

Transportation Fringe Benefits

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Background on Transportation Fringe Benefits Taxation

Prior to the adoption of the Tax Cuts and Jobs Act (“the Act”), fringe benefits provided by an employer to employees for their personal transportation, such as commuting to and from work, were generally excluded from the employees’ income and were deductible by the employer under Internal Revenue Code Sec. 132 (f) and Regulations §1.132-9(b). This applied to both de minimis transportation benefits (defined as any local transportation benefit you provide to an employee if it has so little value that accounting for it would be unreasonable or administratively impracticable) and qualified transportation benefits (QTFs), which comprised:

- a ride in a commuter highway vehicle between the employee's home and work place;
- a transit pass; and
- qualified parking.

New Rules for Transportation Fringe Benefits

Sections 13304 and 13703 of the Act amended IRC Sections 274 and 512, effective for amounts paid or incurred after December 31, 2017. As amended by the Act, Sec. 274(d)(4) generally disallows a deduction for expenses with respect to QTFs provided to employees, and Sec. 512(a)(7) generally provides that a tax-exempt organization’s unrelated business taxable income (UBTI) is increased by the amount of the QTF expense that is nondeductible under Sec. 274. However, the Act fails to address how to determine the amount of QTF that is nondeductible or treated as an increase in UBTI, presumably subject to a 21% excise tax to be calculated on Form 990-T. The Treasury Department intends to issue proposed regulations, which will include guidance on this required determination, although these regulations have not yet been issued.



On December 11, 2018, the IRS issued interim guidance for determining the nondeductible amount of parking fringe expenses and UBTI (Notice 2018-99) and provides relief from estimated tax penalty for certain tax-exempt organizations (Notice 2018-100). Taxpayers may rely on the guidance, or for now, use any reasonable method for determining the amount of nondeductible parking expenses.

Notice 2018-99

[Notice 2018-99](#) provides guidance for determining the amount of parking expenses for QTFs that is nondeductible under §274(a)(4) of the Internal Revenue Code and provides guidance to tax-exempt organizations to determine the corresponding UBTI increase pursuant to §512(a)(7) attributable to nondeductible parking expenses.

The method of determining the nondeductible amount of parking expenses or amount treated as an increase in UBTI as it relates to the expense of a providing a QTF, depends on whether the taxpayer (i) pays a third party to provide parking to its employees or (ii) the taxpayer owns or leases a parking facility:

Taxpayer Pays a Third Party for Employee Parking: If the taxpayer pays a third party an amount so that its employees may park at the third party's parking lot or garage, the §274(a)(4) disallowance generally is calculated as the taxpayer's total annual cost of employee parking paid to the third party. However, if the amount exceeds §132(f)(2) monthly limitation on exclusion of \$260 per employee for 2018, that excess amount is treated as compensation and wages to the employee.

Taxpayer Owns or Leases All or a Portion of a Parking Facility: If a taxpayer owns or leases all or a portion of one or more parking facilities where its employees park, the §274(a)(4) may be calculated using any reasonable method. Notice 2018-99 deems the following methods as reasonable:

- Percentage of parking spots reserved for employee use
- Primary use of remaining parking spots
- Percentage of parking spots reserved for non-employee use
- Reasonable allocation of remaining parking spots

Pursuant to Notice 2018-99, total parking expenses include, but are not limited to, repairs, maintenance, utility costs, insurance, property taxes, interest, snow and ice removal, leaf removal, trash removal, cleaning, landscape costs, parking lot attendant expenses, security, and rent or lease payments.

Notice 2018-100

[Notice 2018-100](#) provides for certain tax-exempt organizations relief from penalty for underpayment of estimated income taxes in 2018 for parking QTF benefits for those entities that were not previously required to file IRS Form 990-T. In addition, some tax-exempt organizations will not exceed the \$1,000 threshold requiring an organization to file IRS Form 990-T or pay the unrelated business income tax.

Special Rule

The guidance provides a special rule which allows employers until March 21, 2019, to change their parking arrangements to reduce the number of parking spots they reserve for employees. Thus, many tax-exempt organizations may be able to reduce their UBTI. Such a change will apply retroactively to January 1, 2018.

Future Regulations

Notice 2018-99 indicates that the Department of the Treasury and the IRS intend to publish proposed regulations under §274 and §512. The proposed regulations will provide guidance on the determination of nondeductible parking expenses and other expenses for QTFs and the calculation of the increased UBTI that is attributable to QTFs.

