

# Interim IRS Guidance Addressing Taxation Impact of Transportation and Parking Fringe Benefits Creates Planning Opportunities for Employers

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Monday, February 4, 2019

In [Notice 2018-99](#), the Internal Revenue Service sets forth interim guidance for taxpayers to determine parking expenses for qualified transportation fringes (QTFs) that are nondeductible and for tax-exempt organizations to determine the increase in unrelated business taxable income (UBTI) attributable to nondeductible parking expenses. The Tax Cuts and Jobs Act (Act) amended these tax provisions effective for amounts paid or incurred after December 31, 2017.

## Background

As you may already know, the Act changed the tax law to disallow a deduction for expenses regarding QTFs, which are pre-tax benefits, provided to employees for transportation in commuter highway vehicles, transit passes, and qualified parking. Because tax-exempt organizations do not take deductions for QTFs, the Act also increases a tax-exempt employer's UBTI by the QTF expense that is not deductible – in an effort to put taxable and tax-exempt employers on equal footing. The Notice explains how employers can determine the portion of the QTF expense that is not deductible or is treated as an increase in UBTI.

# Determination of Nondeductible Parking Expense or Increase in UBTI

The method used to determine the nondeductible amount depends on whether the employer pays a third party to provide the parking facility, or leases or owns the parking facility.

**Pays a Third Party** – If the employer pays a third party to provide parking for the employer’s employees, the amount disallowed as a deduction under Section 274 of the tax code generally is the employer’s total annual cost of employee parking paid to the third party.

- Note that if this amount exceeds the monthly limitations to provide the benefit to employees on a tax-free basis (\$260 per month in 2018, \$265 in 2019); the excess amount is treated as compensation and wages to the recipient employee.
- The amount treated as compensation wages is not subject to the disallowance deduction.

For example, if an employer pays a third party \$300 per month for each parking spot it uses for employees, the annual amount disallowed normally would be \$300 x 12 months for each spot. But because this exceeds the monthly limitation by \$35 (the excess of \$300 over \$265 for 2019), the \$35 must be included in the employee’s taxable wages and is deductible by the employer. The amount disallowed to the employer under Section 274 is limited to \$265 per month.

**Owns or Leases Parking Facility** – If the employer owns or leases the parking facility where its employees park, the disallowance may be calculated by using *any reasonable method*. The Notice then describes a four-step process the IRS deems is a reasonable method.

## Step 1 - Calculate disallowance for reserved spots.

The employer must identify the number of spots reserved for employees and determine the percentage of reserved spots as compared to total spots. The employer then multiplies this percentage by the employer’s parking expense for the facility – this is the disallowed deduction amount.

- **Employer Note: Until March 31, 2019, employers that have reserved employee spots may decrease or eliminate them and treat them as not reserved retroactively to January 1, 2018.** This creates a significant planning opportunity to change signage or access to parking spaces to mitigate the impact of these tax law changes.
- **Planning Opportunity Illustration:** Assume a tax-exempt organization leases space in a parking garage for \$150,000 per year (\$250 per month per space) and designates 10 of the 50 spaces as “Employee Parking Only.” This organization will be subject to UBIT on an amount equal to \$30,000, which is calculated by multiplying \$150,000 by the ratio of 10 reserved employee spaces to 50 total spaces. If the tax-exempt organization simply removes the sign to eliminate

the reserved employee parking, it may avoid UBIT if, under Step 2 below, the primary use of the parking garage is to provide parking to the general public. The same adjustment by a for-profit employer may make the nondeductible expense deductible.

## **Step 2 - Determine the primary use of remaining spots.**

If the primary use of the remaining spots is for use by the general public, the remaining expenses may be deducted. “Primary use” means greater than 50% of the estimated or actual usage of the parking. The general public includes, but is not limited to, customers, clients, visitors, patients, and students.

## **Step 3 - Calculate allowance for reserved nonemployee spots.**

If the primary use of remaining spots is not to provide parking to the general public, the employer may identify the number of spots reserved for nonemployees (e.g., visitors, customers, partners, sole proprietors). These spots might be reserved with signage (“Customer Parking Only”), barriers, or a separate entrance. An employer then may determine the ratio of reserved nonemployee spots in relation to total parking spots and multiply this percentage by the total remaining parking expenses to determine the amount that is *not* disallowed.

## **Step 4 - Determine the remaining use and allocable expenses.**

The Notice provides a final step to allocate remaining parking expenses to employee or nonemployee use.

***Employer Takeaway*** – If an employer provides parking to its employees, it should review the information in the Notice carefully. If practical, it may want to eliminate reserved spots for employees and make over 50% of the spots available to the general public.

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**Source URL:** <https://www.natlawreview.com/article/interim-irs-guidance-addressing-taxation-impact-transportation-and-parking-fringe>