



Summary of Notice 2018-99: Guidance for Calculating UBIT Liability on Transportation and Parking Benefits—Sec. 512(a)(7)

December 2018

Disclaimer: This is meant to provide guidance for estimating UBIT liability according to Notice 2018-99 released by Department of Treasury and IRS. The Council strongly urges members to seek a professional opinion on your specific situation from a tax lawyer or certified public accountant.



Does your organization provide parking/transportation benefits for employees?

If **NO**, you will not have UBIT liability under Sec. 512(a)(7).

If **YES**, you will owe UBIT with your 2018 taxes.*

** Current law does not require organizations with total UBTI liability that is less than \$1,000 to file the Form 990-T and provides a \$1,000 specific deduction to eliminate the taxes that would otherwise be owed.*



The Notice provides guidance for two scenarios:

1. Organization pays subsidies for employee parking or transportation (which is provided by a third party).
2. Organization owns or leases parking spots in a parking facility for use by employees or other visitors.

Note: The guidance states that any “reasonable” method of calculating UBIT owed on parking spots will be accepted, as long as upkeep expenses are allocated for parking spots based on their usage by employees/other visitors versus the general public (i.e. the value of what is paid for parking in a lease contract is not sufficient basis for calculating UBIT owed).



To Calculate:

- Under Sec. 132(f)(2), organizations can provide up to \$260* in parking/transportation benefits per employee. Anything in excess of that amount should be considered compensation for the employee.
- Determine total amount provided to employees for transportation/parking benefits.
- UBIT liability is 21% of total amount paid in parking/transportation benefits.

** For 2018*



To Calculate:

- The Guidance provides a multi-step test to determine UBIT liability.
- Amount owed will depend on:
 - Whether parking spots are reserved for employees or other visitors; and
 - Whether parking is both available for public use and the number of spots available for public use as a percentage of total spots.



Scenario #2: Owns or Leases Parking Spots for Use by Employees/Visitors

Step 1:

- Determine if any spots are specifically reserved for organization's employees (including, but not limited to, specific signage).
- Determine the percentage of reserved spots in relation to the total number of parking spots.
- Multiply percentage by the amount of total parking expenses* for the parking facilities.

** For purposes of 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 (if not broken out separately). Depreciation on a parking structure owned by an organization and used for parking by the organization's employees is not a parking expense for purposes of this Notice.*



Step 2:

- Identify the remaining parking spots in the parking facility and determine whether their primary use is to provide parking to the general public. “Primary use” means greater than 50% of actual or estimated usage of the parking spots.
- If the primary use of the remaining parking spots in the parking facility is:
 - *To provide parking to the general public*, then the remaining total parking expenses for the parking facility are not included in the amount liable for UBIT.
 - *Not to provide parking to the general public*, then the remaining total parking expenses for the parking facility are included in the amount liable for UBIT.



Step 3:

- Determine if any spots are specifically reserved for organization's nonemployees (including, but not limited to, specific signage such as "organization visitors only").
- Determine the percentage of reserved spots in relation to the total number of parking spots.
- Multiply percentage by the amount of total parking expenses* for the parking facilities.

** For purposes of 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 (if not broken out separately). A deduction for an allowance for depreciation on a parking structure owned by a taxpayer and used for parking by the taxpayer's employees is an allowance for the exhaustion, wear and tear, and obsolescence of property, and not a parking expense for purposes of this notice.*



Scenario #2: Owns or Leases Parking Spots for Use by Employees/Visitors

Step 4:

- Determine remaining use and allocable expenses
- If the organization completes Steps 1-3 and has any remaining parking expenses not specifically categorized as deductible or nondeductible, the taxpayer 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.



- For guidance on specific situations, the Council strongly urges members to seek a professional opinion from a tax lawyer or certified public accountant.
- Examples of how these calculations should be determined can be found in [Notice 2018-99](#) (beginning on page 11).