

Notice 2018-99 Examples

For each example, assume that the parking expenses are otherwise deductible expenses; that all or some portion of the expenses relate to a QTF under § 132(f); and that the § 132(f)(2) limitation on an employee's exclusion is \$260 per month. For examples 3-10, also assume that the taxpayer or tax-exempt organization uses the methodology described in Steps 1-4 in Section B of this notice, as applicable.

Example 1. Taxpayer A pays B, a third party who owns a parking garage across the street from A, \$100 per month for each of A's 10 employees to park in B's garage, or \$12,000 per year ($(\$100 \times 10) \times 12 = \$12,000$). The \$100 per month paid for each employee for parking is excludible under § 132(a)(5), and none of the § 274(e) exceptions apply. Thus, the entire \$12,000 is subject to the § 274(a)(4) disallowance.

Example 2. Assume the same facts as Example 1, except A pays B \$300 per 12 month for each employee, or \$36,000 per year ($(\$300 \times 10) \times 12 = \$36,000$). Of the \$300 per month paid for parking for each employee, \$260 is excludible under § 132(a)(5) and none of the § 274(e) exceptions apply to this amount. Thus, \$31,200 ($(\$260 \times 10) \times 12 = \$31,200$) is subject to the § 274(a)(4) disallowance. The excess amount of \$40 per employee per month is not excludible under § 132(a)(5) and is treated as compensation and wages. As a result, the § 274(e)(2) exception applies to this amount. Thus, \$4,800 ($\$36,000 - \$31,200 = \$4,800$) is not subject to the § 274(a)(4) disallowance and remains deductible.

Example 3. Taxpayer C, a big box retailer, owns a surface parking lot adjacent to its store. C incurs \$10,000 of total parking expenses. C's parking lot has 500 spots that are used by its customers and employees. C usually has approximately 50 employees parking in the lot in non-reserved spots during normal business hours on a typical business day. C usually has approximately 300 non-reserved parking spots that are empty during normal business hours on a typical business day.

Step 1. Because none of C's parking spots are exclusively reserved for employees, there is no amount to be specifically allocated to reserved employee spots.

Step 2. The primary use of C's parking lot is to provide parking to the general public because 90% ($450/500 = 90\%$) of the lot is used by the public. The 300 empty non-reserved parking spots are treated as provided to the general public. Thus, expenses allocable to these spots are excepted from the § 274(a) disallowance by § 274(e)(7). Because the primary use of the parking lot is to provide parking to the general public, none of the \$10,000 is subject to the § 274(a)(4) disallowance.

Example 4. Taxpayer D, a manufacturer, owns a surface parking lot adjacent to 13 its plant. D incurs \$10,000 of total parking expenses. D's parking lot has 500 spots that are used by its visitors and employees. D usually has approximately 400 employees parking in the lot in non-reserved spots during normal business hours on a typical business day. Additionally, D has 25 spots reserved for nonemployee visitors. Step 1. Because none of D's parking spots are exclusively reserved for employees, there is no amount to be specifically allocated to reserved employee spots.

Step 2. The primary use of D's parking lot is not to provide parking to the general public because 80% ($400/500 = 80\%$) of the lot is used by its employees. Thus, expenses allocable to those spots are not excepted from the § 274(a) disallowance by § 274(e)(7) under the primary use test.

Step 3. Because 5% ($25/500 = 5\%$) of D's parking lot spots are reserved nonemployee spots, up to \$9,500 ($\$10,000 \times 95\% = \$9,500$) of D's total parking expenses are subject to the § 274(a)(4) disallowance under this step.

Step 4. D must reasonably determine the employee use of the remaining parking spots during normal business hours on a typical business day and the expenses allocable to employee parking spots.

Example 5. Taxpayer E, a manufacturer, owns a surface parking lot adjacent to its plant. E incurs \$10,000 of total parking expenses. E's parking lot has 500 spots that are used by its visitors and employees. E has 50 spots reserved for management and has approximately 400 employees parking in the lot in non-reserved spots during normal business hours on a typical business day. Additionally, E has 10 reserved nonemployee spots for visitors. 14

Step 1. Because E has 50 reserved spots for management, \$1,000 $((50/500) \times \$10,000 = \$1,000)$ is the amount of total parking expenses that is nondeductible for reserved employee spots under § 274(a)(4).

Step 2. The primary use of the remainder of E's parking lot is not to provide parking to the general public because 89% $(400/450 = 89\%)$ of the remaining parking spots in the lot are used by its employees. Thus, expenses allocable to these spots are not excepted from the § 274(a) disallowance by § 274(e)(7) under the primary use test.

Step 3. Because 2% $(10/450 = 2.22\%)$ of E's remaining parking lot spots are reserved nonemployee spots, the \$200 allocable to those spots $(\$10,000 \times 2\%)$ is not subject to the § 274(a)(4) disallowance and continues to be deductible.

Step 4. E must reasonably determine the employee use of the remaining parking spots during normal business hours on a typical business day and the expenses allocable to employee parking spots.

Example 6. Taxpayer F, a financial services institution, owns a multi-level parking garage adjacent to its office building. F incurs \$10,000 of total parking expenses. F's parking garage has 1,000 spots that are used by its visitors and employees. However, one floor of the parking garage is segregated by an electronic barrier and can be entered only with an access card provided by F to its employees. The segregated floor of the parking garage contains 100 spots. The other floors of the parking garage are not used by employees for parking during normal business hours on a typical business day.

Step 1. Because F has 100 reserved spots for employees, \$1,000 $((100/1,000) \times \$10,000 = \$1,000)$ is the amount of total parking expenses that is nondeductible for 15 reserved employee spots under § 274(a)(4).

Step 2. The primary use of the remainder of F's parking lot is to provide parking to the general public because 100% $(900/900 = 100\%)$ of the remaining parking spots are used by the public. Thus, expenses allocable to those spots are excepted from the § 274(a) disallowance by § 274(e)(7) under the primary use test, and only \$1,000 is subject to the § 274(a)(4) disallowance.

Example 7. Taxpayer G, an accounting firm, leases a parking lot adjacent to its office building. G incurs \$10,000 of total parking expenses related to the lease payments. G's leased parking lot has 100 spots that are used by its clients and employees. G usually has approximately 60 employees parking in the leased parking lot in non-reserved spots during normal business hours on a typical business day.

Step 1. Because none of G's leased parking spots are exclusively reserved for employees, there is no amount to be specifically allocated to reserved employee spots.

Step 2. The primary use of G's leased parking lot is not to provide parking to the general public because 60% $(60/100 = 60\%)$ of the lot is used by its employees. Thus, G may not utilize the general public exception from the § 274(a) disallowance provided by § 274(e)(7).

Step 3. Because none of G's parking spots are exclusively reserved for nonemployees, there is no amount to be specifically allocated to reserved nonemployee spots.

Step 4. G must reasonably determine the use of the parking spots and the related expenses allocable to employee parking. Because 60% $(60/100 = 60\%)$ of G's parking spots are used by G's employees during normal business hours on a typical 16 business day, G reasonably determines that \$6,000 $(\$10,000 \times 60\% = \$6,000)$ of G's total parking expenses is subject to the § 274(a)(4) disallowance.

Example 8. Taxpayer H, a large manufacturer, owns multiple parking lots and garages adjacent to its manufacturing plant, warehouse, and office building at its complex in the city of X. H owns parking lots and garages in other cities as well. For purposes of applying the methodology in this notice, H chooses to aggregate the parking spots in the lots and garages at its complex in city X. However, H may not aggregate the spots in parking lots and garages in other cities with its parking spots in city X. H incurs \$50,000 of total parking expenses related to the parking lots and garages at its complex in city X. H's parking lots and garages at its complex in city X have 10,000 spots in total that are used by its visitors and employees. H has 500 spots reserved for management and has approximately 8,000 employees parking in the garages and lots in non-reserved spots during normal business hours on a typical business day at H's complex in city X.

Step 1. Because H has 500 reserved spots for management, \$2,500 $((500/10,000) \times \$50,000 = \$2,500)$ is the amount of total parking expenses that is nondeductible for reserved employee spots under § 274(a)(4).

Step 2. The primary use of the remainder of H's parking facility is not to provide parking to general public because 84% $(8,000/9,500 = 84\%)$ of the remaining parking spots in the facility are used by its employees. Thus, expenses allocable to these spots are not excepted from the § 274(a) disallowance by § 274(e)(7) under the primary use test.

Step 3. Because none of H's parking spots are exclusively reserved for nonemployees, there is no amount to be specifically allocated to reserved nonemployee spots.

Step 4. H must reasonably determine the employee use of the remaining parking spots during normal business hours on a typical business day and the expenses allocable to employee parking spots at its complex in city X. Because 84% $(8,000/9,500 = 84\%)$ of the remaining parking spots in the lot are used by its employees during normal business hours on a typical business day, H reasonably determines that \$39,900 $((\$50,000 - \$2,500) \times 84\% = \$39,900)$ of H's total parking expenses is subject to the § 274(a)(4) disallowance.

INTERIM GUIDANCE ON SECTION 512(a)(7) ISSUES

As noted above, under the Act, tax-exempt organizations that have employees are required by § 512(a)(7) to increase their UBTI by any amount for which a deduction is not allowable by reason of § 274 for any QTF (as defined by § 132(f)), any parking facility used in connection with qualified parking (as defined in § 132(f)(5)(C)), or any on-premises athletic facility (as defined in § 132(j)(4)(B)). Because § 512(a)(7) increases UBTI for any QTF amount for which a deduction is disallowed by reason of § 274, the rules governing tax-exempt organizations necessarily mirror the rules for taxpayers under § 274. See H.R. Rep. No. 115-409, at 266 (2017) ("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."). However, § 512(a)(7) does not apply to the extent the amount paid or incurred is directly connected with an unrelated trade or business that is regularly carried on by the organization. In such case, the amount of the QTF expenses directly connected with the unrelated trade or business is subject to the disallowance under § 274(a)(4) and, thus, is disallowed as a deduction in calculating the UBTI attributable to such unrelated trade or business under the general rule of § 512(a)(1).

Section 512(a)(7) specifically requires UBTI to be increased by any amount for which a deduction is not allowable under § 274 for any parking facility used in connection with qualified parking (as defined in § 132(f)(5)(C)). Although parking facilities are not separately listed in § 274(a)(4), § 274(a)(4) disallows a deduction for QTFs (as defined in § 132(f)), and § 132(f)(1)(C) provides that QTFs include qualified parking. Under § 132(f)(5)(C) and § 1.132-9(b), Q/A-4, qualified parking means parking provided to an employee by an employer on or near the employer's business premises or at a location from which the employee commutes to work (other than property used by the employee for residential purposes) and may be provided on property that the employer owns or leases. Thus, the expenses for a parking facility

referenced in § 512(a)(7) are those expenses related to the property an employer owns or leases, at or near the employer's business or at a location from which the employee commutes to work. Expenses for these parking facilities used in connection with qualified parking and as part of the provision of qualified parking are nondeductible under § 274(a)(4) as expenses for QTFs and result in an increase in UBTI under § 512(a)(7). Section 512(a)(7) mentions on-premises athletic facilities. However, the Act did not include a corresponding change to § 274 disallowing deductions generally for on-premises athletic facilities. Accordingly, a deduction for expenses paid or incurred for on premises athletic facilities is not disallowed under § 274 if the athletic facility is primarily for the benefit of the tax-exempt organization's employees and does not discriminate in favor of highly compensated employees. See § 274(e)(4); § 1.274-2(f)(2)(v).

The provision of QTFs that results in an increase in UBTI under § 512(a)(7) is not an unrelated trade or business. See Notice 2018-67, 2018-36 I.R.B. 409, which discusses and solicits comments regarding the calculation of UBTI under § 512(a)(6) for exempt organizations with more than one unrelated trade or business. Therefore, any increase in UBTI under § 512(a)(7) is not subject to § 512(a)(6), meaning that an exempt organization with only one unrelated trade or business and an increase in UBTI under § 512(a)(7) does not become an exempt organization with more than one unrelated trade or business subject to § 512(a)(6). Accordingly, for taxable years beginning after December 31, 2017, until further guidance is issued, a tax-exempt organization with only one unrelated trade or business can reduce the increase to UBTI under § 512(a)(7) to the extent that the deductions directly connected with the carrying on of that unrelated trade or business exceed the gross income derived from such unrelated trade or business.

Section 512(b)(12) generally provides a specific deduction of \$1,000 as a modification to the UBTI otherwise determined under § 512(a), which, after the Act, includes the increase in UBTI determined under § 512(a)(7). Furthermore, 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. See § 1.6012-2(e). This threshold amount for filing Form 990-T also applies to UBTI calculated with respect to § 512(a)(7). Therefore, organizations for which the sum of (1) gross income from unrelated trades or businesses and (2) the increase of UBTI under § 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. The Treasury Department and the IRS intend to revise the regulations under § 6012 to clarify that amounts which increase UBTI under § 512(a)(7) are included in applying the \$1,000 threshold for filing the Form 990-T.

EXAMPLES FOR TAX-EXEMPT ORGANIZATIONS

The principles illustrated in examples 1 through 8 above apply to tax-exempt organizations. Accordingly, the amount of the deduction disallowed under § 274(a)(4) for each entity would, in the case of a tax-exempt organization with the same relevant facts, be the increase in UBTI under § 512(a)(7). These principles are further illustrated by the following examples:

Example 9. Tax-Exempt Organization J, a religious organization that operates a church and a school, owns a surface parking lot adjacent to its buildings. J incurs \$10,000 of total parking expenses. J's parking lot has 500 spots that are used by its congregants, students, visitors, and employees, and 10 spots that are reserved for certain employees. During the normal hours of J's activities on weekdays, J usually has approximately 50 employees parking in the lot in non-reserved spots and approximately 440 non-reserved parking spots that are empty. During the normal hours of J's activities on weekends, J usually has approximately 400 congregants parking in the lot in non-reserved spots and 20 employees parking in the lot in non-reserved spots.

Step 1. Because J has 10 reserved spots for certain employees, \$200 $((10/500) \times \$10,000 = \$200)$ is the amount of total parking expenses that is nondeductible for reserved employee spots under § 274(a)(4). Thus, under § 512(a)(7), J must increase its UBTI by \$200, the amount of the deduction disallowed under § 274(a)(4).

Step 2. Because usage of the parking spots varies significantly between days of the week, J uses a reasonable method to determine that the primary use of the remainder of J's parking lot is to provide parking to the general public because 90% ($440/490 = 90\%$) of the spots are used by the public during the weekdays and 95% ($470/490$) of the spots are used by the public on the weekends. The empty, non-reserved parking spots are treated as provided to the general public. Thus, expenses allocable to these spots are excepted from the § 274(a) disallowance by § 274(e)(7) under the primary use test, and only \$200 of the \$10,000 is subject to the § 274(a)(4) disallowance. Therefore, only \$200 of the expenses for the provision of the QTF will result in an increase to UBTI under § 512(a)(7).

If J does not have gross income from any unrelated trades or businesses of \$800 or more included in computing its UBTI (to reach the \$1,000 filing threshold), J is not required to file a Form 990-T for that year.

Example 10. Tax-Exempt Organization K is a hospital and owns a surface parking lot adjacent to its building. K incurs \$10,000 of total parking expenses. K's parking lot has 500 spots that are used by its patients, visitors, and employees. K has 50 spots reserved for management and has approximately 100 employees parking in the lot in non-reserved spots during the normal operating hours of the hospital.

Step 1. Because K has 50 reserved spots for employees, \$1,000 ($(50/500) \times \$10,000 = \$1,000$) is the amount of total parking expenses that is nondeductible for reserved employee spots under § 274(a)(4). Thus, under § 512(a)(7), K must increase its UBTI by \$1,000, the amount of the deduction disallowed under § 274(a)(4).

Step 2. The primary use of the remainder of K's parking lot is to provide parking to the general public because 78% ($350/450 = 78\%$) of the remaining spots in the lot are open to the public. Thus, expenses allocable to these spots are excepted from the § 274(a) disallowance by § 274(e)(7) under the primary use test, and only \$1,000 is subject to the § 274(a)(4) disallowance. Therefore, only \$1,000 of the expenses for the provision of the QTF will result in an increase in UBTI under § 512(a)(7).

K will need to add the \$1,000 increase of UBTI under § 512(a)(7) to its gross income from unrelated trades or businesses. K is required to file a Form 990-T because the \$1,000 increase to UBTI under § 512(a)(7) meets the filing threshold.

RELIANCE

Until further guidance is issued, taxpayers may rely on the guidance provided in this notice to determine the amount of expenses for QTFs that is nondeductible under § 274(a)(4) or treated as an increase in UBTI under § 512(a)(7).