

Most (But Not All) Churches Can Avoid New Non-Profit Employee Parking Tax

A little-noticed part of the 2017 tax reform created potential tax liability for non-profits, including churches, that provide parking and other qualified transportation fringe benefits to their employees. Specifically, the new law requires non-profits to count the cost of providing those benefits as unrelated business income, which is subject to tax.

In December 2018, the IRS issued interim guidance on how to calculate the cost for employee parking which is to be included as taxable income. This guidance can be found here: <https://www.irs.gov/pub/irs-drop/n-18-99.pdf>. The good news is that, under the interim guidance, most churches will likely avoid any tax and will likely avoid having to file a return. Specifically, most churches will fall into the safe harbor described below. Unfortunately, churches that pay for their employees to park off-site, or which have small parking lots which are more than half used for employee parking, are likely to have to pay the tax. Such churches should consult a tax professional.

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CONGREGATIONS WITH DETAILED QUESTIONS OR WHO MAY FACE TAX
LIABILITY SHOULD CONSULT WITH AN ATTORNEY OR A TAX PROFESSIONAL.
THIS RESOURCE IS NOT LEGAL OR TAX ADVICE.**

What is Unrelated Business Taxable Income (UBTI)?

Churches are generally exempt from federal (and state) income tax. An exception exists, however, for income from an unrelated business. For example, if a church runs a catering business for weddings out of its kitchen and fellowship hall, then the income from that catering business is taxable, as the catering business is an unrelated business. Most churches do not have UBTI – or have minimal amounts which are below the \$1,000 standard deduction and filing limit. If a church has more than \$1,000 in UBTI, the UBTI needs to be reported on Form 990-T and is taxed at a flat rate of 21%.

(Note: Charitable income received by the church is *not* UBTI, even if it comes from, for example, a bake sale or the purchase of fair-trade coffee. Also, most rental income is *not* UBTI, as explained here: http://download.elca.org/ELCA%20Resource%20Repository/Taxation_on_Rental_Property.pdf.)

What Changed in the New Law?

Under the new law, non-profit institutions (not just churches) are required to count as UBTI the cost of providing certain qualified transportation fringe benefits, including pre-tax reimbursements of public transportation costs and the cost of providing employee parking. Thus, if a church spent \$2,000 providing employee parking, it would have \$2,000 in UBTI which would be subject to reporting and tax.

Recently, the IRS issued interim guidance (found here: <https://www.irs.gov/pub/irs-drop/n-18-99.pdf>) on how to calculate the amount of UBTI, if any, that churches should report. The guidance includes several helpful examples. The key parts can be found on pages 17-21, especially Example 9 on pages 20-21. The guidelines state that it is the cost, not the value, of the employee parking that matters. They also clarify that employee parking costs do not include depreciation, but do include 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.

Is There a Safe Harbor to Avoid the Tax and Avoid Filing a 990-T?

Yes. Churches will have no exposure to the tax if *both* of the following are true:

1. the church does not have any parking spaces reserved for employees (e.g., spaces labelled “pastor parking”); *and*
2. more than 50% of the parking spaces are primarily available for use by the general public at typical times.

For purposes of this analysis, “general public” includes members, worshipers, and people attending events at the church – in other words, non-employees. An example of how to do this calculation is in Example 9 on pages 20-21 of the IRS guidance. Most churches have more than 50% of their parking spaces used by non-employees at most times.

If a church does have parking spaces reserved for employees, the guidance gives the church until March 31, 2019 to de-designate those spaces (e.g., remove the signs and paint over the markings), and the IRS will accept that change retroactively. Thus, churches with designated employee parking spaces should de-designate those spaces as soon as possible.

This safe harbor should cover most churches, especially if they de-designate any reserved spaces by March 31, 2019. For churches that come within this safe harbor, there is no UBTI increase for employee parking. Therefore, unless the church has UBTI from another source, it will not have to file a 990-T.

Is There a De Minimis Amount of Employee Parking Expense which is Not Taxable?

Yes. Even if a church does not fit in the safe harbor above, the filing limit and standard deduction for UBTI is \$1,000. Accordingly, if the cost of parking allocated to employees is less than \$1,000, and the church does not have UBTI from another source, then there is no need to file a Form 990-T or pay the tax. See Example 9 on pages 20-21 of the IRS guidance for an example of this calculation.

Who Will Likely Have to File a 990-T and Pay the Tax?

Churches with the following situations are likely to have to pay the tax (or at least consult with a tax professional and do some calculating):

- Churches who pay for their employees to park off-site;
- Churches who have reserved spots for employees (and do not de-designate them by March 31, 2019); and/or
- Churches with small parking lots which are more than 50% occupied by employees.

These churches will have to calculate the amount they pay to provide this parking, including maintenance, repairs, lighting, etc., and allocate that amount between employee parking and other parking. If the resulting amount is over \$1,000, they will have to file a 990-T and pay the tax. Any church in this situation should consult with an attorney or tax professional.