



## Will your organization be affected by the new tax on parking expenses? IRS Notice 2018-99

### Issue:

Have you considered the impact of the new tax law on your not-for-profit organization? Many not-for-profit organizations are surprised to find that they now may be required to pay a federal tax. There is a new Internal Revenue Service Code Section (IRS Code) that may require tax-exempt organizations to pay a tax on related parking expenses. It's possible your organization will be required to pay a 21% tax on any disallowed parking benefits provided to employees. If your organization maintains or leases a parking lot, this new tax law applies to you.

### Summary:

The Tax Cuts and Jobs Act (TCJA) has deemed the parking expenses of an organization to be a benefit to employees and tax-exempt organizations may be required to pay a 21% tax on these related expenses. Related or qualified expenses include, but are not limited to parking lot: repairs, maintenance, utility costs, insurance, property taxes, interest, snow and ice removal, leaf removal, trash removal, cleaning, landscape costs, parking lot attendants, security, and rent or lease payments or a portion of a rent or lease payment (if not broken out separately).

There has been significant industry discussion on the possibility that this IRS Code Section could be repealed; however, we should all be prepared to move forward as the IRS has already tailored and made changes to the 2018 tax return.

There are certain carve outs and calculation rules to be reviewed, these are outline below.

### Calculation of Disallowance Expense:

There are 4 steps to a calculation to determine if this affects your organization. The following steps are summarized directly from the Notice 2018-99 IRS guidance.

#### Step 1. Calculate the disallowance for reserved employee spots:

If yours is an organization that owns or leases all or a portion of one or more parking facilities, you must identify the number of spots in the parking facility. Next, determine how many spots are reserved for employee parking only. Parking spots may be reserved for employees by a variety of methods, including, but not limited to, specific signage (for example, "Employee Parking Only") or a separate lot or portion of a lot segregated by a barrier to entry or limited by terms of access. The organization must then determine the percentage of reserved employee spots in relation to total parking spots and multiply that percentage by the taxpayer's total parking expenses for the parking facility.

Organizations have until March 31, 2019 to change their parking arrangements (changing signage, access, etc.) to decrease or eliminate their reserved employee spots and treat those parking spots as non-reserved employee spots for purposes of this notice retroactively to January 1, 2018.

#### Step 2. Determine the primary use of remaining spots (the "primary use test"):

Your organization should next identify the remaining parking spots in the parking lot and determine whether their primary use is to provide parking to the general public or employees. For the purposes of this notice, "primary use" means greater than 50 percent of actual or estimated usage of the parking spots in the parking lot. Primary use of the parking spots is tested during normal business hours on a typical business day, or in the case of an exempt organization during the normal hours of the exempt organization's activities on a typical day. If the primary use of the remaining parking spots in the parking lot is to provide parking to the general public, then the remaining total parking expenses for the parking lot are deemed to be exempt from the calculation. Non-reserved

parking spots that are available to the general public, but empty during normal business hours on a typical business day, or in the case of an exempt organization, during the normal hours of the exempt organization's activities on a typical day, are treated as provided to the general public. In addition, if the actual or estimated usage of the parking spots varies significantly between days of the week or times of the year, the taxpayer may use any reasonable method to determine the average actual or estimated usage. The notice defines, the "general public" as, but is not limited to, customers, clients, visitors, individuals delivering goods or services to the taxpayer, patients of a health care facility, students of an educational institution, and congregants of a religious organization. The general public does not include employees, partners or independent contractors of the taxpayer.

**Step 3.** Calculate the allowance for reserved nonemployee spots:

If the primary use of your organization's remaining parking spots is not to provide parking to the general public, your organization must next identify the number of spots in the parking lot exclusively reserved for nonemployees, spots that are reserved for visitors and customers, as well as spots reserved for partners, sole proprietors, and 2-percent shareholders of S Corporations. The number of reserved nonemployee spots in the parking lot. An organization taxpayer that has no reserved nonemployee spots may go to *Step 4*. If the organization has reserved nonemployee spots, it determines the percentage of reserved nonemployee spots in relation to the remaining total parking spots and multiply that percentage by the taxpayer's remaining total parking expenses. The product is the amount of the deduction for remaining total parking expenses that is not disallowed.

**Step 4.** Determine remaining use and allocable expenses:

If your organization completes Steps 1-3 in the methodology above and has any remaining parking expenses not specifically categorized as deductible or nondeductible, your organization must reasonably determine the employee use of the remaining parking spots during normal business hours on a typical business day and the related expenses allocable to employee parking spots. Methods to determine employee use of the remaining parking spots may include specifically identifying the number of employee spots based on actual or estimated usage. Actual or estimated usage may be based on the number of spots, the number of employees, the hours of use, or other measures.

Once the four steps are completed, you will be able to determine the total tax payable. The total expenses are allocated against the eligible parking spots for employees. The tax expense is reported on an annual basis on the 990T. If the tax due is material, quarterly estimates are required to be paid. Tax-exempt organizations are required to file a return on Form 990-T, Exempt Organization Business Income Tax Return, if they have gross income, included in computing UBTI, of \$1,000 or more. This threshold amount for filing Form 990-T also applies to UBTI calculated with respect to the disallowed parking expenses. Therefore, organizations for which the sum of (1) gross income from unrelated trades or businesses and (2) the increase of UBTI under Section 512(a)(7) is less than \$1,000 need not file a Form 990-T. Organizations for which this amount is \$1,000 or more must file a Form 990-T.

**FML Thoughts:**

This new code section is going to be burdensome for many tax-exempt organizations, as well as a burden for the IRS to process, particularly as all 990T's will continue to be paper filed as there is no electronic filing option available at this time.

If you haven't considered these tax implications please give us a call. FML is recommending that organizations start the calculations now to determine if tax will be due and as a result, quarterly estimates. A notice was released at the end of December to relieve penalties for failure to pay quarterly tax payments throughout 2018, but this will not continue into 2019. Quarterly estimates will be due to avoid penalty fees.

Please reach out to FML for any clarification or guidance on this matter.