

# Nonprofit Alert: IRS Releases Guidance on Nonprofit Transportation Benefits and Parking Tax

January 15, 2019

The 2017 "Tax Cut and Jobs Act" generally requires tax-exempt organizations to pay a new tax on the amount of certain transportation benefits they provide to their employees and the cost of any parking facility used in connection with such benefits.

On December 10, 2018, the IRS released IRS Notice 2018-99 and Notice 2018-100, which provide much needed guidance on this new tax and temporary relief to some tax-exempt organizations facing unexpected tax bills. *Tax-exempt organizations that lease or own parking facilities may reduce the impact of this tax by removing signs or barriers reserving parking spots for employees before March 31, 2019.*

## **Background**

Prior to the "Tax Cut and Jobs Act" (the **Act**), for-profit entities could generally reduce their federal income taxes by deducting the expense of providing certain "qualified transportation fringes" (**QTFs**) to their employees. In addition, QTFs are excluded from the employees' taxable income. QTFs include, for example, transit passes, an arrangement to reimburse an employee's parking expenses, or parking provided by the employer. Due to the Act, for-profit entities can no longer deduct the expense of providing these QTFs.

The Act applied this tax increase to tax-exempt organizations by treating an organization's cost of providing QTFs to employees as an item of unrelated business taxable income (**UBTI**). Accordingly, even though the cost of providing a QTF does not generate income, tax-exempt organizations must pay a tax on the expense of providing these benefits. QTFs continue to be excluded from employees' taxable income.

## ***Does this apply to my organization even if no one pays for parking?***

Yes, the increase in UBTI (i.e., the tax) applies to expenses paid for QTFs that a for-profit could not deduct. These include, for example: (i) transit passes; (ii) parking allowances (whether through a cash reimbursement program or a compensation reduction agreement); (iii) the expense of paying a third party for parking spots for employees; or (iv) maintaining a leased or owned parking facility.

## ***When is this effective?***



This new tax applies to amounts a tax-exempt organization paid or incurred for QTFs after December 31, 2017.

***What if my organization has less than \$1,000 in UBTI and expenses for QTFs?***

All tax-exempt organizations may take a \$1,000 deduction from their UBTI. A tax-exempt organization with UBTI of \$1,000 or more must file a Form 990-T. In addition, Minnesota organizations that have to file a federal Form 990-T must file a Minnesota UBTI tax return. If a tax-exempt organization's total UBTI (including amounts spent on QTFs and received from an unrelated trade or business) is less than \$1,000, the organization does not need to file a Form 990-T.

***We pay a third party for employee parking. How do we determine our parking UBTI?***

If a tax-exempt organization pays a third party to allow the organization's employees to park at the third party's lot or garage, the annual amount of these payments is generally added to UBTI. However, if the payments exceed a certain monthly threshold (currently \$260 per employee), the organization must treat the excess as taxable wages and it is not added to UBTI.

***We own or lease a parking facility. How do we determine our parking UBTI?***

Until the IRS issues further guidance, if an organization owns or leases all or part of a parking facility where its employees park, it may use "any reasonable method" to determine the amount of parking expenses added to UBTI. IRS Notice 2018-99 lays out a method that the IRS considers reasonable. Using the value or cost to the employee of employee parking (as opposed to the employer's expense to provide it) is not reasonable. In addition, using a method that fails to allocate expenses to spots specifically reserved for employees is not reasonable.

***What does the IRS consider to be a "reasonable method"?***

- ***Reserved employee spots are subject to the tax.*** To comply with the IRS' reasonable method, a tax-exempt employer that owns or leases a parking facility must identify the number of spots reserved for employees (by signs, access barriers, etc.). The employer must then determine the proportion of its total parking expenses spent on these reserved spots. That amount is added to UBTI.
  
- ***Spots primarily for the use of the general public are not subject to the tax.*** If the "primary use" of the remaining spots in an organization's leased or owned parking facility is to provide parking for the general public (including customers, visitors, vendors, patients of a health care facility, students of an educational institution, and congregants of a religious organization), the proportion of the organization's



parking expenses attributable to those spots is not added to UBTI. "Primary use" means greater than 50% of the actual or estimated usage of the parking spots during business hours on a typical day.

- **Reserved nonemployee spots are not subject to the tax.** Spots reserved for persons other than employees are also not subject to the tax. Sole proprietors and independent contractors are not employees.
- **Allocate expenses to any remaining spots.** If the organization has spots that do not fit in the three categories mentioned above—(i) reserved employee spots; (ii) spots primarily used to provide parking to the general public; or (iii) reserved nonemployee spots—the organization must reasonably determine employee usage of those spots and the expenses allocable to them. Those expenses are subject to the tax.

#### ***How can we reduce the burden of this tax?***

Organizations desiring to reduce the burden of the parking tax may reduce or eliminate their reserved employee spots before **MARCH 31, 2019** (by changing signage, etc.). The IRS will view these changes as retroactive to January 1, 2018.

#### ***This tax is already in effect. What if we haven't been making estimated tax payments?***

If a tax-exempt organization must pay the IRS some amount because of the new tax on QTFs, the organization will generally have to make quarterly estimated tax payments or face a penalty. However, the IRS will waive the penalty for certain tax-exempt organizations to the extent that they failed to make required estimated payments due before December 17, 2018 because of the new tax. To qualify for the waiver, the organization *must*:

- not have been required to file a Form 990-T for taxable year immediately preceding the organization's first taxable year ending after December 31, 2017;
- timely file its Form 990-T for the taxable year in which the relief is granted and pay the amount due; and
- write "Notice 2018-100" on the top of that Form 990-T.



For more information, contact either Gray Plant Mooty's Nonprofit and Tax-Exempt Organizations or Employee Benefits & Executive Compensation team.

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