

Parking: The New Tax on the Block

If your organization provides parking, you need to know about this new tax.

By Sharon C. Lincoln

*If you drive a car, I'll tax the street,
If you try to sit, I'll tax your seat.
If you get too cold, I'll tax the heat,
If you take a walk, I'll tax your feet.
... 'Cause I'm the taxman.
Yeah, I'm the taxman.*

—“Taxman” written by George Harrison

You may want to add “parking lots” to the list of items subject to the reach of the taxman. Among the many revenue-raising measures imposed on the tax-exempt sector in the Tax Cuts and Jobs Act (TCJA), Congress imposed a tax on organizations that provide certain employee benefits, including employer-provided parking.

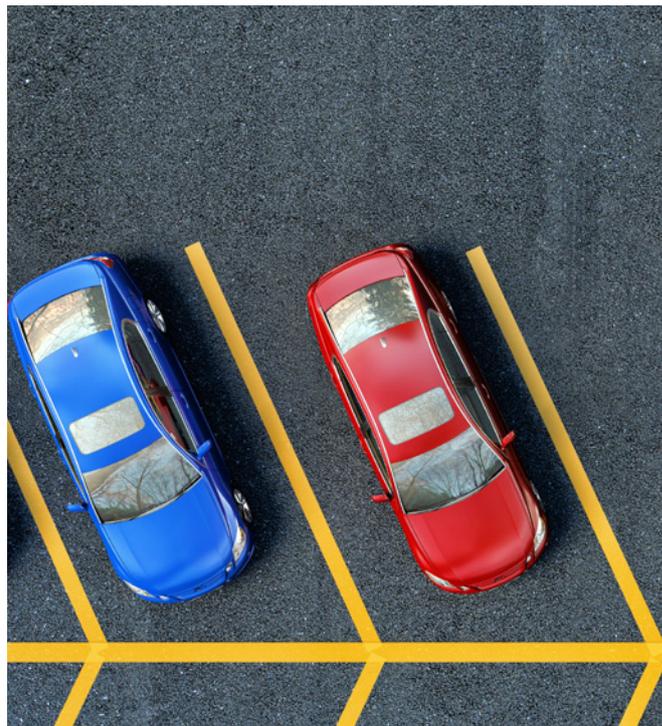
In a creative twist, certain expenses paid or incurred by tax-exempt organizations are now taxed under the unrelated business income tax (UBIT) rules.

A survey of over 700 nonprofits by the Urban Institute (urban.org) found that the new tax on employer-provided parking will divert an average of \$12,000 from each nonprofit’s mission per year. In addition, many religious organizations have expressed dismay over the new parking tax, due to its cost and the fact that religious organizations aren’t generally required to file Forms 990.

With the potential for such widespread impact, the Internal Revenue Service issued guidance shortly before the end of last year in the form of IRS Notice 2018-99. The Notice provides helpful instructions regarding the scope and applicability of this tax.

Overview of the New Tax

Section 512(a)(7), which was added to the tax code as part of the TCJA, says that a tax-exempt organization’s unrelated business taxable income shall be increased by the amount the organization pays or incurs for any “transportation fringe (as defined in section 132(f)), any parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C)), or any on-premises athletic facility (as defined in section 132(j)(4)(B))” (emphasis added).



The tax on expenses related to an on-premises athletic facility doesn’t apply so long as the facility is open to all employees. Also, the tax doesn’t apply to parking provided in connection with an unrelated trade or business or to parking that’s made available to the public. So, the main impact of section 512(a)(7) is in connection with employer-provided parking for employees engaged in the conduct of the organization’s tax-exempt mission.

Note: If a tax-exempt organization’s gross unrelated business taxable income – including expenses calculated under section 512(a)(7) – is less than \$1,000, it doesn’t need to file IRS Form 990-T and no tax is due.

Impact on Employees

Employees can still exclude qualified transportation fringes (QTFs) from their income – up to the annual limit, which for 2018 was \$260 per month. But the fact that such benefits result in tax liability for the nonprofit organization may cause such organizations to re-examine their QTF benefits. (That said, organizations located in municipalities such as New York City, Washington, D.C., and San Francisco, where employers are required to offer certain QTFs, don’t have this choice.)

Also, if the fair market value of the QTF exceeds the limit in section 132(f) (\$260 in 2018), then any excess must be

“This tax liability may cause nonprofits to re-examine their employee benefits.”

treated as compensation to the employee and isn't taxable to the nonprofit organization.

It's worth noting that while the *fair market value* of the parking benefit is used to determine whether the QTF exceeds the section 132(f) limit, the tax on the organization is based on the *expenses* incurred in connection with providing that parking benefit.

IRS Guidance

Notice 2018-99 provides interim answers to several questions left open by the language of the new law:

Q: What is a "parking facility"?

A: A "parking facility" includes garages, parking lots, and other areas where employees may park on or near the organization's premises or near a location from which the employee commutes to work. The facility can be owned by the employer, an affiliate of the employer, or by a third party, so long as employees park in some or all of the facility.

Q: Can the *value* of employee parking be used to determine expenses allocable to employee parking?

A: No. The tax must be calculated based on the "total parking expenses" incurred in connection with providing the parking. "Total parking expenses" include (but aren't limited to) repairs, maintenance, utility costs, insurance, property taxes, interest, snow and ice removal, leaf removal, trash removal, cleaning, landscaping, parking lot attendant expenses, security, and rent or lease payments.

“The new tax will divert an average of \$12,000 from each nonprofit's mission.”

Q: Are parking facilities that are free to customers or the general public as well as to employees subject to this provision?

A: If the "primary use" of the parking facility is to provide parking to the public, then the total parking expenses are exempt from the tax (except for expenses related to any spots specifically reserved for employees). "Primary use" means greater than 50% of the parking spots that aren't reserved for employees.

Q: How should the organization allocate costs related to dual-use facilities (mixed customers, general public, and employee use)?

A: If the primary use is by employees, then the organization will need to allocate the costs related to employee use of the parking facility using "any reasonable method." A safe harbor method for making this determination is outlined in the Notice (described on page 14).

Q: Can parking expenses be aggregated among multiple parking facilities?

A: Yes, to a limited extent. Parking expenses related to parking facilities located in a single geographic location

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may be aggregated; those that are in different geographic locations (e.g., different cities) may not be aggregated.

Safe Harbor in Four Steps

The Notice provides a safe harbor in the form of a four-step method an organization can use to calculate the expenses related to employees' parking-facility use:

1. Identify the percentage of parking spots reserved for employees ("reserved employee spots") in relation to total parking spots. Multiply that percentage by the organization's total parking expenses for the parking facility. The resulting product is the amount of the total parking expenses related to reserved employee spots that is subject to the tax.

For taxable years beginning on or after January 1, 2019, any method that fails to allocate expenses to reserved employee spots isn't a "reasonable method" under the Notice.

2. Determine the primary use of the remaining spots (the "primary use test"). The purpose is to decide whether the primary use (defined as "greater than 50% of actual or estimated usage") of the parking spots is to provide parking to the general public. You should conduct this test "during normal business hours on a typical business day" or, if usage varies "significantly between days of the week or times of the year" then any reasonable method may be used to determine the average usage.

“It's unclear how these new rules add simplicity and fairness.”

Make Peace with the Taxman

Find answers to more of your tax and legal questions at NonprofitWorld.org:

Are Your Activities Safe from UBIT? (Vol. 16, No. 5)

IRS Audits: What Could They Mean for Unrelated Business Income? (Vol. 35, No. 3)

What You Need to Know when You Can't Pay Your Taxes (Vol. 36, No. 4)

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Where to Find Free Legal Assistance (Vol. 26, No. 2)

New Excise Tax: How Will It Impact Nonprofits? (Vol. 37, No. 2)

If over 50% of the spots are for the general public, then the tax doesn't apply to the expenses related to the remaining spots. For the purpose of the Notice, the "general public" includes (but is not limited to) the following:

- customers
- clients
- visitors
- vendors
- patients of a healthcare facility
- students of an educational institution
- congregants of a religious organization.

The general public does *not* include employees or independent contractors.

3. Calculate the allowance for reserved nonemployee spots. If the primary use of the remaining parking spots isn't to provide parking to the general public, identify the percentage of spots exclusively reserved for nonemployees, such as visitors and customers ("reserved nonemployee spots") in relation to the remaining total spots. Multiply that percentage by the organization's remaining total parking expenses. The resulting product is *not taxable* to the organization.

4. Determine the remaining use and allocable expenses. If there are any remaining parking expenses after completing the above steps, use any reasonable method to determine employee use of the remaining parking spots and the related expenses allocable to these employee spots.

Perspective on the New Tax

The premise of this new excise tax is that there should be parity between commercial enterprises and tax-exempt organizations. The Notice quotes the House Committee's report, which states, "The Committee believes that aligning the tax treatment between for-profit and tax-exempt employers with respect to nontaxable transportation and gym benefits provided to employees will make the tax system simpler and fairer for all businesses" (H.R. Rep. No. 115-409).

However, it's unclear how these new rules add simplicity and fairness to the commercial sector. It is clear that they add great complexity and an excess burden to the tax-exempt sector. Meanwhile, commercial enterprises saw their tax rate plummet to 21% due to the TCJA, which for many appears to have been benefit enough. 

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