



TaxNewsFlash

United States



No. 2020-411
June 23, 2020

KPMG report: Proposed regulations and guidance on qualified transportation fringe benefits

Proposed regulations from the U.S. Treasury Department and IRS appear in today's edition of the Federal Register and provide additional guidance for implementing section 274 amendments enacted under the 2017 tax law (Pub. L. No. 115-97), the law that is often referred to as the "Tax Cut and Jobs Act" (TCJA), and that disallows a deduction for the expense of any section 132(f) qualified transportation fringe (QTF) benefits, including qualified parking, provided to an employee, effective for amounts paid or incurred after December 31, 2017.

Prop. Reg. section 1.274-13 generally follows Notice 2018-99, but provides several new simplified methodologies for determining the loss of deduction for qualified parking. This report provides initial impressions about the proposed regulations.

The preamble to the proposed regulations provides that while the value of a QTF is relevant for determining the exclusion from employee income under section 132(f) and the exception under section 274(e)(2), the disallowance only relates to expenses paid or incurred in providing the QTF and not its value. The proposed regulations provide that the exception for expenses included in employee compensation under section 274(e)(2) does not apply to a qualified transportation fringe with a zero value.

Read the [proposed regulations](#) [PDF 351 KB]

[New methodologies to calculate lost deduction](#)

The proposed regulation provides that a taxpayer who owns or leases a parking lot can calculate the disallowance using either the general method or one of three new "simplified methodologies". The taxpayer can choose to apply the methodology for each tax year and each parking facility.

General rule

The General Rule allows the taxpayer to use any reasonable interpretation of section 274(a)(4) within certain parameters:

- Taxpayers must continue to use the expense paid or incurred in providing the QTF rather than its value to the employee.
- Taxpayers must allocate parking expenses to certain reserved employee spaces. Spaces reserved for drivers with disabilities are not included as reserved employee or nonemployee spaces.
- Taxpayers must properly apply exception for parking made available to general public.
- Taxpayers may aggregate parking spaces by geographic location.
- Taxpayers cannot apply the special rule to allocate 5% of certain mixed parking expenses to a parking facility for purposes of determining total parking expenses.

Simplified methodologies

The proposed regulation provide three methodologies a taxpayer can use if they do not use the general rule.

- **Qualified parking limit methodology:** Taxpayers calculate the disallowance by multiplying the total number of spaces used by employees during the peak demand period, or, alternatively, the total number of the taxpayer's employees, by the section 132(f)(2) monthly per employee limitation on income exclusion for qualified parking (\$270 for 2020), for each month in the tax year.
- **Primary use methodology:** Largely based on four-step safe harbor articulated in the Notice 2018-99, but certain rules and definitions have been modified in response to comments received. There are special rules for mixed use parking. The proposed regulations allow reserved employee parking to be excluded if the primary purpose is for the general public, there are five or fewer reserved spots, and the total amount of reserved employee parking is 5% or less of total parking.
- **Cost per space methodology:** Allows taxpayers to calculate the disallowance by multiplying the cost per parking space by the number of available parking spaces to be used by employees during the peak demand period. Cost per space is calculated by dividing total parking expenses (including expenses for inventory/unusable spaces) by total parking spaces (including inventory/unusable spaces). Special rules for allocating certain mixed parking expenses and aggregating parking spaces by geographic location may be used with the cost per space methodology.

Other highlights

274(e) exceptions

- Section 274(e) provides three exceptions to the section 274 limits. Only the exceptions under 274(e)(2) (compensation to the employee), 274(e)(7) (provided to the general public), and 274(e)(8) (sold in a bona fide transaction for an adequate and full consideration) are exceptions to 274(a) qualified transportation fringe benefits. The proposed regulations provide that the other exceptions do not apply. The proposed regulations do not provide any specific exceptions to the section 274(a) disallowance for QTFs with a zero or de minimis fair market value, QTFs required under certain laws, or for small business taxpayers.
- The exception in section 274(e)(2) for expenses included in compensation does not apply for a QTF that has zero value.
- The exception under section 274(e)(2) for expenses treated as employee compensation does not apply to expenses paid or incurred for QTFs for which the value included in gross income is less than the amount required to be included in income or is more than required to be excluded from income under Reg. section 1.61-21 for fringe benefits.

- Exceptions under section 274(e) only apply to section 274(a) and do not apply to section 274(l) related to commuting expenses. Prop. Reg. section 1.274-14 does not include an exception for section 274(l) for including expenses in employee compensation.

New definitions

- Definition of general public has been expanded to include employees, partners, 2% shareholders of S corporations, sole proprietors, independent contractors, clients or customers of unrelated tenants in multi-tenant buildings.
- Taxpayers can aggregate parking spaces in the same geographic location for purposes of the general rule, primary use methodology, or cost per space methodology. "Geographic location" is narrowly defined as contiguous tracts or parcels of land owned or lease by the taxpayer. Two or more tracts or parcels of land are contiguous if they share a common boundary.
- "Inventory/unusable spaces" includes parking spaces for inventoried vehicle, qualified nonpersonal use vehicles, fleet vehicles used by the taxpayer's trade or business, or spaces not usable for parking by employees. These spaces are excluded from "available parking spaces" and "reserved nonemployee spaces" under the primary use methodology and primary use test. These spaces are included in the total parking spaces for the cost per space methodology.

Parking methodology provisions

- Spaces reserved for drivers with disabilities are not treated as "reserved" employee or nonemployee parking. The proposed regulations indicate that such spaces may still be subject to the disallowance, to the extent used by employees, if the primary use test is not met.
- Taxpayers can allocate 5% of certain mixed parking expenses to the parking facility. This rule applies to mixed parking expenses related to payments under a lease or rental agreement, and payments for utilities, insurance, interest and property taxes. This special rule can be used with the primary use methodology and cost per space methodology, but not the general rule or qualified parking limit methodology.
- Taxpayers can use statistical sampling with the general rule and the simplified methodologies if they follow the procedures in Rev. Proc. 2011-42.

Request for comment

The Treasury and IRS request comment on all aspects of the proposed regulations, with a few specific requests:

- Other methodologies for determining the use of parking spaces and related expenses allocable to employee parking
- Additional guidance needed, or specific examples that should be addressed, to determine the amount of commuter highway vehicle and transit pass expenses for QTFs that is nondeductible under section 274(a)(4)
- Additional guidance needed to determine whether transportation is necessary for ensuring the safety of the employee
- How to define an employee's residence and place of employment

- Whether any specific examples of transportation and commuting expenses should be addressed
- If any additional rules are needed due to the COVID-19 pandemic to address significant variations in employee parking during the tax year

Reliance on proposed regulations

The regulations are proposed to apply for tax year beginning on or after the date the final regulations are published in the Federal Register. In the interim, taxpayers may rely on the proposed regulations or the guidance provided in Notice 2018-99 for treatment under section 274(a)(4) of QTF, transportation, and commuting expenses (as applicable) paid or incurred in tax years beginning after December 31, 2017.

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