

Review of IRS Parking Guidance

Editorial note: CoaST staff has reviewed the proposed guidance numerous times; however, we will continue to review the document and confer with other experts to improve this summary and our findings. The summary below has been developed with confidence but should not be taken as tax advice or counsel.

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.

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).

Background

Section 13304 and 13703 of the 'Tax Cuts and Jobs Act of 2018' (public law 115-97) addressed how organizations dealt with employer provided transportation benefits. Under the legislation, for profit organizations were no longer allowed to deduct any commute related expenses for corporate tax purposes. This includes employer provided parking, transportation fringe benefits, and other benefits provided to employees for their commute. This includes amounts provided to employers under a pre-tax arrangement as well as parking that is given for free.

Tax exempt organizations are required to classify parking and transportation fringe benefit expenses as unrelated business taxable income (UBTI) which is subject to the corporate tax rate.

[Click here for more information on the impact of tax reform on transportation fringe benefits](#)

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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Findings by the IRS/Treasury:

- **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.
- **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.
- **Cash reimbursement** – The regulation references that an employer may provide qualified fringe benefits via cash-reimbursement. While this is true of parking, IRS Rev. Rul. 2014-32 prohibits cash reimbursement where readily available qualifying electronic fare media is available. At this point almost all (if not all) transit agencies are served by qualifying electronic fare media.
- **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.

Interim Guidance on Parking

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 – Employer Pays a Third-Party for Employee Parking Spots**
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.
- **Scenario B – Employer Owns or Leases All or a Portion of a Parking Facility**
 - The IRS states that the disallowance may be calculated using any reasonable method and lays out four steps that are considered 'reasonable'.
 - 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.
 - Further, a method that does not allocate expenses to reserved employee spots cannot be a reasonable method. Said another way, after January 1, 2019, all parking expenses must be assigned to employee parking spaces.
 - Employers who lease or own more than one parking facility in a geographic area may aggregate the number of spots in those facilities, however, they may not do that if the parking is in a different geographic location
 - 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
 - Rent or lease payments or a portion of a rent or lease payment if not broken out separately
- Capital depreciation can be written off

The interim guidance provides four steps for employers to take if they own or lease parking

Step 1: Calculating the disallowance for employee spots – This portion looks at assigning a value that cannot be written off for designated employee spots. If an employer does not have designate employee parking spaces, they advance to step 2.

- An employer must identify the number of spots in the parking facility or the employers' portion of such facility that are exclusively reserve for employees. Employee spots may be reserved through a variety of methods including but not limited to:
 - Specific signage
 - Separate facility
 - Segregated facility with limited access
- An employer must then determine the percentage of reserved employee spots in relation to total parking spots and multiply that percentage by the tax payers total parking expenses for the facility. The product is the amount of the that is not allowed to be deducted.
- The IRS is allowing employers the ability to remove/alter reserved employee spots as a way of reducing liability. These changes will be considered retroactive to January 1st, 2018 if made by March 31st, 2019.

When complete, move to step 2

Step 2: Determining the primary use of the remaining spots – This step determines what the purpose of unassigned parking spaces is for. After completing or skipping step 1, an employer must identify the purpose of the remaining spots.

- Here, a primary use test during normal business hours on a typical business day is used. Non-reserved parking spots that are available, but empty are considered public spots.
- If more than 50% of the non-reserved spots are available for the public, the expenses for non-reserved spots are considered deductible.

Step 3: Calculate the allowance for reserved nonemployee spots

If the calculation in step 2 determines that the primary use is for employee parking, then go to step 3. In this step, an employer can deduct its liability by identifying the portion of parking that is specifically designated for non-employees.

- An employer must identify the number of spots in the parking facility or the employers' portion of such facility that are exclusively reserved for non-employees. Non-employee spots may be reserved through a variety of methods including but not limited to:
 - Specific signage
 - Separate facility
 - Segregated facility with limited access
- An employer must then determine the percentage of reserved general use spots in relation to total parking spots and multiply that percentage by the employers total parking expenses for the facility. The product is the amount that may be deducted from additional liabilities

Step 4: Calculate the allowance for remaining spots

If the calculation in step 2 determines that the primary use is for employee parking, and there are spots not accounted for by step 1 or step 3, the primary use of the remaining spots must be identified.

- An employer must then determine the percentage of un-reserved general use spots in relation to total parking spots and multiply that percentage by the employers total parking expenses for the facility. The product is the amount that may be deducted from additional liabilities.

Additional information

The guidance includes a series of examples.

The guidance also adds that if the additional UBTI is not more than \$1,000 then tax-exempt organizations do not need to file.