



Feedback for REG-119307-19: Qualified Transportation Fringe (QTF), Transportation and Commuting Expenses under Section 274¹

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
Preamble	COVID-19 related concerns	COVID19 & safety concerns	<p>Regulations should allow for a moratorium on enforcement on the deduction disallowance throughout the COVID-19 crisis period aligning with same periods as other COVID-related administrative relief measures (given many impacted businesses have significantly fewer employees working at the workplace (and therefore no fringe benefits are being provided).</p> <p>As an alternative, regulations should allow for a COVID-19 exception for employees not working in the office/ business locations and thus not utilizing employee parking during this period. This methodology could align with the general “any reasonable method” standard as provided in the proposed regulations.</p>	<p>As an example for the alternative recommendation, taxpayers can consider the percentage of the population of a company identified as working from home during the COVID relief period and exclude that relative percentage of the otherwise nondeductible parking expenses (as calculated under the taxpayer’s normal “reasonable method” according to their specific facts and circumstances) from disallowance for the COVID-related period.</p> <p><u>Example:</u> Taxpayer has \$10M of non-deductible parking expenses under their normal calculation methodology for their fiscal year ending in 2020 and the taxpayer’s COVID relief period is four months during which 70% of its workforce operates under a WFH policy. As such 23% [(4/12)*70%] of the \$10M would not be subject to the disallowance, bringing the revised nondeductible amount to \$7.67M.</p>
Prop. Regs. §1.274-13	Disallowance of deductions for certain qualified transportation fringe expenditures			

¹ Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.



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<p>Prop. Regs. §1.274-13(c)</p>	<p>Special rules for calculating disallowance of deductions for qualified transportation fringe parking expenses; taxpayer owned or leased parking facilities</p>	<p>Calculation of mixed parking expenses and the 5% safe harbor (Prop. Regs. §1.274-13(c)(1))</p>	<p>Extend the 5% safe harbor to the general rule.</p> <p>Additionally, allow the 5% safe harbor to be used for any mixed parking expenses that are not allocated by a service provider to a parking facility or are not accounted for separately on the taxpayer’s books, including expenses for maintenance, snow and ice removal, landscape costs, security, cleaning.</p>	<p>Under the primary use methodology and the cost per space methodology, the proposed rules allow a taxpayer to allocate 5% of certain mixed expenses to the parking facility.</p> <p>However, the proposed rules prohibit taxpayers from using the 5% safe harbor for both the general rule and the qualified parking limit methodology. It is unclear why the proposed rules prevent application of the safe harbor for the general rule. While it’s arguably understandable why the safe harbor does not apply to the qualified parking limit methodology (which prescribes a cost per space or per employee such that employers using this method do not need to determine actual expenses related to parking facilities) under the general rule, employers must determine actual parking expenses. The 5% safe harbor would alleviate the administrative burden of collecting and allocating parking expenses for taxpayer using the general rule.</p> <p>For the methodologies that are eligible for the 5% safe harbor, the proposed rules only allow it to apply to certain expenses. Those expenses are limited to payments under a lease or rental agreement and payments for utilities, insurance, interest, and property taxes. Service providers do not typically allocate costs to parking facilities for services provided to an entire building. Taxpayers also generally do not separately account for and track expenses for a parking facility if the expense relates to an entire building. For this reason, all expenses that are not separately accounted for and that are not allocated by a service provider to a parking facility should be eligible for the 5% safe harbor, including, but not limited to, expenses for maintenance, landscaping, snow and ice removal, security, and cleaning.</p>



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Prop. Regs. §1.274-13(d)	Calculation of disallowance of deductions for qualified transportation fringe expenses	Alternative Proposal for the Qualified Parking Limit Methodology	<p>To encourage use of the safe harbor by manufacturers and employers with parking spots in less populous areas, we recommend the adoption of a safe harbor alternative monthly rate to determine the disallowed amounts attributable to parking spots located outside the city limits of the 20 most populous cities in the United States. The safe harbor alternative monthly rate equals \$25.</p> <p>The employer would identify the number of employees who park at the geographic locations during the peak demand period and multiply the number by the corresponding annual rate (i.e., either \$3,240 or \$300, depending on the location) to arrive at the disallowed amount.</p> <p>The safe harbor alternative would allow for more accurate calculations and encourage greater use of the safe harbor. Both taxpayers and the IRS would have less administrative burden in tabulating</p>	<p>To simplify the administrative process for determining the disallowed cost of employer-provided parking in taxpayer owned or leased facilities, Prop. Regs. §1.274-13(d)(2)(ii)(A) offers a new methodology - the “qualified parking limit methodology” - that may be used as a simple estimate of the taxpayer’s monthly total cost per parking space. The monthly total disallowed cost per space equals the maximum monthly dollar amount that an employee may exclude as a qualified transportation fringe benefit under §132(f)(2), which is \$270 per month in year 2020. The monthly amount multiplied by the total number of spaces used by employees during the peak demand period (or by the total number of employees) equals the disallowed amount under the Safe Harbor.</p> <p>This monthly rate (\$270 in 2020) ignores the significant disparity in parking costs across the country. Based on 2016 data, the cost of a parking spot near city hall in Oklahoma City averages \$25 per month (which is likely higher than the cost of parking at a manufacturing facility outside city limits); a similar parking spot in New York City averages \$732 per month.² Nor does the safe harbor monthly rate reflect the lower costs associated with parking spots located adjacent to manufacturing facilities, which tend to be located outside a central business district. As a result, the taxpayers most likely to elect the safe harbor are those with taxpayer owned or leased parking facilities in the 20 most populous cities in the United States.³ Manufacturers and employers in less populous cities are less likely to utilize the safe harbor.</p>

² Streetsblog USA, Comparing the Price of Parking Across U.S. Cities (Oct. 20, 2016), <https://usa.streetsblog.org/2016/10/20/comparing-the-price-of-parking-across-u-s-cities/>

³ \$274 per month is the average cost of monthly parking in Washington, DC (the 20th most populous city in the United States) according to data from Parkopedia. Washington, DC Parking, Parkopedia. https://en.parkopedia.com/parking/washington_dc/



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			and auditing disallowed parking expenses.	<p>The below example demonstrates the operation of the revised safe harbor to address this issue.</p> <p><u>Example:</u> Employer X has 100 employees in its Chicago headquarters and 1,000 employees at its manufacturing facility in Rockford, Illinois. In a typical business day, the manufacturing facility operates three shifts – the largest number of employees in a shift involving 400 employees. Employer X owns both facilities and offers free parking to its employees. Under the modified safe harbor alternative, Employer X’s annual disallowed parking costs would equal \$444,000 [i.e., the sum of (100 employees x \$3,240 attributable to the Chicago parking costs) and (400 employees in the peak demand period x \$300 attributable to the Rockford parking costs)].</p>
Prop. Regs. §1.274-13(e)	Specific exceptions to disallowance of deduction for qualified transportation fringe expenses	Taxpayer must not use value to determine expense (Prop. Regs. §1.274-13(d)(2)(i)(A))	The deduction disallowance for the expense of any qualified transportation fringe should not apply to parking facility expenses that have no objective value to an employee, such as parking in industrial, remote, or rural areas (i.e., areas where the general public would not pay to park), and therefore are not a QTF.	<p>An expense is only disallowed under §274(a)(4) if it is an expense for a “qualified transportation fringe (as defined in section 132(f))”. In other words, if access to a parking facility is not a QTF to an employee, then there is no deduction disallowance under §274(a)(4) for expenses related to a parking facility.</p> <p>A QTF is a type of “fringe benefit” that is excluded from gross income pursuant to §132. Section 132 describes the value of benefits that are excludable from income. The parenthetical in §274(a)(4) refers to §132(f)(2), which prescribes a value, indexed for inflation, that may be excluded from employees’ gross incomes for QTFs. To determine the value of parking provided to employees, regulations rely on an arm’s-length-transaction standard. <i>See</i> Regs. §1.132-9(b), Q&A20 (cross-referencing the definition of fair market value for fringe benefits provided in Regs. §1.61-21(b)(2)). Notice 94-3, issued prior to Regs.</p>



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				<p>§1.132-9, concluded that parking for employees of an industrial plant in a rural area without commercially available parking has no fair market value because only employees would ordinarily park in such facilities. Such parking would be excluded by employees because it has no value and, therefore, would not be considered a fringe benefit, including a QTF. An expense with respect to an item that is not a QTF should not be disallowed under §274. In other words, something of no value cannot be a “fringe benefit” subject to §274.</p> <p>Legislative history quoted by the Preamble confirms that the disallowance applies only to benefits covered by the QTF exclusion. As quoted in the Preamble, H.R. Rep. No. 115-409 provides “As of part of its broader tax reform effort, the Committee believes that certain nontaxable fringe benefits should not be deductible by employers if not includible in income of employees.” If an employee would not otherwise exclude an amount, either because it exceeds the exempt monthly amount or because it has no value, then the expense remains deductible by the employer. Section 274(a) was intended to provide parity between the employer’s deduction and an employee’s exclusion.</p> <p>Yet Prop. Regs. §1.274-13(e)(2)(i)(2) explicitly states that the exception in §274(e)(2) does not apply to ‘zero value’ QTFs, thereby creating a fringe benefit out of something of ‘zero value’. This leads to disparate results. A taxpayer who determines that parking has zero value would have all expenses related to parking denied by the proposed regulations. Meanwhile, a taxpayer who determines that the fair value of parking is \$0.50 per day and charges each employee \$0.50 per day would qualify for exclusion from §274(a)(4) as no “fringe benefit” would be provided.</p>



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				Moreover, notwithstanding the Preamble’s insistence that “value” should not be used to determine the disallowance, the qualified parking limit methodology in the proposed regulations relies on the value.