



New guidance: Calculation of non-deductible parking expenses and deemed unrelated business income

December 17, 2018

The Internal Revenue Service recently issued Notice 2018-99 to address changes in the Internal Revenue Code included in the Tax Cuts and Jobs Act (TCJA). Notice 2018-99 provides interim guidance on the calculation of expenses incurred by employers to provide their employees with parking as a qualified transportation fringe benefit (QTF). As a result, this Notice impacts the calculation of non-deductible expenses for taxable employers and the calculation of unrelated business taxable income (UBTI) for tax-exempt employers.

Background

The TCJA amended Section 274 of the Code to disallow a deduction to taxable employers for expenses incurred to provide parking as a QTF to their employees. In tandem with this, the TJCA also amended Section 512 of the Code to require tax-exempt employers that provide parking as a QTF to their employees to recognize UBTI in an amount equal to their parking expenses which would otherwise qualify as non-deductible parking expenses under the amended version of Section 274 of the Code.

The TJCA, however, failed to specify how employers should calculate their non-deductible parking expenses. Notice 2018-99 provides a safe harbor method, both under circumstances when the employer pays a third party for parking spaces and when parking is provided on employer-owned or employer-leased parking facilities.

Notice 2018-99 calculation method

As expected, if an employer pays a third party for parking spaces, Notice 2018-99 provides that the non-deductible parking expense under Section 274 is equal to the annual cost of the employee parking paid to the third party, capped at \$260 per month per employee.

The calculation for employer-owned or employer-leased parking facilities is more complex and involves a multi-step process.

- First, employers must calculate the nondeductible portion for spots reserved for employees by taking the ratio of reserved employee spaces over the total number of spaces and multiplying that ratio by the total yearly parking expenses.
- Next, employers must determine whether the primary use of the remaining spots is for general public use. For such purposes, “primary use” is determined during normal business hours on a typical business day, or during the normal hours of a tax-exempt organization’s activities on a typical day.
 - If the primary use of the remaining spots (greater than 50 percent) is for general public parking, then the remaining total parking expenses are excluded from the disallowance (and are thus treated as deductible expenses).
 - If the primary use of the remaining spots is not to provide parking to the general public, the taxpayer may deduct the portion of spots reserved for non-employees by taking the ratio of these reserved spots over the total number of spaces and multiply such ratio by the total parking expenses to calculate the deductible amount for these spaces.
- Lastly, if the above steps are completed and an employer has remaining parking expenses not categorized as deductible or nondeductible, the taxpayer must reasonably determine the employee use of the remaining parking spots during normal business hours on a typical business day.

Definition of “parking expenses”

In addition to calculating the portion of the yearly parking expenses that is non-deductible, Notice 2018-99 also clarifies the definition of a parking expense for purposes of the QTF rules. Importantly, it provides that depreciation on a parking structure is an allowance for wear and tear and, therefore, not a parking expense subject to Section 274(a)(4) of the Code.

Impact on tax-exempt employers

As noted above, tax-exempt employers are required by amendments to Section 512 of the Code to recognize UBTI equal to their parking expenses which would otherwise qualify as a non-deductible expense under Section 274 of the Code.

Notice 2018-99 clarifies that any UBTI a tax-exempt employer must recognize due solely to providing parking as a QTF is not subject to the loss limitation silo rules of Section 512(a)(6).

Finally, tax-exempt organizations should note that House Resolution 88 is currently being circulated by Republican members of the House Ways and Means Committee. Though many are skeptical that it will pass, it seeks to repeal the provisions of the TJCA that require recognition of UBTI for parking expenses.

Conclusion

Notice 2018-99 offers much-needed guidance. It may also be used as a roadmap for taxable and tax-exempt employers to reduce the portion of their parking expenses deemed non-deductible.

Authors



David S. Jackson

Of Counsel

Columbus
614.227.4818
djackson@bricker.com



Justin D. Cook

Partner and Tax Practice Group Chair

Columbus
614.227.4836
jdcook@bricker.com