American Hospital Association™
Advancing Health in America

**Washington, D.C. Office**
800 10th Street, N.W.
Two CityCenter, Suite 400
Washington, DC 20001-4956
(202) 638-1100

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The Honorable Richard Neal
Chairman, Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Neal:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, the American Hospital Association (AHA) writes in strong support of a provision of your legislation, H.R. 3300, the Economic Mobility Act of 2019. Section 401 of your bill would repeal the inclusion of qualified transportation, parking and other fringe benefits expenses in unrelated business taxation income (UBTI), an important step in relieving hospitals of a costly and administratively burdensome tax.

For nonprofit tax-exempt hospitals, the Tax Cuts and Jobs Act of 2017 (TCJA) made amounts paid or incurred for qualified transportation fringe benefits and parking facilities used in connection with qualified parking provided to employees taxable as unrelated business income. For for-profit taxable hospitals, the TCJA also denied a deduction for these same amounts. These changes to the law have been burdensome for both nonprofit and for-profit hospitals and health systems and should be reversed for both.

To ensure that their physicians, nurses and staff can get to work and care for patients around the clock in a safe and timely fashion, hospitals need to provide affordable parking and other transportation benefits. Furthermore, in a number of large cities, employers are required by law to offer tax-free public transportation benefits to their employees. Hospitals have no way to avoid the costs of this tax on qualified transportation fringe benefits, and for many nonprofit hospitals, particularly in urban areas, the outlay they are required to make is substantial. One large, urban hospital, for example, will pay $2 million in taxes on parking for 2019 alone. It has more than 24,000 employees and just built a new facility in 2017. While the hospital would like to grow to meet the expanding needs of its community, this tax discourages growth, slows job creation because of the increased workforce costs, and siphons funds from clinical services. A major Midwest hospital system expects to pay $1.6 million in taxes on parking per year. Another major medical center in the Northeast anticipates paying more than $1.9 million in parking taxes each year, and one in the Northwest estimates that the parking tax will be $1.3 million for the first year and will increase within a few years to $2 million.

Particularly frustrating is the Internal Revenue Service's (IRS) insistence that hospitals owe tax when they allow their employees to park for free in facilities that are otherwise free and open to the public. It is nonsensical to maintain that an employee has been provided with a fringe benefit when the employee has been given something that any member of the public can access at no cost. As long as the IRS takes this position, hospitals that offer free parking to all employees, patients and visitors will have to spend resources recording and analyzing the signage and the use of all the spaces throughout the week in order to determine whether they owe any tax.

In addition to the cost of the tax itself, hospitals are incurring substantial costs just to comply with the tax. Several hospitals report having to devote a half-time or full-time employee solely to gathering the records and performing the analysis necessary to comply. Even then, the tax is based on expenses that cannot be reliably determined. Where a hospital owns or leases a parking facility where employees are allowed to park, it must determine its total costs for maintenance, utilities, insurance and rent for the parking facility before determining the portion allocable to employee parking. The hospital may lease an office building that has an underground parking garage, but the lease may not state the rent for the offices and the parking garage separately. The hospital pays for trash removal, snow removal, leaf removal, cleaning, landscaping, security, and utilities for its entire campus. It does not pay separately for these services for its parking facilities. As the Tax Executives Institute wrote in its comments on IRS Notice 2018-99, which proposes a methodology for calculating expenses attributable to employee parking, the total parking expenses "are not practicably obtainable because they are not separately invoiced or otherwise accounted for separately from the employer's broader place-of-business property expenses."

Even if the IRS recognized that free parking in a facility that is open and free to the public is not a qualified transportation fringe benefit, the tax would still impose a substantial burden on hospitals. Hospitals are often among the largest employers in their communities, and it is inevitable that they will need to provide parking in facilities that are not free to the public and to subsidize public transportation costs for much of their workforce. The costs associated with these parking facilities can never be determined in an objective and consistent fashion.

We thank you for bringing this legislation before the Committee for mark-up and for much needed attention to this ill-advised tax. We join you in working to remove the burdens associated with it so that hospital resources can be devoted to caring for patients.

Sincerely,

/s/

Thomas P. Nickels
Executive Vice President