



This article presents general guidelines for Georgia nonprofit organizations as of the date written, and should be not be construed as legal advice. Always consult an attorney to address your particular situation.

UPDATED: Determining Your Unrelated Business Income Tax Owed if You Provide Parking & MARTA Passes to Your Employees

Are you providing MARTA passes or parking to your employees? If the answer is yes, read on. If the answer is “only through a pre-tax deduction from the employees” paychecks,” read on!

There are four scenarios we want to highlight:

1. 501(c)(3) organization pays for MARTA passes or nearby parking for employees
2. 501(c)(3) organization purchases MARTA passes or parking at a nearby lot and then passes those costs on to employees through a pre-tax deduction to the employee's pay
3. 501(c)(3) organization has parking lot spaces included in its lease and provides the parking free to its employees
4. 501(c)(3) organization owns the parking lot and provides parking free to its employees

All four of these situations raise tax implications for 501(c)(3) nonprofits under the Tax Cuts and Jobs Act (“Act”).¹ The Act attempted to treat 501(c)(3) nonprofits the same as for-profit businesses that can no longer take a deduction for these expenses by requiring nonprofits to pay unrelated business income tax² on such expenses. The law does not follow the traditional UBI rule (income derived from trade or business activities not substantially related to the tax-exempt organization's purposes is taxable as if earned by a comparable for-profit enterprise), making it more difficult to understand.

The Act became effective almost immediately after passage (January 1, 2018), and on December 10, 2018, the IRS issued Interim Guidance (Notice 2018-99 and Notice 2018-100) that 501(c)(3) nonprofits may rely on as they prepare W-2s and Form 990s for 2018. Under the Act, 501(c)(3) nonprofits will have to pay UBI tax in each of the four scenarios above.

Scenario 1

The organization incurs the expense of the parking or MARTA passes and therefore owes UBI tax on that amount. The UBI tax is based on the total expense of the parking or MARTA passes paid by the organization and not the value of such parking or MARTA passes to the employees. The value of employer-provided parking or MARTA passes is still excludable from an employee's income (and therefore not taxed as income to the employee) subject to a cap (\$260/month in 2018; \$265/month in 2019). If the expense exceeds the cap, the excess amount must be included in the employee's income and that amount is not considered UBI.

¹ There is a limited exception where paying for parking will not require payment of UBIT if it is necessary for the safety of your employees.

² For purposes of this article, “UBI” is unrelated business income that is generated by the nonprofit and “UBI tax” is the tax owed on the unrelated business income.

Scenario 2

This scenario is a bit less obvious. When an employee chooses to pay for transportation using pre-tax dollars, the amount is now considered a benefit provided by the employer and not salary. It is not a “pass-through” where the employer is being “reimbursed” by the employee, but a cost borne by the nonprofit employer. So, in Scenario 2 the employer also owes UBI tax on the full amount of the parking or MARTA passes (and the value of the parking or MARTA pass is only excludable from an employee’s income subject to the cap explained in the paragraph above) unless the employees pay for the passes with post-tax dollars.

Scenario 3 – Parking Included in Lease

In Scenario 3, the 501(c)(3) organization has parking lot spaces **included in its lease** and provides the parking free to its employees. The organization must pay UBI tax on the employee parking expenses, and the Interim Guidance explains how to calculate that UBI tax. The organization may use any reasonable method based on “the total parking expenses” of the organization. The Interim Guidance also provides a safe harbor that the IRS has deemed to be “a reasonable method.” Under the safe harbor, the organization must determine its total parking expense, and in the case of parking included in its lease, it is usually the portion of the lease attributable to the use of the parking lot spaces. [Usually, the organization is not paying for the cost of upkeep of the parking lot, but simply paying more monthly rent to have access to the parking spots.³] Then, the organization should divide the total parking expense by the number of parking spots it has.

Next, the organization must calculate how many of its parking spots are specifically reserved for employees (by using a sign or separate parking area or other designation), The parking expenses for these spots must be included in the UBI tax calculation. [Note that the Interim Guidance provides a special opportunity for organizations to retroactively reduce or eliminate the tax cost of employee-reserved spots for 2018. Organizations have until March 31, 2019 to change their parking arrangements to decrease or eliminate the number of employee-reserved parking spots, which will be given retroactive recognition as of January 1, 2018.]

Next, the organization must determine the primary use of parking spots that are not reserved exclusively for employees. The cost of any spots specifically reserved for visitors, guests, clients, etc. and that may not be used by employees or independent contractors will not be treated as UBI.

Further, the Interim Guidance has created a “primary use test” for determining the primary use of the rest of the spots (those not specifically reserved). If the organization can prove that, during normal hours on a typical day, more than 50% of the non-reserved parking spots are available to “the general public” including visitors, vendors, customers, clients, patients, students, etc., but not including independent contractors or employees (even if many of the spots are empty), then 100% of the expenses for the non-reserved spots are not treated as UBI. If 50% or fewer of the spots are made available to the general public, then the organization’s UBI will be based on the estimated percentage of employee use. The organization must use a “reasonable method” to determine the actual employee use of the spots and the Interim Guidance (Notice 2018-99) provides a number of examples to help determine this part of the calculation.

³ If the organization has additional expenses associated with the leased spots, see Scenario 4 for further guidance and contact your accountant.

Also, under the safe harbor, employers may aggregate multiple parking facilities within the same geographic location. This aggregation rule may help certain employers meet the “over 50%” threshold for visitor and guest availability described above.

Scenario 4

In Scenario 4, the 501(c)(3) organization owns the parking lot and provides parking for free its employees. The organization may, just as in Scenario 3, use any reasonable method to determine its UBI tax based on “the total parking expenses” of the organization. The Interim Guidance safe harbor also applies to Scenario 4. The safe harbor requires the organization to first calculate its “total parking expenses,” which include, but are not limited to, repairs, maintenance, utility costs, insurance, property taxes, interest, snow and ice removal, leaf removal, cleaning, landscape costs, parking lot attendant expenses, and security. Fortunately, however, capital expenses are **not** included in total parking expenses, so the organization still will be able to obtain the full tax benefit from depreciation on its parking facilities.

Then, once total expenses are determined, the organization follows the same steps as outlined in Scenario 3 above: determine the number of reserved employee spaces (expenses attributed to those spaces are treated as UBI), determine the number of reserved public spaces not for use by employees or independent contractors (the expenses for these spaces are do not generate UBI), and then apply the “primary use” test for the rest of the spaces.

Paying UBIT

If a 501(c)(3) organization had unrelated business income of \$1,000 or more in 2018, it must file a Form 990T and pay UBI tax at the flat corporate tax rate of 21%. Further, if a 501(c)(3) organization had to pay \$500 or more in UBI tax, it should have made estimated tax payments using Form 990W. Such payments were to be made quarterly (April 17, June 15, Sept. 17, Dec. 17). The Interim Guidance (Notice 2018-100) provides relief for organizations that did not pay estimated income tax due to UBI implicated by employee parking/MARTA passes for 2018 but only for those organizations that were not required to file a Form 990-T for the previous tax year and that comply in a timely manner with the payment of tax due for the current year. For 2019, the estimated payments will be required. In addition, if doing business in Georgia, the 501(c)(3) must file a Form 600T and pay corporate income taxes on that amount to the State of Georgia.

Please contact your attorney or accountant with any questions.