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Proposed regulations: Qualified transportation and commuting expenses under section 274 (text of regulations)

The U.S. Treasury Department and IRS this afternoon released for publication in the Federal Register a notice of proposed rulemaking (REG-119307-19) that reflects changes made to section 274 by the 2017 U.S. tax law (Pub. L. No. 115-97) that is the law that is often referred to as the “Tax Cuts and Jobs Act” (TCJA).

The [proposed regulations](#) [PDF 513 KB] (64 pages) address the elimination of the deduction under section 274 for expenses related to certain transportation and commuting benefits provided by employers to their employees in tax years beginning after December 31, 2017.

The preamble explains that these proposed regulations provide guidance to determine the amount of such expenses that is nondeductible and apply certain exceptions under section 274(e) that may allow such expenses to be deductible.

Read a related IRS release, [IR-2020-125](#) (June 19, 2020).

Overview

Section 274 was amended by the TCJA to disallow a deduction for the expense of any qualified transportation fringe provided to an employee of the taxpayer, effective for amounts paid or incurred after December 31, 2017.

The TCJA also added:

- Section 274(l) to provide that no deduction is allowed for any expense incurred for providing any transportation, or any payment or reimbursement, to an employee of the taxpayer in connection with travel between the employee’s residence and place of employment, except as necessary for ensuring the safety of the employee, effective for transportation and commuting expenses paid or incurred after December 31, 2017.

- Section 512(a)(7) providing that a tax-exempt organization's unrelated business taxable income (UBTI) is increased by the amount of the qualified transportation fringe expense for which a deduction is not allowable under section 274, effective for amounts paid or incurred after December 31, 2017 (however, in December 2019, section 512(a)(7) was repealed retroactive to the original date of enactment of the TCJA). While section 512(a)(7) was retroactively repealed, the rules of section 274 and today's proposed regulations apply to tax-exempt organizations to the extent the amount of the qualified transportation fringe expenses paid or incurred by an exempt organization is directly connected with an unrelated trade or business conducted by the exempt organization. In such case, the amount of the expenses directly connected with the unrelated trade or business is subject to the disallowance under section 274(a)(4) and, thus, is disallowed as a deduction in calculating the UBTI attributable to such unrelated trade or business under the general rule of section 512(a)(1).

The purpose of this report is to provide text of the proposed regulations.

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