February 22, 2019

David J. Kautter

Acting Commissioner

Internal Revenue Service

1111 Constitution Avenue, NW

Washington, DC 20224

**RE: Notice 2018-99, Parking Expenses for Qualified Transportation Fringes Under § 274(a)(4) and § 512(a)(7) of the Internal Revenue Code**

Dear Acting Commissioner Kautter,

We write to offer our comments regarding Internal Revenue Service Notice 2018-99: “Parking Expenses for Qualified Transportation Fringes Under § 274(a)(4) and § 512(a)(7) of the Internal Revenue Code.”

Section 13304 of Public Law 115-97 eliminates employers’ ability to deduct the expenses of:

“[Q]ualified transportation fringes. . . [and] . . . any expense incurred for providing any transportation, or any payment or reimbursement, to an employee of the taxpayer in connection with travel between the employee’s residence and place of employment, except as necessary for ensuring the safety of the employee.”

However, the guidance outlined by Notice 2018-99, specifically regarding the “primary use test” in step 2 on page 9, creates a policy not authorized by this legislation. As written, we are concerned that that the guidance may produce unintended consequences by promoting the development of unused parking in order to avoid additional tax liability. Not only could this lead to harmful and inefficient land use policy by incentivizing the creation of empty parking spaces, it also has disparate impacts on small businesses that may have fewer overall available parking spots.

To that end, we recommend that the “primary use test” and the “any reasonable method” of counting cars be eliminated from final guidance. Similar to the “primary use test,” the recommendation to use “any reasonable method” to determine how many employees park should be replaced with a requirement that employers actually have to identify the number of people who park. If employers do not wish to make this calculation, they should have the option to assume that 86% (the national average) of their employees drive and then park at work.

While Notice 2018-99 is sufficient in detailing the parking expenses that employers should consider when calculating tax liability, we are concerned about the lack of guidance for situations where a business’ parking is bundled into a lease. Employers and property managers need guidance on how to calculate the cost of parking-only in the lease and equitably divide that cost between tenants.

Sincerely,

Earl Blumenauer

Member of Congress

Cc: Patrick M. Clinton, Office of Associate Chief Counsel (Income Tax & Accounting)