CAPLAW FAQ

A series of common legal questions and answers for the CAA network

March 31st Deadline Approaching for Nonprofits to Act to Reduce Liability for Employee Parking Tax

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This FAQ is intended to help nonprofit CAAs determine if they are subject to a new federal tax associated with providing parking to employees, understand how to calculate and manage the potential tax liability, and take advantage of an option that is available until March 31, 2019 which, if applicable, could retroactively mitigate the impact of the tax.

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OVERVIEW

As highlighted in CAPLAW's February 2018 eNews Bulletin, the Tax Cuts and Jobs Act (the Tax Act), which was signed into law at the end of 2017, included numerous changes affecting tax-exempt organizations and their employees. In particular, the Tax Act included a new requirement for tax-exempt employers to pay unrelated business income tax (UBIT) on the expenses of providing certain "qualified transportation fringe" (QTF) benefits to their employees on a tax-free basis.

On December 10, 2018, the IRS issued long-awaited guidance on how this requirement applies to tax-exempt employers providing parking for their employees. In Notice 2018-99, the IRS finally clarified that a tax-exempt organization must count its "expenses" of providing parking to its employees as unrelated business taxable "income" (UBTI) and pay UBIT on those expenses, *regardless of whether the parking is provided for free to the employees*. Notice 2018-99 also contains details on how employers can calculate the expenses associated with employee parking and provides guidance for tax-exempt organizations to report and pay UBIT owed. Unfortunately for tax-exempt CAAs, under the federal Uniform Guidance, federal income taxes, such as UBIT, may not be charged to federal grants.

According to Notice 2018-99, one way tax-exempt employers may be able to reduce their tax liability on employee parking expenses is *by reducing or eliminating completely the number of reserved employee parking spots. Employers that do so by March 31, 2019 may treat those spots as non-reserved, retroactive to January 1, 2018. Thus, a nonprofit CAA with reserved employee parking spots should act now to assess its tax liabilities and consider reducing or eliminating its reserved employee spots by March 31, 2019*.

Because of the complexity of the issue and the current confusion surrounding its applicability to nonprofit organizations, CAPLAW is issuing this FAQ to provide guidance to 501(c)(3) tax-exempt CAAs on how they should evaluate their employee parking in light of the Tax Act and Notice 2018-99. Note that there are bills pending in Congress that would repeal the application of this Tax Act provision to nonprofit organizations, but until Congress acts, tax-exempt organizations, including tax-exempt CAAs, must comply with the requirements in Notice 2018-99.

SECTION ONE: GENERAL

1. How does the Tax Act apply to a nonprofit CAA that provides parking to its employees?

The Tax Act requires tax-exempt organizations to treat as unrelated business taxable income (UBTI) the expenses of any "qualified transportation fringe" benefit, including any "qualified parking" the organization provides to its employees. This affects a nonprofit CAA if it provides parking to its employees in a lot the CAA owns or leases, if the CAA pays a third-party operator of a parking lot or garage for the CAA's employees to park there, or in certain circumstances if the CAA reimburses its employees for the cost of parking near its offices.

As a result of the Tax Act, many nonprofit CAAs may, for the first time, be required to pay a tax (UBIT, which is currently 21%) and file Form 990-T based on their employee-related parking expenses. As such, all nonprofit CAAs should go through the analysis discussed below to determine their potential exposure to UBIT.

2. How can it be that QTF "expenses" are taxed as unrelated business taxable "income"?

This outcome seems totally illogical, since employee-related parking and QTF expenses are clearly not actual income to a tax-exempt CAA. To understand how this provision ended up in the Tax Act, it may help to trace the origins of the provision. Prior to the Tax Act's passage, for-profit employers that provided QTFs such as parking benefits and commuter passes to employees on a tax-free basis (i.e., the value of these benefits was not included in the employee's taxable compensation) could deduct the cost of providing these QTFs when calculating the employers' federal income tax, even if the employees paid for all or part of the benefits through a compensation reduction arrangement. One way that Congress sought to raise revenues to offset income tax cuts under the Tax Act was to eliminate this deduction.[1] Under the Tax Act, if the benefit is tax-free to the employee, a for-profit employer can no longer take a deduction for the expenses of providing the benefit.

Tax-exempt entities, however, typically do not take any deductions because they are generally exempt from paying federal income taxes in the first place. Nevertheless, Congress sought to "level the playing field" between taxable and tax-exempt employers by including a provision in the Tax Act requiring tax-exempt employers to count their QTF expenses as unrelated business taxable *income* (UBTI). The Tax Act added Internal Revenue Code (IRC) section 512(a)(7), which provides that whenever a *taxable* employer is not allowed to take a deduction for its expenses associated with providing a QTF, a *tax-exempt* employer is correspondingly required to treat its QTF expenses as unrelated business taxable income.[2]

Recognizing the inequity as well as the significant costs of this provision on tax-exempt employers, groups advocating on behalf of nonprofit organizations have asked Congress to repeal this new UBIT requirement. Several bills that would overturn this provision are currently pending in Congress.

The IRS solicited comments on Notice 2018-99. In response, CAPLAW submitted comments requesting that the IRS revise its interpretation of the new UBIT rule on employer-provided parking and delay implementation until one year after the IRS issues final regulations on the new rule.

3. What employee parking benefits are subject to the new tax?

The Tax Act requires tax-exempt organizations to pay a tax on expenses paid or incurred by the organization to provide "qualified parking." "Qualified parking" means any parking provided by a tax-exempt CAA to an employee on or near the business premises of the employer, or on or near a location from which the employee commutes to work.[3] This includes parking provided in a CAA-owned or CAA-leased lot, or parking in a lot operated by a third-party. It also applies regardless of whether the CAA reimburses the employee for parking fees or provides parking for free.

Previously, some tax advisors believed that if a tax-exempt employer provided free parking to its employees, and also allowed other members of the public (e.g., clients, vendors, customers, and volunteers) to park without charge in the lot, there was no "value" deemed to be provided to an employee for the parking (since it was free to everyone). Thus, they reasoned, the parking was not a "qualified transportation fringe" benefit provided to the employee, and the new UBIT requirement would not apply. In Notice 2018-99, however, the IRS rejects this position. Instead, Notice 2018-99 indicates that if the primary purpose of the parking facility is to provide employee parking, a tax-exempt organization must count expenses associated with providing employee parking as UBTI, regardless of whether parking is made available for free to the general public.

4. Are any other employee transportation benefits other than parking subject to UBIT?

Yes. Exempt employers are taxed on the expenses of providing any "qualified transportation fringe" benefit (QTF), not just parking. This includes benefits such as providing employees with transit passes, commuting reimbursements, and carpooling allowances. As discussed in CAPLAW's June 2018 e-News Bulletin, the new UBIT rule applies even if these benefits are provided via a "compensation reduction agreement" where employees are allowed to purchase mass transit passes or pay for parking costs using pre-tax dollars, and even if the CAA does not subsidize any portion of the costs and merely subtracts the full expenses (e.g., the cost of a monthly transit pass) from the employee's taxable income.

5. When does the new UBIT requirement on QTFs and qualified parking apply?

The new rules became effective on January 1, 2018. Unfortunately, the IRS guidance does not provide for any delay in implementation or transition relief from filing Form 990-T for tax year 2018. This means that tax-exempt organizations, regardless of when their fiscal

year for tax reporting begins, must go through the analysis described in Notice 2018-99 to determine their tax liabilities for providing employee parking and other QTFs going back to January 1, 2018. CAAs that have already filed their Forms 990 for 2018 (for example, CAAs with a June 30, 2018 fiscal year-end) without including UBTI from QTFs or employee parking expenses may need to amend their Forms 990 to file a new or revised Form 990-T.

SECTION TWO: DETERMINING UBTI FOR PROVIDING EMPLOYEE PARKING

Below are the general rules for calculating which expenses incurred by a nonprofit CAA to provide employee parking count as UBTI. If a nonprofit CAA has gross UBTI of at least $1,000 in its fiscal year (from any source, whether from the cost of providing employee parking or from operating an unrelated trade or business that generates income), the CAA must report the income on Form 990-T and pay taxes on it at the federal income tax rate (currently 21%).

6. What expenses count as UBTI if a nonprofit CAA pays a third party for employee parking spots, or if the CAA reimburses its employees for parking costs in a lot operated by an outside vendor?

All of the costs paid by the CAA to the third party or outside vendor, up to the individual monthly exclusion limitation[4] for each employee (set annually by the IRS, $260 per month for 2018 and $265 per month for 2019), will count as UBTI to the CAA. Any amount over this limit must be included as taxable compensation to the employee and will not count towards the tax-exempt CAA's UBTI.

Example #1: If a nonprofit CAA pays $300 per month in 2019 to a garage operator for its Executive Director to park in the garage, the CAA would incur UBTI equal to $265 per month for that employee (the remaining $35 exceeds the monthly exclusion limitation for 2019 and is treated as taxable compensation to the Executive Director and reported on IRS Form W-2).

7. What expenses count as UBTI if a nonprofit CAA owns or leases all or a portion of a parking facility where its employees park?

The expenses associated with providing parking to *employees* count as UBTI to the nonprofit CAA. (See Question #8 below for a list of expenses that must be included). However, expenses associated with providing parking to the *general public* do *not* count as UBTI. The nonprofit CAA must identify the *primary use* of spaces that are not specifically reserved for employees and are open to either employees or the general public.

While the IRS allows tax-exempt employers to use *any reasonable method* to calculate the expenses of providing employee parking in a parking facility that the employer owns or leases, Notice 2018-99 provides one specific methodology that the IRS deems to be

reasonable (a "safe harbor" method), and which is described in Steps 1-4 below. The IRS specifically says that using the *value* of employee parking to determine the expenses allocable to employee parking in a parking facility owned or leased by the tax-exempt employer is *not* a reasonable method.

STEP 1: IDENTIFY SPACES RESERVED FOR EMPLOYEES AND ALLOCATE EXPENSES AS UBTI

Does the CAA have any parking spaces specifically reserved for its employees?

If so, the CAA must treat the parking expenses associated with these reserved spots as UBTI.

The IRS considers parking spots "reserved" in various circumstances, including when they are marked with specific signs (e.g., "Employee Parking Only" or "Reserved Parking for Executive Director") or when a separate parking lot or section of a lot is reserved for employees.

STEP 2: IDENTIFY THE "PRIMARY USE" OF THE REMAINING SPACES (SPACES NOT RESERVED FOR EMPLOYEES)

What is the "primary use" of the parking spaces that are not specifically reserved for employees—to provide parking to employees or to the general public?

After accounting for any spaces specifically reserved for employees in Step 1, the CAA must determine whether the "primary use" of the remaining spaces is providing parking to its employees or to the general public. The IRS defines "primary use" to mean greater than 50% of the actual or estimated usage of the parking spots in the parking facility (tested during the normal hours of the nonprofit CAA's activities on a typical day).

The IRS does not tell employers how to determine which spaces are typically used by employees and which are used by non-employees. Actual or estimated usage may be based on the number of spots, the number of employees, the hours of use, or other measures. Thus, a nonprofit CAA may adopt any reasonable method to determine the typical pattern of parking usage during its normal hours of activity. Note that if most employees drive their own cars to work, then the number of employee spaces likely would be similar to the number of employees.

If parking spaces are empty but not specifically reserved for employees, they are considered available to the general public for purposes of this test. Further, if the pattern of parking usage varies significantly between days of the week or times of the year, the CAA may use any reasonable method to determine the average usage.

If the CAA determines the primary use of the non-employee reserved spaces is for *general public parking*, then *none* of the CAA's expenses for those spaces count as UBTI and the CAA does not need to move on to steps 3 and 4. The CAA will have UBTI liability only to the extent that it has any reserved employee spots, as identified in Step 1.

If the CAA determines that the primary use of the non-employee reserved spaces is for *employee parking*, then the CAA must move on to Steps 3 and 4 to determine the amount of its parking expenses remaining after Step 1 that will be considered taxable UBTI.

Example #2: A nonprofit CAA has a parking lot with 50 spaces and does not reserve any spots for employees or any other group of people. The CAA has 20 employees and estimates that each employee drives his or her own car and parks in the lot. The CAA reasonably determines that the "primary use" of its parking lot is to provide parking to the general public because 60% (30/50 = 60%) of the spots are open to the public. Thus, the CAA does not need to move on to Steps 3 and 4. Because it has no reserved spots for employees, *none* of its expenses of operating the parking lot are considered taxable UBTI.

STOP! If the "primary use" of your CAA's parking spots that are not reserved for employees is for *general public* parking, you don't need to go to Steps 3 or 4.

STEP 3: IDENTIFY ANY SPACES RESERVED FOR NON-EMPLOYEES (E.G., VISITORS, CLIENTS, VOLUNTEERS, INDEPENDENT CONTRACTORS, ETC.)

Does the CAA have any parking spaces specifically reserved for visitors, clients, or volunteers?

If so, the expenses allocable to these spots are not included in UBTI. If not, skip to Step 4.

The CAA can reserve parking spots in a variety of ways, including using specific signs (e.g., "Client Parking Only" or "Reserved Parking for Volunteer of the Month") or designating a separate parking lot or section of the lot as reserved for non-employees.

STEP 4: DETERMINE THE PARKING EXPENSES ALLOCABLE TO EMPLOYEE PARKING

What are the expenses allocable to employee parking?

The CAA must reasonably determine the employee use of the remaining parking spots during its normal hours of activity on a typical day. The expenses allocable to employee parking count as UBTI.

ADDITIONAL EXAMPLES

Example #3: A nonprofit CAA owns a parking lot with 200 spaces and reserves 20 spaces for its executive staff and reserves an additional 18 spaces for its clients. The CAA estimates that 135 non-reserved spaces are typically used for employee parking during its normal hours of operation on a typical day. The CAA incurs $10,000 in total annual expenses of operating the parking lot.

- Under Step 1, the CAA must allocate 10% of its total parking costs, or $1,000, to reserved employee parking (20/200 = 10%). The CAA would treat this $1,000 as UBTI.
- Under Step 2, the CAA determines that the "primary use" of the remainder of its parking lot is to provide employee parking because 75% (135/180 = 75%) of the 180 spots not reserved for employees are typically used by its employees. Thus, the CAA must move on to Steps 3 and 4 to determine its UBIT liability for these 180 spots.
- Under Step 3, because 10% (18/180 = 10%) of the CAA's remaining parking spots are reserved for clients, the $900 in parking expenses allocable to these spots ($9,000 x 10%) is *not* considered UBTI.
- Under Step 4, the CAA must reasonably determine the use of the 180 parking spots and the related expenses allocable to employee parking. The CAA estimates that 135 spots (75%, or 135/180) of these spots are used by the CAA's employees during normal hours of operation on a typical day, so must count $6,750 (75% of the $9,000 in remaining parking costs) as taxable UBTI.
- Thus, the CAA counts as UBTI: (a) $1,000, or the expenses allocable to the 20 reserved employee spots; and (b) $6,750, or the expenses associated with the 135 spots primarily used as employee parking. The CAA will need to add this $7,750 in "deemed" UBTI due to providing employee parking to its actual gross income (if any) from any unrelated trades or businesses. The CAA will be required to file a Form 990-T because the $7,750 in UBTI exceeds the $1,000 filing threshold.

Example #4: A nonprofit CAA leases its central administrative office, and the lease includes a parking lot adjacent to the office building. The CAA incurs $10,000 in total parking expenses. The CAA's leased parking lot has 100 spaces and doesn't include any spots reserved for employees or other individuals. During the normal hours of the CAA's activities on weekdays, approximately 40 employees park in the lot, and approximately 60 parking spots are empty.

- Under Step 1, the CAA does not have any reserved employee spots, so does not allocate any parking costs to reserved employee parking under this step.
- Under Step 2, the CAA must determine whether the "primary use" of the 100 non-reserved spaces is for employee parking or for general public parking. The 60 empty spots are treated as parking provided to the general public. Based on this assessment, the CAA concludes that the primary use of the 100 spots is for ***general public*** parking (60/100 = 60%). Thus, the CAA does not need to move on to Steps 3 and 4.
- None of the CAA's parking expenses are considered taxable UBTI. The CAA is ***not*** required to file a Form 990-T so long as it does not have gross income from any other unrelated trades or businesses of $1,000 or more.

Example #5: A nonprofit CAA leases a building to run a Head Start program. The lease includes a parking structure adjacent to the building with 200 spots that are used by its employees, volunteers, and parents of Head Start children. The CAA reserves 10 spots for certain employees and also reserves 5 spots for parents dropping off or picking up their children. The CAA incurs $10,000 in total annual parking expenses. During the normal hours of the CAA's activities, approximately 35 employees park in the lot in non-reserved spots and approximately 150 non-reserved parking spots are empty.

- Under Step 1, the CAA must allocate 5% of its total parking costs, or $500, to reserved employee parking (10/200 = 5%). The CAA would treat this $500 as UBTI.
- Under Step 2, the CAA must determine whether the "primary use" of the 190 remaining spaces is for employee parking or for general public parking. The 150 empty spots are treated as provided to the general public, and the 5 spots reserved for non-employees are also offered to the public. Based on this assessment, the CAA concludes that the primary use of the 190 spots is for ***general public*** parking

(155/190 = 81.6%). Thus, the CAA does not need to move on to Steps 3 and 4.

- The CAA incurs $500 in UBTI for parking expenses associated with the 10 spots reserved for certain employees. So long as the CAA does not have gross income from any other unrelated trades or businesses of $500 or more (to reach the $1,000 filing threshold), it will not be required to file a Form 990-T for that year.

For additional examples of how to calculate employee-parking UBTI, see this FAQ issued by The Bonadio Group.

8. What counts as a parking "expense" when calculating UBTI?

According to Notice 2018-99, 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
- Rent or lease payments (or a portion of a rent or lease payment if not broken out separately)

9. Are there any parking expenses that do *not* count as UBTI?

According to Notice 2018-99, depreciation on parking structure used for employee parking is not treated as a parking expense, and for-profit employers can continue to take a deduction for depreciation costs. Thus, nonprofit employers do not need to treat depreciation costs as UBTI. Depreciation is an allowance for the exhaustion, wear and tear, and obsolescence of the property.

Further, expenses paid for items not located on or in the parking facility, including items related to property next to the parking facility (such as landscaping or lighting), do not count as UBTI.

10. What if our CAA has parking lots at more than one location?

If a nonprofit CAA owns or leases more than one parking facility at a single geographic

location, the CAA can aggregate the spots and analyze them collectively as one parking lot. Example #8 in Notice 2018-99 indicates that where an employer owns multiple parking lots and garages at a single complex in one city, it may treat them as being in a single geographic location and analyze them collectively. However, if the parking lots are located in more than one geographic location (for example, in different cities or towns), the CAA must evaluate and allocate parking expenses at each lot separately.

SECTION THREE: PRACTICAL TAX PLANNING CONSIDERATIONS

11. Is it possible for a nonprofit CAA to have no UBTI from its employee-related parking expenses?

Yes, it is theoretically possible. First, the CAA would have to show that no parking spaces are reserved for employees. Further, the CAA must reasonably show that more than 50% of the spaces in its parking lot are either typically used by the public or empty during the CAA's normal hours of activities on a typical day—that is, that 50% or fewer of the parking spaces in the lot are used by employees during a typical day.

12. Can a nonprofit CAA charge its federal grants for the taxes paid on UBTI incurred through providing employee parking or other QTFs?

Unfortunately no. Under the federal Uniform Guidance, federal income taxes are unallowable costs.[5] Even though the tax is based on expenses incurred by the CAA for providing employee parking and other QTFs, because the Tax Act classifies these expenses as additions to UBTI[6] and assesses the tax as *federal* unrelated business *income tax* (UBIT), the prohibition against using federal funds to pay federal income taxes applies.

13. What are our options if our nonprofit CAA does not have unrestricted funds to pay taxes on the UBTI stemming from employee parking and QTF expenses?

Some tax-exempt organizations are considering one or more of the following three strategies to minimize their tax liabilities resulting from employee parking or other QTFs. If your CAA considers adopting one of these strategies, we urge you to speak with your CAA's auditors and tax advisors to determine whether any of these options is feasible given your CAA's circumstances. This FAQ is intended to provide general information and not individual legal advice or tax assistance.

First, the IRS indicated in Notice 2018-99 that *organizations can reduce or eliminate completely the number of reserved employee parking spots by March 31, 2019, and treat those spots as non-reserved, retroactive to January 1, 2018.* While this may not completely

eliminate a nonprofit CAA's UBIT liability, it can help minimize the total parking expenses allocable to employees.

Second, an organization that leases its facilities might consider renegotiating the lease agreement. If the organization rents a building that includes access to a parking lot as part of the lease, it could consider amending the lease to explicitly state that parking and any associated maintenance costs are provided for free. Under this option, no parking expenses after the lease amendment would be added to UBTI (though it would not affect parking expenses prior to the amendment). It is not clear, however, how the IRS would view a lease amendment that maintains the same total rental costs but shifts them completely to non-parking facilities. It is possible that the IRS would require that the organization allocate at least some portion of the lease payment to the parking facilities. The IRS could also enforce anti-abuse rules that target taxpayer actions clearly aimed at circumventing a tax rule, and might view the lease amendment as an attempted end-run around the Tax Act.

A third, more administratively complicated solution, is for an organization that previously provided free parking to its employees to begin charging a fee for employees to park. The organization would then use those fees to pay UBIT on the parking expenses allocable to employee parking. The organization could make employees whole by raising their salaries enough to approximate both the parking fee and the additional income and employment taxes each employee would owe on the salary increase. While this solution, in the aggregate, may be more costly to the organization than just paying the UBIT costs (since some employees' income tax rates may be higher than the organization's UBIT rate and because the organization will owe additional employment taxes on the salary increases), the main benefit of this approach is that salary increases are generally allowable federal grant expenses, whereas federal income taxes are not.

14. Are there any deductions we can use to offset UBTI from employee parking or QTF expenses?

Since the Tax Act treats the CAA's ***expenses*** as providing employee parking or other QTFs as income, unlike other types of UBTI, there are no deductions from the activity generating the income that could be used to offset the UBTI. The IRS does, however, note that the provision of employee parking and QTFs is ***not*** considered an unrelated trade or business. Thus, until the IRS issues guidance to the contrary, if a nonprofit CAA only has one other unrelated trade or business, and that unrelated trade or business results in net losses for the year, the CAA could use those losses to offset any UBTI incurred to provide employee parking or other QTFs.[7]

15. Do we need to pay estimated taxes for UBTI incurred from employee parking or QTF expenses?

Unfortunately yes. If your nonprofit CAA has tax liabilities for providing employee parking or QTFs under these new rules, it must make quarterly estimated tax payments. The IRS issued a separate Notice 2018-100 to waive penalties for certain tax-exempt organizations

that failed to make quarterly tax payments in 2018—this relief applies only to tax-exempt organizations that were not previously required to file Form 990-T.

16. How do these new federal requirements impact state UBIT rules?

It depends. Some states impose a separate, state-level tax on income that meets the definitions of UBIT under federal tax laws, and in those states, a nonprofit CAA may be required to report and pay UBIT at both the federal and state levels. Some states, however, have specifically exempted the provision of qualified parking and QTFs from state UBIT (e.g., New York).

CAPLAW will continue to monitor the status of the law, including any guidance from the IRS regarding employer-provided parking, and will issue additional updates and resources as they become available.

END NOTES

[1] IRC § 274(a)(4): "No deduction shall be allowed under this chapter for the expense of any qualified transportation fringe (as defined in section 132(f)) provided to an employee of the taxpayer."

[2] New IRC § 512(a)(7) reads:

> *Unrelated business taxable income* of an organization shall be *increased by any amount for which a deduction is not allowable* under this chapter by reason of section 274 *and which is paid or incurred by such organization for any qualified transportation fringe* (as defined in section 132(f)), *any parking facility used in connection with qualified parking* (as defined in section 132(f)(5)(C)), or any on-premises athletic facility (as defined in section 132(j)(4)(B)).

[3] IRC § 132(f)(5)(C).

[4] IRC § 132(f)(2) imposes a monthly cap on the amount of QTF benefits, including qualified parking, that employers can provide to individual employees on a pre-tax basis. This limitation is set annually by the IRS ($260 per month for 2018 and $265 per month for 2019). Any amount of QTF benefits and qualified parking provided by employers that exceeds this monthly exclusion limitation will be treated as taxable compensation to the individual employee, and hence would not count as "deemed" UBTI to the nonprofit employer.

[5] 2 C.F.R. § 200.470(b)(iii); 45 C.F.R. § 75.470(b)(iii)

[6] I.R.C. § 512(a)(7): "Unrelated business taxable income of an organization shall be increased by any amount for which a deduction is not allowable [under I.R.C. § 274] and which is paid or incurred by such organization for any qualified transportation fringe..., any parking facility used in connection with qualified parking..., or any on-premises athletic facility....

[7] Because a tax-exempt organization that only has one unrelated trade or business is *not* subject to the new "silo" rules in I.R.C. § 512(a)(6), which requires a tax-exempt organization to count gross income and associated deductions for each unrelated trade or business separately, it appears that this tax-exempt organization can use any net operating losses associated with that single unrelated trade or business to offset its parking expenses.

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