benefit Ordinances in the most congested cities in the US
- Looking at Statewide policies that work, like the Washington State Commute Trip Reduction legislation, and advancing them across the nation.
- Connecting experts in policy fields to State, Federal and local leaders looking to advance smarter transportation policies.
- Advancing smarter transportation policies as a part of the upcoming transportation reauthorization

## Benefits of Joining

- Help shape what we are advancing and where we are advancing policies
- Be one of our expert voices that policy leaders call upon

- **Help Lead The Smarter Transportation Revolution and Shape The Future of Transportation by being involved in CoaST**

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# Best Practices & Information

- Transportation Fringe Benefits Ordinance Information & Active Campaigns
- Columbus Smart Cities Playbook
- Automated Vehicle Policy Toolkit

# TRANSPORTATION FRINGE BENEFITS ORDINANCE INFORMATION & ACTIVE CAMPAIGNS

Home / State & Local Policies / Transportation Fringe Benefits Ordinance Information...

## Background Info

- Background – Transit Benefits & Transit Benefit Ordinances
- Transit Benefit Ordinances Implementation
- Commuter Benefits Post Tax Reform – A dollar and cents look at why employers should offer transportation fringe benefits
- 2019 Transportation Fringe Benefit Caps

## Tools

- Best Practice – NJ Statewide Ordinance Legislation

# SUPPORT LEGISLATION TO END THE PENALTY ON NON-PROFITS FOR OFFERING TRANSPORTATION OPTIONS

Home / Federal Action Center / Support Legislation to End the...

The Tax Cuts and Jobs Act signed into law last December, more commonly referred to as tax reform, made several changes to the transportation fringe benefit (IRC Sec. 132(f)). The legislation maintained the parking and transit tax benefits for individuals. However, it also made the transportation fringe benefit more expensive for non-profits and universities that offer it. Under the new law, non-profits who offer transportation benefits (both parking & transit), are required to pay a 21% Unrelated Business Income Tax on the amounts deducted by employees on a pre-tax basis or provided by employers as a subsidy. The only way a tax-exempt organization can avoid this tax is requiring employees to pay for parking or transit on their own.

CoaST Presentation on UBTI and Impact of Tax Reform on Tax-Exempt Transportation Fringe Benefits

**CoaST 1-pager on Changes Made To Transportation Fringe Benefits**

**House Legislation:**

**HR 6037 (Conaway R-TX)**

**HR 6460 (Walker R-NC)**

**HR 6504 (Clyburn (D-SC)**

House Dear Colleague

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# FEDERAL POLICY ACTION CENTER

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# Why Join CoaST

## *Educate*

- CoaST is connecting the dots by providing information on programs, products, and technical assistance

### Examples of What CoaST is doing:

- **Transportation 101 Series:** 20-40-minute informational sessions and a variety of transportation topics. These sessions are designed to help create a broader, multimodal understanding of transportation and transportation policies. Examples include our 101 session CMAQ, the Planning process, Positive Train Control.

- **Spotlight Series –** Highlighting the latest in Smarter Transportation

### Benefits of Joining

- Access and input on Transportation 101 sessions and Spotlight sessions
- Technical advice from CoaST staff or other experts in the field

- **Help Lead The Smarter Transportation Revolution and Shape The Future of Transportation by being involved in CoaST**

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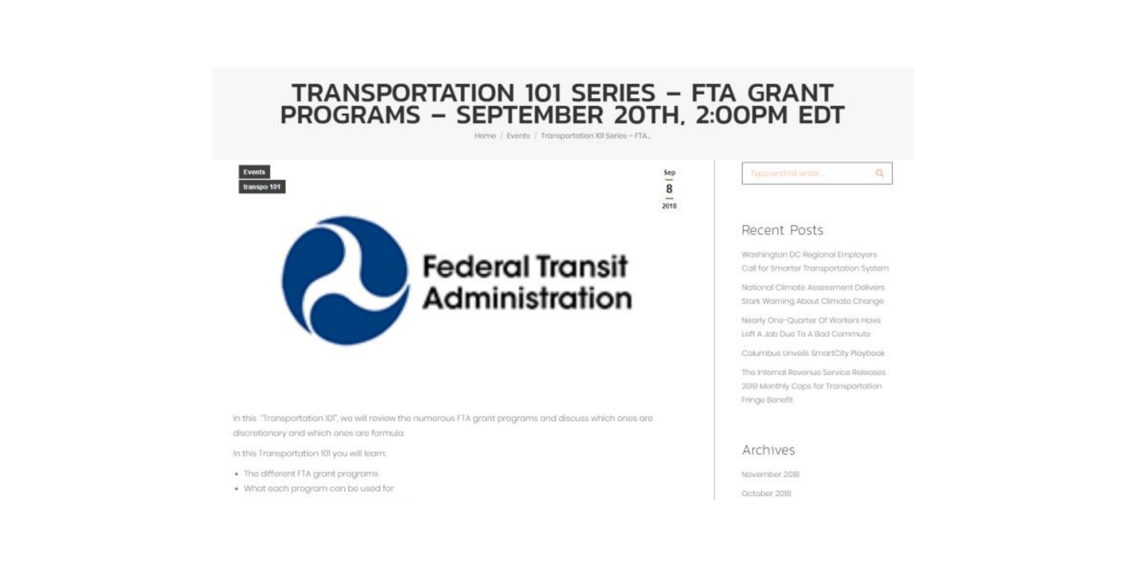
# TRANSPORTATION 101 SERIES – FTA GRANT PROGRAMS – SEPTEMBER 20TH, 2:00PM EDT

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Events
transpo 101

Sep 8 2018

Federal Transit Administration

In this "Transportation 101", we will review the numerous FTA grant programs and discuss which ones are discretionary and which ones are formula.

In this Transportation 101 you will learn:

- The different FTA grant programs
- What each program can be used for

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Archives

November 2018

October 2018


# AUTOMATED VEHICLE POLICY RESOURCES

Home / Resources / Automated Vehicle Policy Resources

Automated Vehicles 3.0

PREPARING FOR THE FUTURE OF TRANSPORTATION

Below is a series of links and presentations that provide background information of USDOT's AV policy

**Documents**

US DOT AV 3.0 – Preparing for the Future of Transportation: Automated Vehicles 3.0 (October 2018)

US DOT AV 2.0 – A vision for Safety

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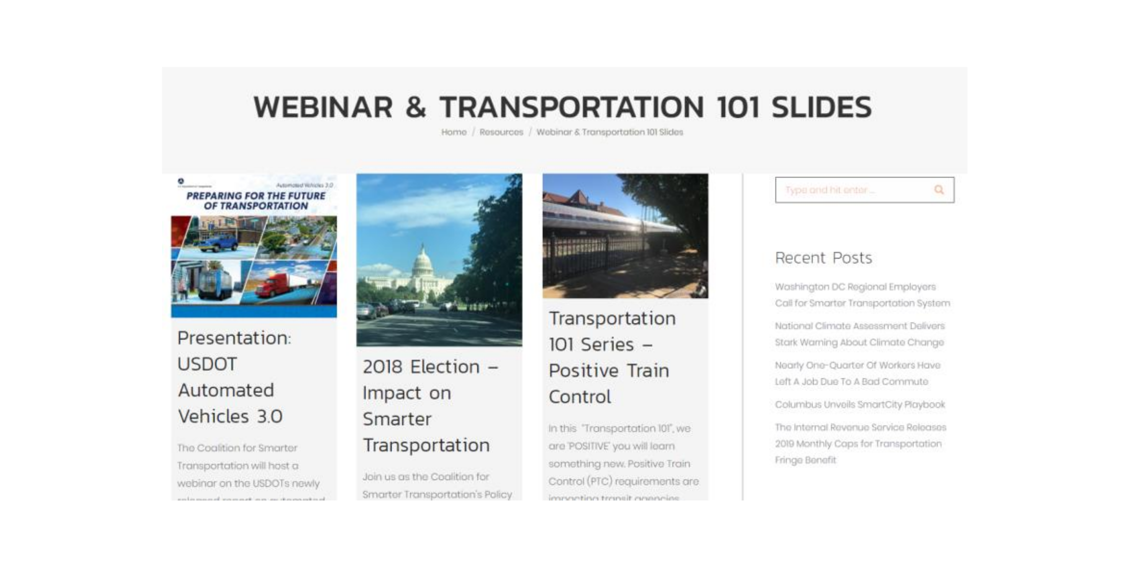
Archives

November 2018


# WEBINAR & TRANSPORTATION 101 SLIDES

Home / Resources / Webinar & Transportation 101 Slides

PREPARING FOR THE FUTURE OF TRANSPORTATION

Presentation: USDOT Automated Vehicles 3.0

The Coalition for Smarter Transportation will host a webinar on the USDOTs newly

2018 Election – Impact on Smarter Transportation

Join us as the Coalition for Smarter Transportation's Policy

Transportation 101 Series – Positive Train Control

In this "Transportation 101", we are 'POSITIVE' you will learn something new. Positive Train Control (PTC) requirements are

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# FEDERAL REGULATIONS

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FTA Regulations | FHWA Regulations | Performance Measures | Mobility on Demand | AV CV | Other

- FTA Urban Formula Program Circular
- FTA Guidance on Joint Development
- FTA ADA Guidance
- FTA Rural Formula Program Circular
- FTA Buy America Guidance
- FTA Title VI Guidance
- Private Investment Project Procedures Final Rule – June 2018
- FTA Safety Performance Measure Guidance

# Why Join CoaST

## *Communicate*

- CoaST is becoming the voice for smarter transportation

## Examples of What CoaST is doing:

- **Developing Speakers Bureau for press and others to connect with experts in a variety of topics**
- **Monthly Smarter Transportation Viewpoints (Starting in Jan 2019)– op-ed pieces from our Members discussing a variety of topics**
- **Spotlight Series –** Highlighting the latest in Smarter Transportation

## Benefits of Joining

- **Share your voice and make sure it's heard by policy leaders, the press, and stakeholders**
- **Help Lead The Smarter Transportation Revolution and Shape The Future of Transportation by being involved in CoaST**

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