

NEWS ALERT**TAX-EXEMPT ORGANIZATIONS GROUP****IRS Provides Guidance on Calculation of Unrelated Business Taxable Income for Nondeductible Employee Parking Expenses**

By Julia P. Boisvert | April 29, 2019

On December 10, 2018, the IRS issued Notice 2018-99 (the “Notice”) which is designed to serve as interim guidance on determining unrelated business taxable income (“UBTI”) related to nondeductible qualified parking offered by employers to employees as a transportation fringe benefit. This guidance is effective pending the issuance of proposed regulations related to the enactment of section 512(a)(7) of the Internal Revenue Code (the “Code”) created as part of the Tax Cuts and Jobs Act (the “Act”).

All tax-exempt organizations that have parking arrangements with employees should be aware of the Notice and should consider how it may affect the need to report UBTI for Form 990-T.

Qualified Transportation Fringe Benefits in General

Transportation fringe benefits offered by employers to employees are generally defined to include transportation in a commuter highway vehicle between the employee’s home and work, transit passes, and qualified parking. Qualified parking is parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work.

Under section 274(a)(4) of the Code, a taxable employer cannot take a deduction for providing an employee qualified transportation fringe benefits unless the expenses are treated as taxable income to the employees or are necessary for ensuring the safety of employees. Under section 512(a)(7) of the Code, UBTI is increased for a tax-exempt employer by the amounts for which a deduction would have been disallowed had the employer been taxable and paid nondeductible qualified transportation fringe benefits.

Since the Act, there have been questions as to how a tax-exempt organization is to calculate nondeductible employee parking expenses. The Notice provides some clarification as to this point.

Determining UBTI for Qualified Parking

Pursuant to the Notice, the determination of the disallowed amount for employee parking expenses varies depending on whether (1) the employer pays a third party for employee parking, or (2) the employer owns or leases the parking facility.

Third Party Parking Facilities

Where an employer pays a third party parking facility, the amount by which UBTI is increased is the total annual cost for employee parking paid by the employer to the third party. Because there is a cap on the monthly exclusion limit of qualified parking for employees (currently at \$265), any amount paid by the employer in excess of this limit is treated as additional compensation to the employees and is not considered part of the employer’s UBTI.

Employer Owned or Leased Parking Facilities

Where an employer owns or leases a parking facility, the IRS has stated that any reasonable method may be used in calculating the expenses allocable to employee parking to determine the amount by which UBTI is increased for nondeductible qualified parking. Using the value for qualified parking excluded by employees under section 132 of the Code, however, is not considered a reasonable method for considering the expenses allocable to employee parking. 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. Parking expenses do not include depreciation.

The Notice provides a four-step method safe harbor which the IRS has determined is a reasonable method of calculating expenses for employer owned or leased parking facilities:

- Step 1: Calculate the disallowance for reserved employee parking spots
 - Determine the percentage of the spots in the parking facility that are exclusively reserved for the employer's employees.
 - Multiply this percentage by the total parking expenses.
 - This amount is included in UBTI.
- Step 2: Determine the primary use of the remaining parking spots
 - If the remaining parking spots are used "primarily" for the general public, those spaces are excluded from the calculation of UBTI. Primarily means more than 50% of the actual or estimated usage during normal business hours on a typical day.
 - If the remaining spots are not used primarily for the general public, proceed to step 3.
- Step 3: Calculate the allowance for reserved non-employee spots
 - Determine the percentage of the remaining spots in the parking facility (after adjusting for reserved employee spots) that are exclusively reserved for non-employee use.
 - Multiply this percentage by the remaining total parking expenses.
 - This amount is not included in UBTI.
- Step 4: Determine the remaining use and allocable expenses
 - If there are any remaining parking spots after steps 1-3, reasonably determine the employee use of these spots during normal business hours and the allocable expenses. The determination of employee use may be based on actual or estimated usage such as the number of spots, number of employees, hours of use, or other measures.
 - This amount is included in UBTI.

For purposes of this calculation, if an employer owns or leases more than one parking facility, the total number of spots in those facilities may only be aggregated if the facilities are in the same geographic location.

Conclusion

Tax-exempt organizations are required to file a Form 990-T if their total gross UBTI is \$1,000 or more. Therefore, with the Act and the Notice's guidance as to the calculation of the disallowance for qualified parking expenses, many more tax-exempt organizations will likely need to file Form 990-Ts than had done so in the past. Any tax-exempt organization with employee parking arrangements should evaluate these arrangements in light of the Notice and should consider speaking with its qualified tax professional about UBTI.

If you have any questions regarding this bulletin, please contact:

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