



February 21, 2019

The Honorable Steven Mnuchin  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

**RE: Internal Revenue Service Notice 2018-99: Parking Expenses for Qualified Transportation Fringes under Section 274(a)(4) and Section 512 (a)(7) of the Internal Revenue Code**

Dear Secretary Mnuchin,

Thank you for issuing interim guidance on calculating parking expenses for qualified transportation fringes (QTFs) and to help tax-exempt organization calculate the resulting increase in unrelated business taxable income. As you know, The Tax Cuts and Jobs Act (Public Law 115-97) changed the status of QTFs and now subjects tax-exempt organizations offering these benefits to a 21 percent unrelated business income tax. The changes made to QTFs has caused uncertainty to non-profit organizations across the country and further guidance is still needed. The Association for Commuter Transportation (ACT) would like to share the specific concerns of our members regarding the guidance released in Internal Revenue Service Notice 2018-99, as well as the broader negative impacts the changes made to QTFs in P.L. 115-97 will have on non-profit organizations, the environment, and congestion.

Representing over 1,000 members across the United States, ACT brings together private and public-sector organizations working to improve the lives of commuters. This includes non-profit or tax-exempt employers like hospitals, universities, and museums. For tax-exempt organizations with very little or no unrelated business income, treating transportation fringe benefits as unrelated business taxable income will result in increased tax fees and new reporting requirements that they simply cannot afford. Many non-profit organizations will have to make tough choices about cutting their transportation fringe benefit programs or pulling funds from other areas of operations. This means either punishing their employees by removing benefits or hurting the communities they serve by reducing operations. Again, this is a 21% tax increase on churches, hospitals, and other non-profit organizations that offer valuable resources and services to their communities.

Cutting qualified transportation fringe benefit programs will increase the cost of commuting for employees, increase congestion on highways and roads, and increase harmful emissions that damage our environment. Non-profits that cut these programs will become less competitive in attracting potential employees, as large corporations and for-profit companies can afford to offer these benefit programs to entice workers. Additionally, a growing number of municipalities require, by law, that organizations of certain size provide transportation benefits to their employees. This list includes some of America's largest cities, including: New York City, Washington D.C., and San Francisco. The new UBIT provisions in the Tax Cut and Jobs Act would essentially be taxing organizations in these municipalities for following their local mandate.

ACT members appreciate the Internal Revenue Service's work issuing Notice 2018-99. As stated before, organizations across the country have significant apprehension and confusion as how to interpret and calculate



the new unrelated business tax on QTFs. Notice 2018-99 helps clarify some of the concerns of ACT members, however there are still areas that need further guidance and explanation. Some specific concerns that we have heard from tax-exempt entities that need to be addressed in the guidance include:

- The lack of guidance on transit programs covered by the qualified transportation fringes.
  - How does an employer determine UBTI on private transportation services shared between employees/students/public?
  - How to determine UBTI on bulk payment arrangements where an employer provides a single payment to a transit agency to provide services and in exchange receives free transit usage for all employees and students?
- In Notice 2018-99, what is the definition of Geographic Location?
  - Example 8, cites different cities, so do municipal boundaries serve this purpose? What happens when an organization is right on the border of two municipalities like the Longwood Medical Area in Massachusetts and parking facilities that may be located in both jurisdictions? A mile distance should be included in this definition?
- Notice 2018-99 uses several examples to help demonstrate how to calculate the amount of parking expenses that would be considered unrelated business taxable income. Many of these examples use unrealistic numbers for “total parking expenses.” These numbers underestimate the real-world cost of maintaining and operating a parking lot.
  - Example 10 suggests that an organization owning a parking lot offering 500 spaces would only cost \$10,000 for total parking expenses. This means the organization would only pay \$20 per parking space ( $10,000/500 = 20$ ). In this notice, “total parking expenses include, but are not limited to, repairs, maintenance, utility costs, insurance, property taxes, interest, snow and ice removal, leaf removal, trash removal, cleaning, landscape costs, parking lot attendant expenses, security, and rent or lease payments or a portion of a rent or lease payment.” It is highly unrealistic that including all of the factors that go into calculating total parking expenses that an organization would only end up paying \$20 per parking spot.
  - This undervaluation lessens the public perception of the actual cost that organizations will have to pay per parking spot. A more realistic valuation of the total parking expenses is needed, otherwise people will assume that this tax burden is not as severe as it actually is.
  - Future guidance examples should use more realistic cost numbers by calculating for more of the factors listed under “total parking expenses”. Between snow removal, repairs, operating cost, and insurance, real-world “total parking expenses” will far exceed the \$20 per spot valuation used in this notice.
- The Notice establishes the 'Primary Use Test' for identifying if employers are subject to the tax or not. This arbitrary 'use-test' and its percentage calculation establishes new policy not intended by Public Law 115-97. The IRS should require employers to sufficiently account for additional tax liability based upon the number of people who park at work, not based upon the percentage of parking spaces filled. Additionally, The IRS should look to create a de-minimis threshold that would allow relief to small businesses.
- In the Notice, the IRS allows for 'any reasonable means' as a way of employers to estimate the number of cars parked in a parking lot. This vague language opens the door for significant fraud and abuse. Employers should assume that 90% of their employees park unless they gather and provide data that shows a more accurate count of parked car.
- There is a need for further guidance in calculating “total parking expenses”. Page 7 describes the calculation of “total parking expenses”. This definition includes calculating “rent or lease payments or a portion of a rent



or lease payment (if not broken out separately)". The Notice does not give sufficient guidance for how to calculate the "portion of rent or lease" spent on parking. Essentially, the Notice says parking expenses that are bundled into leases should be unbundled, however, provides no guidance to employers or property managers on how to account for and appropriately divide parking costs to tenants.

The Association for Commuter Transportation objects to the unfair way non-profits offering qualified transportation fringe benefit programs are punished by the new unrelated business income tax on such programs. ACT is strongly opposed to the classification of qualified transportation fringe benefit programs as unrelated business income. These programs benefit both employees and the public by reducing commute times, cost, and carbon emissions. Qualified transportation fringe benefit programs should not be subject to the unrelated business income tax.

Thank you for your careful attention to this matter and we stand ready to meet should you have additional questions about these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "David S.", is written in a cursive style.

David Straus  
Executive Director