

IRS Guidance on Parking Fringe Benefits

PG Alert

January 3, 2019

Rochelle Hodes (Crowe LLP, Washington, DC)
Janice M. Smith (Crowe LLP, Washington, DC)

This Alert is brought to you by AHLA's Tax and Finance Practice Group.

The Tax Cuts and Jobs Act (TCJA) eliminated the deduction for qualified transportation fringe benefits (including employee parking), which are excludable from an employee's wages. Additionally, TCJA requires tax-exempt organizations—including hospitals and health systems—to treat qualified transportation fringe benefits as unrelated business taxable income (UBTI). On December 10, the Internal Revenue Service (IRS) issued [Notice 2018-99](#), which provides guidance on how to compute the amount of the expenses for employee parking fringe benefits that is nondeductible under Section 274 and the amount treated as an increase in UBTI under Section 512.

Employee Parking

The IRS announced plans to release regulations regarding the nondeductible portion of qualified transportation fringe benefit expenses and the calculation of increased UBTI attributable to

qualified transportation fringe benefits. Notice 2018-99 states that, until the regulations are released, employers should use any reasonable method consistent with guidance provided in the notice to compute the amount of employee parking expense that is nondeductible to an employer or that increases UBTI. The notice provides the following guidance for determining nondeductible expenses. The rules for determining the increase in UBTI are similar.

- If a taxpayer pays a third party for employee parking spots:
 - The nondeductible amount paid for employee parking generally is equal to the amount paid to the third party. However, if the amount paid per employee is greater than the monthly limitation for exclusion from an employee's income under Section 132(f) (\$260 for 2018), the excess paid per employee must be treated as taxable compensation to the employee. The employer can deduct any amounts included in taxable employee compensation.
- If a taxpayer owns or leases all or a portion of a parking facility:
 - The taxpayer may use any reasonable method to determine nondeductible expenses. The method for computing the nondeductible portion of the expense for employee parking is deemed reasonable if computed under a four-step process (based on expense, regardless of value):
 1. Multiply the percentage of spots that are reserved for employees (as designated by signage or limited access) by the total parking expenses to determine the amount disallowed for reserved employee parking. Taxpayers with reserved employee spots may retroactively change their parking arrangements through March 31, 2019, in order to reduce the number of reserved employee spots as of January 1, 2018.
 2. Determine the primary use (greater than 50% use) of the remaining spots. Primary use is tested using a reasonable method during normal business hours on a normal business day. If the primary use of the remaining spots is for use by the general public (including customers, clients, visitors, patients, students, and congregants), the entire amount of remaining parking expenses is fully deductible.

3. If the primary use of reserved spots is not to provide public or employee parking, the employer may calculate and treat as deductible any expenses attributable to reserved nonemployee use.
4. Any parking costs remaining after the first three steps should be allocated between deductible and nondeductible expenses based on a reasonable application of the primary use test. For example, if 80% of the remaining spots are determined to be used by employees on a typical day, then 80% of the remaining parking costs would be nondeductible.
 - A parking facility includes indoor and outdoor garages or structures as well as parking lots that are on or near the business premises of the employer or from which an employee may commute to work.

In a typical hospital scenario, the guidance applies as follows. Assume that a tax-exempt hospital owns a surface parking lot adjacent to its building. The hospital incurs \$100,000 of total parking expenses. The parking lot has 500 spots that are used by patients, visitors, and employees, with 50 spots reserved for management. Approximately 100 employees park in the lot in nonreserved spots during normal operating hours.

Step one is to consider the spots reserved specifically for employees. Because 10% of the spots (50 of 500) are reserved for employees, \$10,000 (10% of \$100,000) is the increase in UBTI.

Step two is to consider the primary use of the remaining 450 spots. Because approximately 78% of the spots (350 of 450) are open to the public (patients and visitors), the “primary use” test is met, and there is no additional increase in UBTI.

Therefore, the hospital would include a \$10,000 increase in UBTI on its Form 990-T. (See Notice 2018-99, Example 10.) According to Notice 2018-67, an increase in UBTI under Section 512(a)(7) does not constitute a separate trade or business under Section 512(a)(6) siloing rules. So, if a tax-exempt hospital or health system has only one unrelated trade or business, and the unrelated trade or business operates at a loss, the loss can be used to reduce the increase to UBTI under Section 512(a)(7). Parking expenses subject to disallowance include, but are not

limited to, repairs, maintenance, utility costs, insurance, property taxes, interest, snow and ice removal, leaf removal, trash removal, cleaning, landscaping, parking lot attendant expenses (if not broken out separately), security, and rent or lease payments (or a portion of a rent or lease payment). However, depreciation on a parking structure owned by a taxpayer and used for parking by the taxpayer's employees is not an expense subject to disallowance. An expense paid for items related to property next to the parking facility (such as landscaping and lighting) also is not subject to disallowance.

Amounts that increase UBTI under Section 512(a)(7) are included in applying the \$1,000 threshold for filing Form 990-T.

As a planning opportunity, hospitals and health systems may want to take a closer look at employee-only parking arrangements (parking areas designated by signage or gated parking lots) because taxpayers with reserved employee spots may retroactively change their parking arrangements through March 31, 2019, in order to reduce the number of reserved employee spots as of January 1, 2018.

Estimated Tax Relief for Tax-exempt Organizations

In [Notice 2018-100](#), the IRS provides that tax-exempt organizations that provide qualified transportation fringe benefits and that were not required to file a Form 990-T for the tax year before their first year ending after December 31, 2017, will not be subject to estimated tax penalties related to inclusion of the qualified transportation fringe benefits in UBTI if they timely file the Form 990-T and timely pay the amount due. This relief, however, may be of limited value to tax-exempt hospitals and health systems, a majority of which already regularly file Form 990-T.

Tax-exempt organizations still are hoping for a full repeal of tax on fringe benefits.