services are the following: Export packing, local drayage in the source country (including waiting time at the dock), ocean and other freight, loading, heavy lift, wharfage, tollage, switching, dumping and trimming, lighterage, insurance, commodity inspection services, and services of a freight forwarder. ''Delivery service'' may also include work and materials necessary to meet USAID marking requirements.

Developing countries means those countries that are categorized by the World Bank as low or lower middle income economies according to their gross national income per capita, and also includes all countries to which USAID provides assistance. USAID will maintain a list of developing countries primarily based on the most recent World Bank determinations, and will make the list available in USAID's Automated Directives System, ADS 310.

Essential medical supplies means personal protective equipment, medical products and equipment, pharmaceuticals, and other medical countermeasures needed to address the COVID–19 pandemic, which are in short supply, as identified in the ''Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID–19 Hoarding Prevention Measures'' issued by the Department of Health and Human Services (HHS) on March 25, 2020, as updated. USAID may designate additional materials as ''emergency medical supplies'' if deemed necessary and will publish notice of these additional materials in the **Federal Register.**

Free Port or *Bonded Warehouse* is a special customs area with favorable customs regulations (or no customs duties and controls for transshipment).

Implementing instrument means a binding relationship established between USAID and an outside party or parties to carry out USAID programs, by authorizing the use of USAID funds and/or nonfinancial resources for the procurement of services or commodities and/or commodity related services. Implementing instruments include specific conditions that apply to each such procurement. Examples of such instruments include contracts, grants, cooperating agreements, and interagency agreements.

Incidental services means services such as installation, erection, maintenance, or upgrading of USAID-financed equipment, or the training of personnel in the maintenance, operation and use of such equipment, or similar services provided for the authorized disposition of such commodities.

Long term lease means, for purposes of subpart B, a single lease of more than 180 calendar days; or repetitive or intermittent leases under a single award within a one-year period, which cumulatively total more than 180 calendar days. A single lease may consist of lease of one or more of the same type of commodity within the same lease term.

Motor vehicles means self-propelled vehicles with passenger carriage capacity, such as highway trucks, passenger cars and buses, motorcycles, scooters, motorized bicycles, ATVs, and utility vehicles. Excluded from this definition are ambulances, snowmobiles, industrial vehicles for materials handling and earthmoving, such as lift trucks, tractors, graders, scrapers, off-the-highway trucks (such as off-road dump trucks), boats, and other vehicles that are not designed for travel at normal road speeds (40 kilometers per hour and above).

Mission means the USAID Mission, office or representative in a cooperating/recipient country.

Nationality refers to the place of legal organization, ownership, citizenship, or lawful permanent residence (or equivalent immigration status to live and work on a continuing basis) of suppliers of commodities and services.

Pharmaceutical means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals; any substances (other than food) intended to affect the structure or any function of the body of humans or animals; and, any substance intended for use as a component in the above. The term includes drugs, vitamins, oral rehydration salts, biologicals, and some in-vitro diagnostic reagents/test kits; but does not include devices or their components, parts, or accessories. Contraceptives, including condoms, are not included in this definition.

Prohibited sources means countries to which assistance is prohibited by the annual appropriations acts of Congress or other statutes, or those subject to other executive branch restrictions, such as applicable sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control. USAID maintains a list of prohibited sources, available in USAID's Automated Directives System, ADS 310.

Recipients and contractors. Recipient has the same meaning as defined in 22 CFR 226.02, except that it shall include non-U.S. individuals, entities and organizations, as well as subrecipients. *Contractors* mean those entities which enter into a contract, as the term is defined in 48 CFR part 2, with the U.S. Government, and includes subcontractors.

Services means the performance of identifiable tasks, rather than the delivery of an end item of supply.

Source means the country from which a commodity is shipped to the cooperating/recipient country or the cooperating/recipient country itself if the commodity is located therein at the time of the purchase, irrespective of the place of manufacture or production, unless it is a prohibited source country. Where, however, a commodity is shipped from a free port or bonded warehouse in the form in which received therein, ''source'' means the country from which the commodity was shipped to the free port or bonded warehouse.

Supplier means any person or organization, governmental or otherwise, who furnishes services, commodities, and/or commodity related services, including delivery or incidental services, financed by USAID.

United States means the United States of America, any State(s) of the United States, the District of Columbia, and areas of U.S. associated sovereignty, including commonwealths, territories and possessions.

USAID means the United States Agency for International Development or any successor agency, including when applicable, each USAID Mission or office abroad.

USAID Principal Geographic Code means a USAID code which designates a country, a group of countries, or an otherwise defined area. The USAID principal geographic codes for purposes of procurement are described in § 228.03 of this part.

Suk J. Jin,

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DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9939]

RIN 1545–BP49

Qualified Transportation Fringe, Transportation and Commuting Expenses Under Section 274

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations to implement legislative

changes to section 274 of the Internal Revenue Code (Code) effective for taxable years beginning after December 31, 2017. Specifically, the final regulations address the elimination of the deduction under section 274 for expenses related to certain transportation and commuting benefits provided by employers to their employees. The final 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. These final regulations affect taxpayers who pay or incur such expenses.

DATES:

Effective Date: These regulations are effective on December 16, 2020.

Applicability Date: These regulations apply to taxable years beginning on or after December 16, 2020. Notwithstanding the preceding sentence, taxpayers may choose to apply § 1.274–13(b)(14)(ii) to taxable years ending after December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Patrick Clinton of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–7005 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under section 274 of the Code that amend the Income Tax Regulations (26 CFR part 1). In general, section 274 limits or disallows deductions for certain expenditures that otherwise would be allowable under chapter 1 of the Code (chapter 1), primarily under section 162(a), which allows a deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

On December 22, 2017, section 274 was amended by section 13304 of Public Law 115–97 (131 Stat. 2054), commonly referred to as the Tax Cuts and Jobs Act (TCJA), to disallow a deduction for the expense of any qualified transportation fringe (QTF) as defined in section 132(f) provided to an employee of the taxpayer, effective for amounts paid or incurred after December 31, 2017.

The TCJA also added section 274(l), which provides that no deduction is allowed under chapter 1 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.

On December 24, 2018, the Department of the Treasury (Treasury Department) and the IRS published Notice 2018–99, 2018–52 I.R.B. 1067, ''Parking Expenses for Qualified Transportation Fringes under § 274(a)(4) and § 512(a)(7) of the Internal Revenue Code.'' Notice 2018–99, in part, provided interim guidance for taxpayers to determine the amount of parking expenses for QTFs that is nondeductible under section 274(a)(4).

On June 23, 2020, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–119307–19) in the **Federal Register** (85 FR 37599) containing proposed regulations under section 274 (proposed regulations) to implement the TCJA's amendments to section 274. The proposed regulations would add a new section at § 1.274–13 to address parking and other QTF expenses under section 274(a)(4), including the application of certain exceptions in section 274(e) to QTF expenses. The proposed regulations also would add a new section at § 1.274–14 to address transportation and commuting expenses under section 274(l).

Pending the issuance of these final regulations, taxpayers were allowed to rely on the proposed regulations or the guidance provided in Notice 2018–99 for parking expenses, other QTF expenses, and transportation and commuting expenses, as applicable, paid or incurred in taxable years beginning after December 31, 2017.

The Treasury Department and the IRS received one request to speak at a public hearing that was later withdrawn. Therefore, no public hearing was held. The Treasury Department and the IRS received 12 written and electronic comments responding to the proposed regulations. All comments were considered and are available at *https://www.regulations.gov* or upon request. The comments addressing the proposed regulations are summarized in the Summary of Comments and Explanation of Revisions section. However, comments recommending statutory revisions or addressing issues outside the scope of these final regulations are not discussed in this preamble.

After full consideration of the comments received on the proposed regulations, this Treasury decision adopts the proposed regulations with modifications in response to certain comments, as described in the Summary of Comments and Explanation of Revisions section.

Summary of Comments and Explanation of Revisions

1. Qualified Transportation Fringes

A. In General

Section 274(a)(4), as added by the TCJA, provides that no deduction is allowed under chapter 1 for the expense of any QTF (as defined in section 132(f)) provided by taxpayers to their employees for expenses paid or incurred after December 31, 2017. Section 132 generally excludes from employees' gross income the value of certain fringe benefits. Section 132(a)(5) generally provides that gross income does not include any fringe benefit that qualifies as a QTF under section 132(f). QTFs are defined in section 132(f)(1) to mean any of the following provided by an employer to an employee: (1) Transportation in a commuter highway vehicle between the employee's residence and place of employment, (2) any transit pass, (3) qualified parking, and (4) any qualified bicycle commuting reimbursement. Section 132(f)(5)(A), (B), (C), and (F)(i) define transit pass, commuter highway vehicle, qualified parking, and qualified bicycle commuting reimbursement, respectively. Section 132(f)(2) provides that the amount of QTFs provided by an employer to any employee that can be excluded from gross income under section 132(a)(5) cannot exceed a maximum monthly dollar amount, adjusted for inflation. The adjusted maximum monthly excludable amount for 2020 is $270.

The proposed regulations restated the statutory rules under section 274(a)(4), defined relevant terms, and provided a general rule and three simplified methodologies to determine the amount of nondeductible parking expenses when a parking facility is owned or leased by the taxpayer. Additionally, the proposed regulations included rules addressing the deduction disallowance for expenses related to providing employees transportation in a commuter highway vehicle and transit pass QTFs. Finally, the proposed regulations applied the applicable exceptions in section 274(e) to all QTF expenses.

Specifically, the proposed regulations provided that if the taxpayer pays a third party for its employee's QTF, the section 274(a)(4) disallowance is generally calculated as the taxpayer's total annual cost of the QTF paid to the third party. With regard to QTF parking expenses, the proposed regulations provided that if the taxpayer owns or leases all or a portion of one or more parking facilities, the section 274(a)(4) disallowance may be calculated using a general rule or any one of three simplified methodologies. The proposed regulations provided taxpayers the option to apply the general rule or a simplified methodology for each taxable year and for each parking facility. The proposed regulations included special rules and definitions for allocating certain mixed parking expenses, aggregating parking spaces by geographic location, removing inventory/unusable spaces from available parking spaces, defining general public for multi-tenant building parking facilities, disregarding five or fewer reserved parking spaces if the reserved spaces are 5 percent or less of total parking spaces, and determining employee use of parking on a typical business day. The preamble to the proposed regulations provided that taxpayers may use statistical sampling with the general rule or simplified methodologies if they follow the procedures in Rev. Proc. 2011–42, 2011–37 I.R.B. 318, as corrected by Ann. 2013–46, 2013–48 I.R.B. 593.

The general rule in the proposed regulations allowed taxpayers to calculate the disallowance based on a reasonable interpretation of section 274(a)(4). However, the proposed regulations required taxpayers to use the expense paid or incurred in providing a QTF and not its value to an employee, allocate parking expenses to reserved employee spaces, and properly apply the exception for parking made available to the general public. The proposed regulations allowed a special rule for aggregating parking spaces by geographic location to be used with the general rule.

The proposed regulations also included three simplified methodologies as alternatives to the general rule. Under the first simplified methodology, the ''qualified parking limit methodology,'' taxpayers calculate the disallowance by multiplying the total number of spaces used by employees during the peak demand period, or, alternatively, the total number of the taxpayer's employees, by the section 132(f)(2) monthly per employee limitation on exclusion for qualified parking ($270 for 2020), for each month in the taxable year.

The second simplified methodology, the ''primary use methodology,'' is largely based on the method deemed reasonable in Notice 2018–99, modified in response to comments received on the Notice. The proposed regulations permitted the use of special rules for allocating certain mixed parking expenses and aggregating parking spaces by geographic location. The proposed regulations also provided definitions for employee, general public, parking facility, total parking spaces, reserved employee spaces, reserved nonemployee spaces, primary use, and total parking expenses, geographic location, inventory/unusable spaces, available parking spaces, peak demand period, and mixed parking expense.

The third simplified methodology provided in the proposed regulations is the ''cost per space methodology,'' which allows taxpayers to calculate the disallowance by multiplying the cost per parking space by the number of available parking spaces used by employees during the peak demand period. The proposed regulations provided that cost per space is calculated by dividing total parking expenses (including expenses for inventory/unusable spaces) by total parking spaces (including inventory/unusable spaces). The proposed regulations also permitted special rules for allocating certain mixed parking expenses and aggregating parking spaces by geographic location to be used with the cost per space methodology.

Finally, the proposed regulations provided that the deduction disallowance under section 274(a)(4) does not apply to expenditures for QTFs that meet the requirements of section 274(e)(2), (7), or (8), the three exceptions in section 274(e) that are relevant for QTFs. Pursuant to section 274(e)(2), the proposed regulations provided that the disallowance under section 274(a) does not apply to expenditures for QTFs to the extent the taxpayer properly treats the expenses as compensation to the employee on the taxpayer's Federal income tax return as originally filed, and as wages to the employee for purposes of withholding under chapter 24 of the Code (chapter 24) relating to collection of Federal income tax at source on wages. The proposed regulations also provided, in accordance with section 274(e)(7), that any taxpayer expense for transportation in a commuter highway vehicle, a transit pass, or parking that otherwise qualifies as a QTF under section 132(f)(1) is not subject to the deduction disallowance under section 274(a) to the extent such transportation, transit pass, or parking is made available to the general public. Finally, consistent with section 274(e)(8), the proposed regulations provided that any taxpayer expense for transportation in a commuter highway vehicle, a transit pass, or parking that otherwise qualifies as a QTF under section 132(f)(1) that is sold to customers in a bona fide transaction for an adequate and full consideration in money or money's worth is not subject to the deduction disallowance under section 274(a).

The final regulations substantially adopt the proposed regulations, with certain modifications and clarifications, as discussed in this Summary of Comments and Explanation of Revisions. In applying the final regulations, taxpayers may continue to use statistical sampling with the general rule or simplified methodologies if they follow the procedures in Rev. Proc. 2011–42, 2011–37 I.R.B. 318, as corrected by Ann. 2013–46, 2013–48 I.R.B. 593.

B. Definitions

As described in this part 1.B., the final regulations generally include the definitions from the proposed regulations, modified and clarified in response to comments.

i. Qualified Transportation Fringe

The final regulations adopt the proposed regulations' definition for the term ''qualified transportation fringe.'' The definition is based on section 132(f)(1), except that it does not include qualified bicycle commuting reimbursements. Although section 132(f)(1) includes qualified bicycle commuting reimbursements as a QTF, section 132(f)(8) provides that the inclusion of qualified bicycle commuting reimbursements in the definition of a QTF is suspended for taxable years beginning after December 31, 2017, and before January 1, 2026. Accordingly, for such taxable years, qualified bicycle commuting reimbursements are not excluded from an employee's income as a QTF. Because qualified bicycle commuting reimbursements are not QTFs, deductions for qualified bicycle commuting reimbursements are not disallowed under section 274(a)(4) for taxable years beginning after December 31, 2017 and before January 1, 2026. Thus, the final regulations provide that the term ''qualified transportation fringe'' means any of the following provided by an employer to an employee: (1) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment (as described in section 132(f)(1)(A) and (f)(5)(B)), (2) any transit pass (as described in section 132(f)(1)(B) and (f)(5)(A)), or (3) qualified parking (as described in section 132(f)(1)(C) and (f)(5)(C)).

Under section 132(f)(1)(C) and (f)(5)(C), the term ''qualified parking'' includes parking provided by an employer to an employee on or near the business premises of the employer. A commenter requested that the final regulations define ''parking provided to an employee'' to include only parking spaces that are reserved or otherwise set aside exclusively for employee use. The Treasury Department and the IRS decline to adopt this suggestion. Section 1.132–9, Q/A–4(d) provides that parking is provided by an employer to an employee if the parking is on property that the employer owns or leases, the employer pays for the parking, or the employer reimburses the employee for parking expense. Thus, the definition of qualified parking as a QTF under section 132(f) is not limited to parking that is reserved or otherwise set aside exclusively for employee use.

Another commenter suggested that parking with no objective value to an employee, such as parking in industrial, remote, or rural areas (that is, areas where the general public would not pay to park) is not a QTF and therefore, that section 274(a)(4) should not disallow the deduction of the expenses. The Treasury Department and the IRS note that there is nothing in section 132 or § 1.132–9 that supports the proposition that the value of parking to an employee is relevant in determining whether the parking itself constitutes qualified parking and a QTF. Thus, the Treasury Department and the IRS do not agree with the commenter that qualified parking with no objective value to an employee is not a QTF. However, see part 1.E.iii. of this Summary of Comments and Explanation of Revisions section for a discussion of the applicability of the section 274(e)(8) exception to parking with no objective value to an employee.

ii. Employee

The proposed regulations defined the term ''employee'' based on definitions in §§ 1.132–1(b)(2)(i) and 1.132–9(b), Q/A–5 and Q/A–24. The term ''employee'' for Federal tax purposes generally is understood to refer to a common-law employee. Whether a service provider is a common-law employee generally turns on whether the service recipient has the right to direct and control the service provider, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. *See, e.g.,* § 31.3121(d)–1(c)(2) of the Employment Taxes and Collection of Income Tax at Source Regulations. The determination does not depend on whether or how the individual is compensated, or by which person. The regulations under section 132 also include certain statutory employees such as officers of corporations in the definition of employee for purposes of QTFs. No comments were received on the proposed definition of ''employee''. Thus, the final regulations adopt this definition without modification.

iii. General Public

Commenters on Notice 2018–99 raised concerns that, for taxpayers that lease space in a multi-tenant building, the Notice did not include employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), independent contractors, clients, or customers of unrelated tenants in the building as members of the general public. In response to these comments, the proposed regulations provided that ''general public'' includes employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), sole proprietors, independent contractors, clients, or customers of unrelated tenants in multi-tenant buildings, as well as customers, clients, or visitors of the taxpayer, individuals delivering goods or services to the taxpayer, students of an educational institution, and patients of a health care facility.

A commenter on the proposed regulations raised concerns that the definition of the term ''general public'' in the proposed regulations gives tenants of multi-tenant buildings an unfair advantage in comparison to tenants in buildings with only one tenant and suggested all tenants be treated the same. The Treasury Department and the IRS decline to adopt this suggestion because any alternative would likely impose an undue administrative burden on taxpayers in a multi-tenant building to determine the use of the parking facility by numerous other tenants.

A commenter also asked why taxpayers that own or lease space in a multi-tenant building may include independent contractors in the definition of general public. The Treasury Department and the IRS note that the proposed regulations defined general public to include independent contractors of unrelated taxpayers in a multi-tenant building because unlike independent contractors of the taxpayer, independent contractors of unrelated tenants do not have a relationship with the taxpayer. The final regulations continue to provide that independent contractors of unrelated tenants in multi-tenant buildings are included in the general public. However, independent contractors of the taxpayer continue to be excluded from the general public regardless of whether the taxpayer owns or leases space in a multi-tenant building.

A commenter requested that a car dealership's parking spaces occupied by customers' vehicles being repaired or serviced be excluded from the definition of inventory/unusable spaces and instead be included in the definition of spaces available to the general public because the parking spaces are used by customers and are not available for employee parking. The Treasury Department and the IRS agree with the commenter and have revised the definition of general public in the final regulations accordingly. Thus, the final regulations follow the definition of the term general public as provided in the proposed regulations with the clarification that parking spaces that are used to park vehicles owned by members of the general public while the vehicles await repair or service by the taxpayer also are treated as provided to the general public.

iv. Parking Facility

The final regulations include a definition of the term ''parking facility'' that follows the definition of qualified parking in section 132(f)(5)(C) and includes one or more indoor or outdoor garages and other structures, as well as parking lots and other areas where employees may park. Commenters on Notice 2018–99 suggested that because qualified parking as defined in section 132(f)(5)(C) and § 1.132–9(b), Q/A–4(c) does not include any parking on or near property used by the employee for residential purposes, including parking for resident employees of residential rental buildings, the definition of ''total parking spaces'' in the proposed regulations should exclude such spaces. In response to these comments, the proposed regulations specifically excluded parking spaces on or near property used by the employee for residential purposes from the definition of parking facility. The final regulations adopt this definition, without modification.

v. Geographic Location

Consistent with the proposed regulations, the final regulations allow the taxpayer to aggregate the number of parking spaces in a single geographic location to determine the section 274(a)(4) disallowance using the general rule, primary use methodology, or cost per space methodology.

The proposed regulations defined the term ''geographic location'' as contiguous tracts or parcels of land owned or leased by the taxpayer. Two or more tracts or parcels of land are contiguous if they share common boundaries or would share common boundaries but for the interposition of a road, street, railroad, stream, or similar property. Tracts or parcels of land which touch only at a common corner are not contiguous.

A commenter suggested that the definition of geographic location be expanded to allow parking lots located within reasonable distance (¼ mile) of a principal parking lot to be aggregated as part of a single geographic location. The commenter explained that automotive dealers often have overflow parking lots not designated for any purpose available relatively close to the business location in the event the inventory levels exceed the spaces available at the principal location.

The Treasury Department and the IRS considered this comment and decline to adopt it because the term ''reasonable distance'' is difficult to define and, as the commenter explained, overflow parking facilities are typically utilized for excess inventory vehicles, instead of parking for the general public. The Treasury Department and the IRS believe that expanding the definition of geographic location to include noncontiguous tracts or parcels of land would introduce unnecessary complexity without providing a meaningful benefit to taxpayers. Thus, the final regulations adopt the proposed regulations' definition of geographic location, without modification.

vi. Total Parking Spaces

The proposed regulations defined the term ''total parking spaces'' as the total number of parking spaces, or the taxpayer's portion thereof, in the parking facility. No comments were received on this definition, and the final regulations adopt it without modification.

vii. Reserved Employee Spaces

A commenter on Notice 2018–99 recommended that the definition of the term ''reserved employee spaces'' be limited to parking spaces actually used by employees on a typical business day. Because section 274(a)(4) disallows the deduction for the expense of providing a QTF to an individual employee, the commenter reasoned that the taxpayer should identify the expense for each QTF provided to each individual employee when determining the amount that is disallowed.

After considering the comment, the Treasury Department and the IRS, in the proposed regulations, provided that costs allocated to reserved employee spaces would be disallowed regardless of actual use of the reserved spaces. However, the proposed regulations also included a special rule in step 1 of the primary use methodology providing that there is no disallowance for reserved employee spaces if the primary use of the available parking spaces is to provide parking to the general public, there are five or fewer reserved employee spaces, and the number of reserved employee spaces is 5 percent or less of the total parking spaces in the parking facility. The final regulations adopt the disallowance of costs allocated to reserved employee spaces and the special rule in step 1 of the primary use methodology provided in the proposed regulations, without modification.

viii. Reserved Nonemployee Spaces

A commenter on Notice 2018–99 suggested that parking spaces reserved for drivers with disabilities be treated as ''reserved nonemployee spaces'' and thus, any related expenses not be disallowed under section 274(a)(4). After considering the comment, the Treasury Department and the IRS declined to include parking spaces reserved for drivers with disabilities from the definition of reserved nonemployee spaces in the proposed regulations. The Treasury Department and the IRS reasoned that unlike parking spaces reserved for customers or visitors, parking spaces reserved for drivers with disabilities may be used by employees (with disabilities), and section 274(a)(4) would then apply to disallow the expense. The proposed regulations also did not include parking spaces reserved for drivers with disabilities in ''reserved employee spaces'' because they may or may not be exclusively reserved for employees. The final regulations adopt the proposed regulations' definitions of reserved nonemployee spaces and reserved employee spaces, without modification.

ix. Inventory/Unusable Spaces

The Treasury Department and the IRS received questions and comments in response to Notice 2018–99 on how parking spaces reserved for, or used by, inventoried vehicles are to be treated for purposes of determining the disallowance. For example, taxpayers asked whether parking spaces reserved exclusively for, or used by, vehicles to be sold or leased to customers at a car dealership or car rental agency are treated as spaces available to the general public.

In response to the comments and questions received, the proposed regulations added a new definition for the term ''inventory/unusable spaces'' that includes parking spaces used exclusively for inventoried vehicles, qualified nonpersonal use vehicles (as described in § 1.274–5(k)), other fleet vehicles used in a taxpayer's trade or business, or otherwise not usable for parking by employees.

A commenter on the proposed regulations suggested that inventory spaces should be included in the definition of spaces available to the general public in cases where inventory spaces may at times be used by customers and are not available for employee parking. The Treasury Department and the IRS note that spaces used by customers should not be included in inventory/unusable spaces. Therefore, the final regulations adopt the definition of ''inventory/unusable spaces'' included in the proposed regulations, with the clarification that inventory/unusable spaces are otherwise not usable for parking by the general public.

Inventory/unusable spaces are specifically excluded from the definitions of ''available parking spaces,'' discussed later, and ''reserved nonemployee spaces,'' discussed earlier, under the primary use methodology and primary use test in the final regulations. The final regulations exclude inventory/unusable spaces because those spaces are not available to employees or the general public but are instead used exclusively for other purposes. Inventory/unusable spaces are included in total parking spaces under the cost per space methodology because taxpayers do incur costs in maintaining the spaces.

A commenter on the proposed regulations requested that a safe harbor be added to the final regulations to determine the number of inventory spaces at a car dealership because of extreme fluctuations of inventory over a car dealer's tax year. The commenter suggested that the safe harbor should be based on an annualization of the number of spaces occupied by inventory vehicles at the end of the month during the tax year with lowest inventory, or alternatively, based on the average number of spaces occupied by inventory vehicles at the end of each month. The commenter further suggested that inventory per month should be determined based on inventory levels a car dealer reports to the vehicle manufacturer on monthly financial reporting.

The Treasury Department and the IRS note that the proposed regulations did not specifically describe how taxpayers should determine the number of inventory/unusable spaces in the parking facility. Thus, the Treasury Department and the IRS have added a rule in these final regulations providing that taxpayers may use any reasonable methodology to determine the number of inventory/unusable spaces in the parking facility. In addition, in response to the commenter's alternative suggestion, the final regulations provide that a reasonable methodology may include using the average of monthly inventory counts.

x. Available Parking Spaces

The proposed regulations included a definition of ''available parking spaces'' to clarify that reserved employee spaces and inventory/unusable spaces are not included in determining primary use under the primary use methodology. No comments were received on this definition, and the final regulations adopt it without modification.

xi. Primary Use

The proposed regulations provided that for purposes of the primary use test of the primary use methodology, ''primary use'' means greater than 50 percent of actual or estimated usage of the parking spaces in the parking facility by the general public. A commenter on the proposed regulations suggested that the final regulations provide that primary use should mean 30 percent or greater for healthcare facilities, including skilled nursing and assisted living healthcare facilities, because the employees at these types of healthcare businesses provide essential and life-saving care services to the public, especially during the ongoing Coronavirus Disease (COVID–19) pandemic.

After considering this comment, the Treasury Department and the IRS have decided to retain the primary use test as described in the proposed regulations. The Treasury Department and the IRS continue to believe that this primary use test is a reasonable interpretation of the exception in section 274(e)(7) for parking made available to the general public. Further, this interpretation is consistent with recent final regulations addressing the application of the section 274(e)(7) exception to the limitation on the deduction for meals and entertainment expenses, which apply the section 274(e)(7) exception to food and beverages ''primarily consumed'' by the general public, meaning greater than 50 percent of actual or reasonably estimated consumption. *See* TD 9925, 85 FR 64026 (October 9, 2020).

The Treasury Department and the IRS understand that the primary use of a parking facility could be affected by a federally declared disaster such as the COVID–19 pandemic. Thus, as discussed in part 1.B.xiv. of this Summary of Comments and Explanation of Revisions section, the final regulations modify the definition of ''peak demand period'' to provide flexibility for taxpayers affected by a federally declared disaster to determine the primary use of parking spaces used by employees during the peak demand period.

xii. Total Parking Expenses

Commenters on Notice 2018–99 suggested that safety-related expenses, such as lighting, snow and ice removal, leaf removal, trash removal, cleaning, and security, should be excluded from the definition of ''total parking expenses.'' Commenters reasoned that including the expenses may encourage unsafe parking conditions and neglect of care in maintaining the parking facilities. Commenters on the Notice also requested the removal of indirect costs, such as utility costs, insurance, property taxes, snow and ice removal, leaf removal, trash removal, cleaning, parking lot attendant expenses, and security. Multiple commenters on the Notice also suggested adding depreciation to total parking expenses, reasoning that these are costs of parking facilities.

After considering the comments received, the Treasury Department and the IRS determined that the proposed regulations should include the definition of the term ''total parking expenses'' from Notice 2018–99, and the final regulations adopt this definition without modification. Section 274(a)(4) disallows a deduction for the expense of providing a QTF, without regard to whether the expense is required for safety reasons. Further, QTF parking expenses include indirect costs such as allocable salaries for security and maintenance personnel, property taxes, repairs and maintenance, etc. *See* Joint Committee on Taxation, *General Explanation of Public Law 115–97* (JCS–1–18), at 190, December 2018. However, a deduction for an allowance for depreciation is not included in total parking expenses because it is an allowance for the exhaustion, wear and tear, and obsolescence of property, and not a parking expense.

xiii. Mixed Parking Expense

Numerous commenters on Notice 2018–99 expressed concerns and asked questions about how to determine the amount of expenses allocable to a parking facility if the invoice does not separate parking facility expenses from nonparking facility expenses. Commenters explained that determining and allocating expenses may impose excessive and unduly burdensome recordkeeping requirements on taxpayers and may be difficult for taxpayers and the IRS to administer. Commenters noted that such expenses for parking and nonparking property may include rent or lease payments, repairs, maintenance, utility costs, insurance, property taxes, interest, snow or ice removal, and security. In response to the comments, the Treasury Department and the IRS included in the proposed regulations a definition for the term ''mixed parking expense'' and a special rule for allocating certain mixed parking expenses. The proposed regulations defined ''mixed parking expense'' as an amount paid or incurred by a taxpayer for both a parking facility and nonparking facility property that a taxpayer owns or leases. The proposed regulations provided that mixed parking expenses may be allocated using any reasonable methodology but provided a special rule for allocating certain mixed costs that taxpayers could chose to apply in conjunction with certain of the methodologies for determining disallowed parking expenses.

The final regulations adopt the definition of ''mixed parking expenses'' included in the proposed regulations, as well as the rule allowing the use of any reasonable methodology to allocate mixed parking expenses. However, the final regulations make certain modifications to the allowance of the special rule in the proposed regulations for allocating certain mixed parking expenses. The special rule for allocating certain mixed parking expenses to a parking facility and the modifications made in the final regulations is explained in part 1.C of this Summary of Comments and Explanation of Revisions section.

A commenter on the proposed regulations suggested using property tax assessments and/or acreage to determine the amount of mixed parking expenses allocable to a parking facility. The Treasury Department and the IRS note that taxpayers may use any reasonable methodology to allocate mixed parking expenses. However, the Treasury Department and the IRS decline to adopt a specific methodology as reasonable for this purpose. The Treasury Department and the IRS further note that the methodology must be reasonable for the expense being allocated. Thus, one methodology for multiple expenses may be used only if the methodology is reasonable for all such expenses.

xiv. Peak Demand Period

In the proposed regulations, several of the methodologies for determining the section 274(a)(4) disallowance for parking facilities require the taxpayer to determine the total number of parking spaces used by employees during the peak demand period for employee parking on a typical business day. The proposed regulations provided that for purposes of § 1.274–13, the term ''peak demand period'' means the period of time on a typical business day when the greatest number of the taxpayer's employees are utilizing parking spaces in the taxpayer's parking facility. If a taxpayer's employees work in shifts, the peak demand period would take into account the shift during which the largest number of employees park in the taxpayer's parking facility. However, a brief transition period during which two shifts overlap in their use of parking spaces, as one shift of employees is getting ready to leave and the next shift is reporting to work, may be disregarded.

A commenter on the proposed regulations explained that it is overly burdensome for taxpayers at healthcare facilities to determine how many employees are at each location 24 hours a day, 7 days a week and instead suggested using an average based on the primary location of each employee and the amount of time each employee typically works each week. The Treasury Department and the IRS considered the comment and have determined that the proposed rules regarding ''peak demand period'' should be adopted in the final regulations, subject to an optional rule for parking facilities located in a federally declared disaster area as discussed later in this part 1.B.xiv. of this Summary of Comments and Explanation of Revisions section. However, the Treasury Department and the IRS note that the definition of peak demand period allows for flexibility based on taxpayer facts and circumstances by allowing taxpayers to choose a typical business day during the taxable year and to use any reasonable methodology to determine the total number of spaces used by employees. For example, a taxpayer may determine the total number of spaces used by employees based on periodic inspections or employee surveys.

The ongoing COVID–19 pandemic highlights that taxpayers may experience significant variations in employee parking during the taxable year due to a national emergency or other type of disaster. In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on what additional rules, if any, are needed to address significant variations in employee parking during the taxable year due to the COVID–19 pandemic. One commenter suggested that the final regulations allow for a COVID–19 exception for employees not working at the workplace location and thus not using employee parking during the period of the COVID–19 pandemic. Specifically, the commenter requested that taxpayers be permitted to calculate their disallowance under one of the simplified methodologies in § 1.274–13(d)(2), and then reduce their disallowance by a certain amount based on the taxpayer's ''COVID relief period'' and the reduction in their workforce during that period.

Although the commenter's example would not be permitted under any of the simplified methodologies in the proposed or final regulations because taxpayers must use one methodology for the entire year, taxpayers may achieve a similar result using any reasonable method under the general rule. Taxpayers also may achieve a similar result by using a monthly computation method such as the qualified parking limit methodology or the cost per space methodology. A taxpayer using the cost per space methodology generally computes the cost per space and multiplies it by the number of spaces used by employees during the peak demand period. Although the proposed regulations did not specify whether the cost per space must be based on one peak demand period in the taxable year, these final regulations clarify that the cost per space calculation may be performed on a monthly basis.

A taxpayer using the primary use methodology would be allowed a full deduction for parking expenses (except for expenses related to reserved employee spaces) if the primary use of the parking facility during the peak demand period is for the general public. The proposed regulations defined ''peak demand period'' as the period of time on a typical business day when the greatest number of the taxpayer's employees are utilizing parking spaces in the taxpayer's parking facility. As discussed previously in this part 1.B.xiv. of this Summary of Comments and Explanation of Revisions section, the final regulations retain this general definition. However, to provide relief to taxpayers affected by the COVID–19 pandemic or other federally declared disasters, the final regulations add an optional rule in the definition of ''peak demand period'' for taxpayers who own or lease a parking facility that is located in a federally declared disaster area, as defined in section 165(i)(5). A taxpayer that uses this rule may identify a typical business day for the taxable year in which the disaster occurred by reference to a typical business day in that taxable year prior to the date that the taxpayer's operations were impacted by the federally declared disaster. For example, a restaurant that transitioned from a dine-in restaurant to take-out service due to the COVID–19 pandemic could determine its parking disallowance under the primary use test based on the usage of parking on a typical business day prior to its transition to take-out service. Alternatively, under this rule, a taxpayer may choose to identify a typical business day for the month(s) of the taxable year in which the disaster occurred by reference to a typical business day in the same month(s) of the taxable year immediately preceding the taxable year in which the disaster first occurred. For purposes of this rule, the taxable year in which the disaster occurred is determined without regard to whether the taxpayer makes an election under section 165(i). In order to allow taxpayers affected by the COVID–19 pandemic to benefit from this rule, the final regulations allow a taxpayer to apply this rule to taxable years ending after December 31, 2019. This rule is intended to provide relief to both calendar and fiscal year taxpayers, as well as taxpayers with a seasonal business, that are affected by a federally declared disaster.

C. Optional Rules for QTF Parking Expenses

The proposed regulations included a special rule for allocating certain mixed parking expenses to reduce administrative burdens for taxpayers and simplify calculations in complying with section 274(a)(4). Specifically, the proposed regulations provided that a taxpayer may choose to allocate 5 percent of certain mixed parking expenses to the parking facility. This special rule applies to mixed parking expenses related to payments under a lease or rental agreement, and payments for utilities, insurance, interest and property taxes. However, the proposed regulations provided that the special rule for allocating certain mixed parking expenses may only be used in applying the primary use methodology and cost per space methodology and may not be used in applying the general rule or the qualified parking limit methodology. The proposed regulations did not require taxpayers to use the special rule for allocating certain mixed parking expenses and provided that taxpayers may instead use any reasonable methodology for mixed parking expenses.

A commenter on the proposed regulations requested that the final regulations allow taxpayers to use this special rule for applicable mixed parking expenses when using the general rule to calculate the disallowance of deductions for QTFs based on a reasonable interpretation of section 274(a)(4). In response to the commenter's request, these final regulations have extended the 5 percent optional rule for allocating certain mixed parking expenses to the general rule as a further attempt to reduce administrative burdens for taxpayers and to simplify calculations in complying with section 274(a)(4). The optional rule for allocating certain mixed parking expenses in these final regulations may therefore be used in applying the general rule, the primary use methodology, and the cost per space methodology. In addition, this optional rule may be used by taxpayers using the qualified parking methodology, but solely for the purpose of determining total parking expenses. As revised, this optional rule may be used to determine total parking expenses under any of the parking methodologies permitted in the proposed and final regulations. Thus, the final regulations relocate this rule from § 1.274–13(c) to the definition of total parking expenses in § 1.274–13(b)(12).

A commenter suggested that the 5 percent special rule for allocating mixed parking expenses be expanded to include any parking expense that is not allocated by a service provider to a parking facility or is not accounted for separately on the taxpayer's books, including expenses for maintenance, snow and ice removal, landscape costs, security, cleaning. The Treasury Department and the IRS continue to believe that this optional rule should apply only to mixed parking expenses related to payments under a lease or rental agreement, and payments for utilities, insurance, interest and property taxes, and therefore, decline to adopt this comment. However, the final regulations clarify that a taxpayer who chooses to apply the 5 percent optional rule is not required to apply the rule to allocate all eligible mixed parking expenses. Thus, a taxpayer may choose to apply the 5 percent optional rule to allocate one or more of the eligible mixed parking expenses, while using a reasonable methodology to allocate remaining eligible mixed parking expenses. Certain types of expenses, such as parking facility maintenance, snow and ice removal, landscape costs, security, and parking facility cleaning are more likely to be separately billed and/or primarily allocable to the parking facility. Taxpayers may, however, continue to use any reasonable methodology to allocate these mixed parking expenses.

Consistent with the proposed regulations, the final regulations permit taxpayers using certain methodologies to aggregate the number of parking spaces in a single geographic location if they so choose. The final regulations adopt the proposed definition of the term ''geographic location,'' which is based on tracts or parcels of land that are contiguous. The optional rule for aggregation of parking spaces in a single geographic location may be used in applying the general rule, primary use methodology, and cost per space methodology, but may not be used with the qualified parking limit methodology. The final regulations clarify that a taxpayer that chooses to apply this optional aggregation rule must treat the aggregated parking spaces as one parking facility for purposes of determining total parking expenses.

D. Calculation of Disallowance of QTF Parking Expenses

Like the proposed regulations, the final regulations provide that if a taxpayer pays one or more third parties an amount for its employees' QTFs, the section 274(a)(4) disallowance is equal to the taxpayer's total annual cost for the QTFs paid or incurred to third parties. The Treasury Department and the IRS determined that amounts paid to a third party for qualified parking should be disallowed regardless of actual employee use of the spaces because the taxpayer paid or incurred the expense for its employees' QTFs regardless of employee use.

If instead, the taxpayer owns or leases a parking facility, the final regulations continue to provide that a taxpayer may use the general rule or choose any of the following three simplified methodologies for each parking facility to determine the section 274(a)(4) disallowance for each taxable year. The general rule and three simplified methodologies are substantially the same as those provided in the proposed regulations, with the following modifications based on comments received.

i. General Rule

Consistent with the proposed regulations, under the general rule provided in the final regulations taxpayers may calculate the disallowance based on a reasonable interpretation of section 274(a)(4), as long as the taxpayer's methodology does not use the value of a QTF instead of its expense, fail to allocate parking expense to reserved employee spaces, or improperly apply the exception for qualified parking made available to the public (for example, by treating a parking facility regularly used by employees as available to the public merely because the public has access to the parking facility).

In response to the proposed regulations, a commenter recommended that taxpayers be permitted to elect to use historic information to calculate the current year disallowance to reduce the compliance burden of annually calculating the disallowance under section 274(a)(4). For example, the commenter suggested that the average disallowed amount for the prior two years may be used as the disallowance for the next five years or, alternatively, if the primary use of the available parking spaces is to provide parking to the general public for two out of three years, then the taxpayer may treat the primary use of the available parking spaces as providing parking to the general public for the next five years. The Treasury Department and the IRS considered this comment and do not believe that section 274(a)(4) permits taxpayers to compute the amount of a permanently disallowed deduction for a taxable year based on the amount of the disallowance in one or more different taxable years.

ii. Qualified Parking Limit Methodology

Consistent with the proposed regulations, the final regulations provide that the maximum monthly dollar amount under section 132(f)(2), adjusted for inflation, may be used as a simple estimate of the taxpayer's monthly total cost per parking space. The adjusted maximum monthly excludable amount for 2020 is $270 per employee. Taxpayers using the qualified parking limit methodology may determine the disallowance simply by multiplying the section 132(f)(2) monthly per employee limitation on the exclusion by the total number of spaces used by employees during the peak demand period. Alternatively, taxpayers using this methodology may instead multiply the section 132(f)(2) monthly per employee limitation on the exclusion by the total number of the taxpayer's employees.

A commenter recommended the adoption of an alternative monthly rate of $25 per parking space, instead of the maximum monthly dollar amount under section 132(f)(2), to estimate a taxpayer's monthly total cost per parking space for parking facilities located outside the city limits of the 20 most populous cities in the United States. The commenter explained that this will encourage the use of the qualified parking limit methodology by manufacturers and employers with parking spaces in less populous areas. The Treasury Department and the IRS decline to adopt this comment because the commenter provided no evidence that the monthly rate of $25 per parking space is the appropriate cost for all parking spaces located outside the city limits of the 20 most populous cities in the United States.

Section 274(e)(2) provides that the section 274(a)(4) disallowance for QTFs does not apply to the extent that a QTF is treated as compensation to an employee on the taxpayer's return and as wages to the employee. Under § 1.274–13(e)(2)(i) of the proposed regulations, a taxpayer using this qualified parking limit methodology who has monthly expenses per parking space exceeding the section 132(f)(2) monthly per employee limitation on the exclusion could deduct those excess expenses without regard to how much (if any) of the value of the parking space to the employee exceeds the section 132(f)(2) monthly per employee limitation on exclusion. However, the proposed regulations provided that the qualified parking limit methodology could be used only if the value of the QTF, to the extent it exceeds the sum of the amount paid (if any) by the employee for the QTF and the applicable statutory monthly limit in section 132(f)(2), is included on the taxpayer's Federal income tax return as originally filed as compensation paid to the employee and as wages to the employee for purposes of withholding under chapter 24 (relating to collection of Federal income tax at source on wages). The final regulations adopt this rule from the proposed regulations without change.

iii. Primary Use Methodology

The Treasury Department and the IRS received numerous comments on Notice 2018–99 related to the four-step method provided in the Notice. The proposed regulations adopted the four-step method provided in the Notice, with revisions in response to comments, and renamed it the ''primary use methodology.'' No comments were received on the primary use methodology included in the proposed regulations, and the final regulations adopt the primary use methodology without modification.

iv. Cost Per Space Methodology

The proposed regulations also provided a cost per space methodology, which allows taxpayers to calculate the disallowance by multiplying the cost per space by the number of available parking spaces used by employees. Taxpayers must identify the number of total parking spaces used by employees during the peak demand period. Cost per space is calculated by dividing total parking expenses (including expenses related to inventory/unusable spaces) by total parking spaces (including inventory/unusable spaces).

In response to the proposed regulations, a commenter pointed out that a taxpayer using the cost per space methodology calculates the disallowance of deductions for QTF parking expenses by multiplying the cost per space by the total number of ''available parking spaces'' used by employees during the peak demand period rather than the ''total parking spaces'' used by employees. The commenter suggested that ''total parking spaces'' should be used instead of ''available parking spaces'' because reserved spaces are excluded from the definition of ''available parking spaces.'' The Treasury Department and the IRS agree with this suggestion and modify the cost per space methodology provided in the proposed regulations by specifying that ''total parking spaces'' is used to calculate the disallowance under the final regulations. In addition, as discussed in part 1.B.xiv. of this Summary of Comments and Explanation of Revisions section, the final regulations clarify that the cost per space calculation may be performed on a monthly basis.

v. Expenses for Transportation in a Commuter Highway Vehicle and Transit Pass QTFs

Consistent with the proposed regulations, the final regulations include rules addressing the disallowance of deductions for expenses for transportation in a commuter highway vehicle and transit pass QTFs, as well as the applicability of certain exceptions under section 274(e). The general rules are unchanged from those in the proposed regulations.

E. Specific Exceptions to Section 274(a) for QTF Expenses

Section 274(e) provides that the deduction disallowance under section 274(a) does not apply to any expense described in section 274(e). Consistent with the proposed regulations, the final regulations provide that the deduction disallowance does not apply to expenditures for QTFs that meet the requirements of section 274(e)(2), (7), or (8), which are the three exceptions in section 274(e) that are relevant for QTFs.

A commenter suggested that the IRS implement a moratorium on enforcement of the deduction disallowance for the expense of QTFs during the ongoing COVID–19 pandemic. In addition, a commenter requested that healthcare facilities, including skilled nursing and assisted living healthcare facilities, be excepted from the section 274(a)(4) disallowance because the employees at these types of healthcare businesses provide essential and life-saving care services to the public.

The Treasury Department and the IRS note that exceptions for QTFs during the COVID–19 pandemic or for healthcare facility taxpayers are not provided for in any of the exceptions under section 274(e) and therefore are not exceptions to the section 274(a)(4) disallowance that the Treasury Department and the IRS may allow. However, as discussed in part 1.B.xiv. of this Summary of Comments and Explanation of Revisions section, the Treasury Department and the IRS are modifying the definition of ''peak demand period'' to provide additional flexibility for taxpayers affected by the COVID–19 pandemic or other federally declared disaster in applying the methodologies for determining the section 274(a)(4) disallowance for parking facilities.

i. Certain QTF Expenses Treated as Compensation Under Section 274(e)(2)

Section 274(e)(2) provides an exception to section 274(a) for expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to its employees under chapter 1 and as wages to its employees under chapter 24. Pursuant to section 274(e)(2), the proposed regulations provided that the disallowance under section 274(a) does not apply to expenditures for QTFs to the extent the taxpayer properly treats the expenses as compensation to the employee on the taxpayer's Federal income tax return as originally filed, and as wages to the employee for purposes of withholding under chapter 24 relating to collection of Federal income tax at source on wages. Because section 132(a)(5) excludes the value of QTFs from an employee's gross income up to the limitations on exclusion provided by section 132(f)(2), the proposed regulations provided that the exception in section 274(e)(2) does not apply to expenses paid or incurred for QTFs the value of which (including a purported value of zero) is excluded from an employee's gross income under section 132(a)(5). The proposed regulations further provided that section 274(e)(2) applies to expenses paid or incurred for QTFs, the value of which exceeds the sum of the amount, if any, paid by the employee for the fringe benefits and any amount excluded from gross income under section 132(a)(5), if treated as compensation on the taxpayer's Federal income tax return as originally filed and as wages to the employee for purposes of withholding under chapter 24.

Section 1.61–21(b)(1) provides rules for the valuation of fringe benefits and requires that an employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the sum of the amount paid for the benefit by or on behalf of the recipient and the amount, if any, specifically excluded from gross income under the Code. Thus, in the case of reimbursements by a recipient, the amount of the reimbursement is taken into account in determining the amount properly includible in the recipient's income and does not affect the taxpayer's ability to use the exception in section 274(e)(2).

To prevent taxpayers from inappropriately claiming a full deduction under section 274(e)(2) by including a value that is less than the amount required to be included under § 1.61–21, the proposed regulations provided that the exception in section 274(e)(2) does not apply to expenses for QTFs for which the taxpayer calculates a value that is less than the amount required to be included in gross income under § 1.61–21.

Commenters on the proposed regulations under section 274 limiting deductions for meals and entertainment expenses (proposed §§ 1.274–11 and 1.274–12 (REG–100814–19)) asserted that a rule disallowing the application of section 274(e)(2) to expenses for which an improper amount is included in compensation and wages or in gross income, as applicable, is unduly harsh given the difficulty in determining the value of a fringe benefit under § 1.61–21 and the possibility of good faith errors. *See* TD 9925, 85 FR 64026, 64031 (October 9, 2020). In addition, a commenter noted that the ''to the extent that'' language in section 274(e)(2)(A) does not support applying an ''all or nothing'' rule against the taxpayer.

The Treasury Department and the IRS agree that the ''all or nothing'' rule in proposed §§ 1.274–13 and 1.274–14 may lead to unduly harsh results. Therefore, in response to these comments, the Treasury Department and the IRS have revised the rules in proposed § 1.274–13(e)(2)(i) to allow a taxpayer to apply section 274(e)(2) even if the taxpayer includes less than the proper amount in compensation and wages as required under § 1.61–21. In such a case, however, the amount of a taxpayer's deduction is limited to the amount included in compensation and wages, taking into account the amount, if any, reimbursed to the taxpayer by the employee (referred to as the ''dollar-for-dollar'' methodology in this preamble). This is consistent with the rule provided in section 274(e)(2)(B) for QTFs provided to specified individuals.

The final regulations also provide that if the value of a QTF exceeds the monthly per employee limitations on exclusion provided by section 132(f)(2) ($270 per employee for 2020), so that only a portion of the value is included in the employees' wages, the taxpayer may apply section 274(e)(2). However, in this case, the taxpayer must use the dollar-for-dollar methodology.

ii. Expenses for Transportation in a Commuter Highway Vehicle, Transit Pass, or Parking Made Available to the Public

Section 274(e)(7) provides an exception to section 274(a) for expenses for goods, services, and facilities made available by the taxpayer to the general public. Pursuant to section 274(e)(7), the proposed regulations provided that any taxpayer expense for transportation in a commuter highway vehicle, a transit pass, or parking that otherwise qualifies as a QTF under section 132(f)(1) is not subject to the deduction disallowance under section 274(a) to the extent such transportation, transit pass, or parking is made available to the general public. No comments were received on this provision, and the final regulations adopt it without modification. As described further in part 1.B.iii. of this Summary of Comments and Explanation of Revisions section, ''general public'' includes, but is not limited to, customers, clients, visitors, individuals delivering goods or services to the taxpayer, and patients of a health care facility. The general public does not include employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), sole proprietors, or independent contractors of the taxpayer. If a taxpayer owns or leases space in a multi-tenant building, employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), sole proprietors, independent contractors or customers of unrelated tenants in the building are included in the definition of general public.

iii. Expenses for Transportation in a Commuter Highway Vehicle, Transit Pass, or Parking Sold to Customers

Section 274(e)(8) provides an exception to section 274(a) for expenses for goods or services (including the use of facilities) which are sold by the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth. Pursuant to section 274(e)(8), the proposed regulations provided that any taxpayer expense for transportation in a commuter highway vehicle, a transit pass, or parking that otherwise qualifies as a QTF under section 132(f)(1) that is sold to customers in a bona fide transaction for an adequate and full consideration in money or money's worth is not subject to the deduction disallowance under section 274(a). The proposed regulations also provided that for purposes of this section, the term ''customer'' includes an employee of the taxpayer who purchases the transportation in a commuter highway vehicle, transit pass, or parking in a bona fide transaction for an adequate and full consideration in money or money's worth. The final regulations adopt these provisions.

A commenter requested guidance in the final regulations for a situation in which employees are charged for parking at a parking facility. If a taxpayer charges its employees for parking at its parking facilities in a bona fide transaction for adequate and full consideration in money or money's worth, the employees are the taxpayer's customers for this purpose and the exception in section 274(e)(8) and § 1.274–13(e)(2)(iii) would apply. On the other hand, if an employee pays less than adequate and full consideration, this exception would not apply because the parking was not sold to the employee for full consideration. In this case, however, the taxpayer may apply the exception in section 274(e)(2) and § 1.274–13(e)(2)(i) to the extent of the reimbursement.

Another commenter suggested that the deduction disallowance for the expense of any QTF should not apply to expenses for parking that has no objective value to the taxpayer's employees, such as parking in industrial, remote, or rural areas (that is, areas where the general public would not pay to park). In response to this comment, the Treasury Department and the IRS have determined that the exception in section 274(e)(8) and the final regulations at § 1.274–13(e)(2)(iii) should apply if in a bona fide transaction, the adequate and full consideration for qualified parking is zero. The final regulations provide that to apply the exception in such a case, the taxpayer bears the burden of proving that the fair market value of the qualified parking is zero. However, a taxpayer will be treated as satisfying this burden if the qualified parking is provided in a rural, industrial, or remote area in which no commercial parking is available and an individual other than an employee ordinarily would not pay to park. The final regulations also provide an example illustrating the application of this rule.

2. Transportation and Commuting Expenses

Section 274(l)(1), as added by the TCJA, provides that no deduction is allowed under chapter 1 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. The provision applies to expenses paid or incurred after December 31, 2017. Section 274(l)(2) provides that the disallowance of a deduction for commuting and transportation expenses under section 274(l) is suspended for any qualified bicycle commuting reimbursement (described in section 132(f)(5)(F)) paid or incurred after December 31, 2017, and before January 1, 2026. Thus, for such period, deductions for qualified bicycle commuting reimbursements, which, also for such period, are not excluded from an employee's income under section 132(f)(8), are not disallowed under section 274(l).

Section 1.274–14 addresses the disallowance of deductions under section 274(l). Section 1.274–14 of the proposed regulations provided that travel between the employee's residence and place of employment includes travel that originates at a transportation hub near the employee's residence or place of employment. For example, an employee who commutes to work by airplane from an airport near the employee's residence to an airport near the employee's place of employment is traveling between the residence and place of employment.

A commenter suggested that the final regulations clarify that section 274(l) applies to commuting expenses only and does not apply to business travel. The commenter further requested that the concept of transportation originating at a hub near the employee's residence or place of employment be removed from the proposed regulations because it may disallow business travel between two places of employment. In addition, the commenter noted that it is incorrect to describe a commute as originating at a transportation hub because an individual's commute will always begin at the residence, even if the individual first travels from the residence to the transportation hub. Thus, the commenter suggested that instead of the hub reference, the final regulations provide that the application of section 274(l) to travel between a residence and place of employment is not affected by the use of different modes of transportation on the trip.

The Treasury Department and the IRS agree with these suggestions. The final regulations do not include a reference to a transportation hub and instead explain that travel between the employee's residence and place of employment is not affected by the use of different modes of transportation, or by whether the employer pays for all modes of transportation during the commute. The final regulations also state that the disallowance under section 274(l) does not apply to business expenses under section 162(a)(2) paid or incurred while traveling away from home.

A commenter suggested that only the marginal cost of commuting should be disallowed, similar to spouse and dependent travel in section 274(m)(3). The Treasury Department and the IRS decline to adopt this suggestion because the language of section 274(l) broadly refers to ''any expense'' incurred for the provision of commuting to an employee. Further, the Treasury Department and the IRS are not aware of any evidence that Congress intended to disallow only the marginal cost of commuting.

A commenter requested that the final regulations include a definition of ''employee'' for purposes of section 274(l). In response to this comment, the Treasury Department and the IRS include a definition of employee in the final regulations. Under the final regulations, the term ''employee'' means an employee of the taxpayer as defined in section 3121(d)(1) and (2) (that is, officers of a corporate taxpayer and employees of the taxpayer under the common law rules).

The proposed regulations provided a definition for an employee's ''residence,'' referencing the definition of the term ''residence'' in § 1.121–1(b)(1). Under § 1.121–1(b)(1), whether property is used by the taxpayer as the taxpayer's residence depends upon all the facts and circumstances. A property used by the taxpayer as the taxpayer's residence may include a houseboat, a house trailer, or the house or apartment that the taxpayer is entitled to occupy as a tenant-stockholder in a cooperative housing corporation.

A commenter requested that the final regulations limit the definition of ''residence'' to the residence to or from which the employee regularly commutes, which generally is the employee's principal residence. The Treasury Department and the IRS decline to adopt this comment because nothing in the language of section 274(l) indicates that commuting is limited to transportation from a principal residence. An employee could, for example, regularly commute from a vacation home to the workplace. Thus, the final regulations continue to define ''residence'' by referencing the definition of the term ''residence'' in § 1.121–1(b)(1), and specifically provide that this definition may include a residence that is not a principal residence.

The proposed regulations also defined the term ''safety of the employee,'' referencing the description of a bona fide business-oriented security concern in § 1.132–5(m). Several commenters suggested that the proposed rules for determining when transportation provided by an employer is necessary for the safety of the employee were too narrow and should be expanded to apply beyond a bona fide business-oriented security concern in § 1.132–5(m). These commenters generally suggested that the final regulations should instead define ''safety of the employee'' by reference to § 1.61–21(k)(5). Section 1.61–21(k)(5) provides that unsafe conditions exist if a reasonable person would, under the facts and circumstances, consider it unsafe for the employee to walk to or from home, or to walk to or use public transportation at the time of day the employee must commute. One of the factors indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or residence at the time of day the employee must commute.

The Treasury Department and the IRS agree with this suggestion. Accordingly, the final regulations clarify that a transportation or commuting expense is necessary for ensuring the safety of the employee if unsafe conditions, as described in § 1.61–21(k)(5), exist for the employee.

To further clarify the exception, a commenter also suggested that examples be included illustrating situations in which transportation provided by an employer is necessary for the safety of the employee. The Treasury Department and the IRS believe that further clarification is unnecessary in light of the final regulations' reference to unsafe conditions as described in § 1.61–21(k)(5).

A commenter suggested that temporary or occasional places of employment should not be considered an employee's place of employment for purpose of section 274(l). The commenter pointed to prior guidance issued by the IRS as well as to case law that provides that travel to a temporary place of employment is not treated as commuting. The Treasury Department and the IRS agree with this comment and have modified the final regulations to explain that temporary or occasional places of employment are not an employee's place of employment under section 274(l). However, the final regulations provide that an employee must have at least one regular or principal place of business.

The Treasury Department and the IRS have determined that the exceptions in section 274(e) do not apply to deductions disallowed by section 274(l), because the statutory language in section 274 applies the exceptions in 274(e) only to expenses that are otherwise disallowed or limited by section 274(a), (k), and (n). A commenter pointed out that although the exceptions in section 274(e) are applicable only to expenses disallowed or limited by section 274(a), (k), and (n), the Treasury Department and the IRS have previously extended the exceptions in 274(e)(2) to expenses otherwise disallowed by other subsections of section 274. Specifically, the commenter noted that the exception in section 274(e)(2) was extended to the spouse travel disallowance in § 274(m)(3), pursuant to § 1.274–2(f)(2)(iii).

The Treasury Department and the IRS considered this comment but do not believe that the exception in section 274(e)(2) should be extended to commuting expenses disallowed by section 274(l). The Joint Committee on Taxation's "Bluebook" describing the TCJA confirms that the exception in section 274(e)(2) does not apply to section 274(l) expenses:

> The provision is intended to include qualified transportation fringe expenses in the exception to the deduction disallowance for expenses that are treated as compensation. Any expenses incurred for providing any form of transportation which are not qualified transportation fringes (or any payment or reimbursement) for commuting between the employee's residence and place or employment, even if included in compensation, are not eligible for this exception.

Joint Committee on Taxation, *General Explanation of Public Law 115–97* (JCS–1–18), at 190 (December 20, 2018). Thus, the final regulations do not apply the section 274(e) exceptions, including section 274(e)(2), to commuting expenses disallowed by section 274(l).

Applicability Date

These regulations apply to taxable years beginning on or after December 16, 2020. Notwithstanding the preceding sentence, taxpayers may choose to apply § 1.274–13(b)(14)(ii) of these final regulations to taxable years ending after December 31, 2019.

Taxpayers may continue to rely on proposed §§ 1.274–13 through 1.274–14, which were issued in a notice of proposed rulemaking (REG–119307–19) and published on June 23, 2020, in the **Federal Register** (85 FR 37599) or the guidance provided in Notice 2018–99 for parking expenses, other QTF expenses, and transportation and commuting expenses, as applicable, paid or incurred in taxable years beginning after December 31, 2017 and before December 16, 2020.

Special Analyses

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Although the rule may affect a substantial number of small entities, the economic impact of the regulations is not likely to be significant. Data are not readily available about the number of taxpayers affected, but the number is likely to be substantial for both large and small entities because the rule may affect entities that incur QTF or commuting expenses. The economic impact of these regulations is not likely to be significant, however, because these final regulations substantially incorporate prior guidance and otherwise clarify the application of the TCJA changes to section 274 related to QTF and commuting expenses. These final regulations will assist taxpayers in understanding the changes to section 274 and make it easier for taxpayers to comply with those changes. Accordingly, the Secretary of the Treasury's delegate certifies that the rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these regulations on small entities.

Pursuant to section 7805(f), these final regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business. No comments on the proposed regulations were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

Effect on Other Documents

The following publications are obsolete as of December 16, 2020.

Notice 2018–99 (2018–52 I.R.B. 1067).

Statement of Availability of IRS Documents

Notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

Drafting Information

The principal author of this final regulation is Patrick Clinton, Office of the Associate Chief Counsel (Income Tax & Accounting). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in for §§ 1.274–13 and 1.274–14 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 1.274–13 also issued under 26 U.S.C. 274.

Section 1.274–14 also issued under 26 U.S.C. 274.

* * * * *

■ **Par. 2.** Section 1.274–13 is added to read as follows:

§ 1.274–13 Disallowance of deductions for certain qualified transportation fringe expenditures.

(a) *In general.* Except as provided in this section, no deduction otherwise allowable under chapter 1 of the Internal Revenue Code (Code) is allowed for any expense of any qualified transportation fringe as defined in paragraph (b)(1) of this section.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Qualified transportation fringe.* The term *qualified transportation fringe* means any of the following provided by an employer to an employee:

(i) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment (as described in sections 132(f)(1)(A) and 132(f)(5)(B));

(ii) Any transit pass (as described in sections 132(f)(1)(B) and 132(f)(5)(A)); or

(iii) Qualified parking (as described in sections 132(f)(1)(C) and 132(f)(5)(C)).

(2) *Employee.* The term *employee* means a common law employee or other statutory employee, such as an officer of a corporation, who is currently employed by the taxpayer. See § 1.132–9 Q/A–5. Partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), sole proprietors, and independent contractors are not employees of the taxpayer for purposes of this section. See § 1.132–9 Q/A–24.

(3) *General public.* (i) *In general.* The term *general public* includes, but is not limited to, customers, clients, visitors, individuals delivering goods or services to the taxpayer, students of an educational institution, and patients of a health care facility. The term general public does not include individuals that are employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), sole proprietors, or independent contractors of the taxpayer. Also, an exclusive list of guests of a taxpayer is not the general public. Parking spaces that are available to the general public but empty are treated as provided to the general public. Parking spaces that are used to park vehicles owned by the general public while the vehicles await repair or service by the taxpayer are also treated as provided to the general public.

(ii) *Multi-tenant building.* If a taxpayer owns or leases space in a multi-tenant building, the term *general public* includes employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), sole proprietors, independent contractors, clients, or customers of unrelated tenants in the building.

(4) *Parking facility.* The term *parking facility* includes indoor and outdoor garages and other structures, as well as parking lots and other areas, where a taxpayer provides qualified parking (as defined in section 132(f)(5)(C)) to one or more of its employees. The term *parking facility* may include one or more parking facilities but does not include parking spaces on or near property used by an employee for residential purposes.

(5) *Geographic location.* The term *geographic location* means contiguous tracts or parcels of land owned or leased by the taxpayer. Two or more tracts or parcels of land are contiguous if they share common boundaries or would share common boundaries but for the interposition of a road, street, railroad, stream, or similar property. Tracts or parcels of land which touch only at a common corner are not contiguous.

(6) *Total parking spaces.* The term *total parking spaces* means the total number of parking spaces, or the taxpayer's portion thereof, in the parking facility.

(7) *Reserved employee spaces.* The term *reserved employee spaces* means the spaces in the parking facility, or the taxpayer's portion thereof, exclusively reserved for the taxpayer's employees. Employee spaces in the parking facility, or portion thereof, may be exclusively reserved for employees by a variety of methods, including, but not limited to, specific signage (for example, ''Employee Parking Only'') or a separate facility or portion of a facility segregated by a barrier to entry or limited by terms of access. Inventory/unusable spaces are not included in *reserved employee spaces.*

(8) *Reserved nonemployee spaces.* The term *reserved nonemployee spaces* means the spaces in the parking facility, or the taxpayer's portion thereof, exclusively reserved for nonemployees. Such parking spaces may include, but are not limited to, spaces reserved exclusively for visitors, customers, partners, sole proprietors, 2-percent shareholders of S corporations (as defined in section 1372(b)), vendor deliveries, and passenger loading/unloading. Nonemployee spaces in the parking facility, or portion thereof, may be exclusively reserved for nonemployees by a variety of methods, including, but not limited to, specific signage (for example, ''Customer Parking Only'') or a separate facility, or portion of a facility, segregated by a barrier to entry or limited by terms of access. Inventory/unusable spaces are not included in *reserved nonemployee spaces.*

(9) *Inventory/unusable spaces.* The term *inventory/unusable spaces* means the spaces in the parking facility, or the taxpayer's portion thereof, exclusively used or reserved for inventoried vehicles, qualified nonpersonal use vehicles described in § 1.274–5(k), or other fleet vehicles used in the taxpayer's business, or that are otherwise not usable for parking by employees or the general public. Examples of such parking spaces include, but are not limited to, parking spaces for vehicles that are intended to be sold or leased at a car dealership or car rental agency, parking spaces for vehicles owned by an electric utility used exclusively to maintain electric power lines, or parking spaces occupied by trash dumpsters (or similar property). Taxpayers may use any reasonable methodology to determine the number of inventory/unusable spaces in the parking facility. A reasonable methodology may include using the average of monthly inventory counts.

(10) *Available parking spaces.* The term *available parking spaces* means the total parking spaces, less reserved employee spaces and less inventory/unusable spaces, that are available to employees and the general public.

(11) *Primary use.* The term *primary use* means greater than 50 percent of actual or estimated usage of the available parking spaces in the parking facility.

(12) *Total parking expenses*—(i) *In general.* The term *total parking expenses* means all expenses of the taxpayer related to total parking spaces in a parking facility including, but 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 taxpayer may use any reasonable methodology to allocate mixed parking expenses to a parking facility. A deduction for an allowance for depreciation on a parking facility 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 included in *total parking expenses* for purposes of this section. Expenses paid or incurred for nonparking facility property, including items related to property next to the parking facility, such as landscaping or lighting, also are not included in *total parking expenses.*

(ii) *Optional rule for allocating certain mixed parking expenses.* A taxpayer may choose to allocate 5 percent of any the following mixed parking expenses to a parking facility: Lease or rental agreement expenses, property taxes, interest expense, and expenses for utilities and insurance.

(13) *Mixed parking expense.* The term *mixed parking expense* means a single expense amount paid or incurred by a taxpayer that includes both parking facility and nonparking facility expenses for a property that a taxpayer owns or leases.

(14) *Peak demand period*—(i) *In general.* The term *peak demand period* refers to the period of time on a typical business day during the taxable year when the greatest number of the taxpayer's employees are utilizing

parking spaces in the taxpayer's parking facility. If a taxpayer's employees work in shifts, the *peak demand period* would take into account the shift during which the largest number of employees park in the taxpayer's parking facility. However, a brief transition period during which two shifts overlap in their use of parking spaces, as one shift of employees is getting ready to leave and the next shift is reporting to work, may be disregarded. Taxpayers may use any reasonable methodology to determine the total number of spaces used by employees during the *peak demand period* on a typical business day. A reasonable methodology may include periodic inspections or employee surveys.

(ii) *Optional rule for federally declared disasters.* If a taxpayer owns or leases a parking facility that is located in a federally declared disaster area, as defined in section 165(i)(5), the taxpayer may choose to identify a typical business day for the taxable year in which the disaster occurred by reference to a typical business day in that taxable year prior to the date that the taxpayer's operations were impacted by the federally declared disaster. Alternatively, a taxpayer may choose to identify a typical business day during the month(s) of the taxable year in which the disaster occurred by reference to a typical business day during the same month(s) of the taxable year immediately preceding the taxable year in which the disaster first occurred. For purposes of applying the optional rule for federally declared disasters, the taxable year in which the disaster occurs is determined without regard to whether an election under section 165(i) is made with respect to the disaster.

(c) *Optional aggregation rule for calculating total parking spaces; taxpayer owned or leased parking facilities.* For purposes of determining total parking spaces in calculating the disallowance of deductions for qualified transportation fringe parking expenses under the general rule in paragraph (d)(2)(i) of this section, the primary use methodology in paragraph (d)(2)(ii)(B) of this section, or the cost per space methodology in paragraph (d)(2)(ii)(C) of this section, a taxpayer that owns or leases more than one parking facility in a single geographic location may aggregate the number of spaces in those parking facilities. For example, parking spaces at an office park or an industrial complex in the geographic location may be aggregated. However, a taxpayer may not aggregate parking spaces in parking facilities that are in different geographic locations. A taxpayer that chooses to aggregate its parking spaces under this paragraph (c) must determine its total parking expenses, including the allocation of mixed parking expenses, as if the aggregated parking spaces constitute one parking facility.

(d) *Calculation of disallowance of deductions for qualified transportation fringe expenses*—(1) *Taxpayer pays a third party for parking qualified transportation fringe.* If a taxpayer pays a third party an amount for its employees' parking qualified transportation fringe, the section 274(a)(4) disallowance generally is calculated as the taxpayer's total annual cost of employee parking qualified transportation fringes paid to the third party.

(2) *Taxpayer provides parking qualified transportation fringe at a parking facility it owns or leases.* If a taxpayer owns or leases all or a portion of one or more parking facilities where its employees park, the section 274(a)(4) disallowance may be calculated using the general rule in paragraph (d)(2)(i) of this section or any of the simplified methodologies in paragraph (d)(2)(ii) of this section. A taxpayer may choose to use the general rule or any of the following methodologies for each taxable year and for each parking facility.

(i) *General rule.* A taxpayer that uses the general rule in this paragraph (d)(2)(i) must calculate the disallowance of deductions for qualified transportation fringe parking expenses for each employee receiving the qualified transportation fringe based on a reasonable interpretation of section 274(a)(4). A taxpayer that uses the general rule in this paragraph (d)(2)(i) may use the aggregation rule in paragraph (c) of this section for determining total parking spaces. An interpretation of section 274(a)(4) is not reasonable unless the taxpayer applies the following rules when calculating the disallowance under this paragraph (d)(2)(i).

(A) *A taxpayer must not use value to determine expense.* A taxpayer may not use the value of employee parking to determine expenses allocable to employee parking that is either owned or leased by the taxpayer because section 274(a)(4) disallows a deduction for the expense of providing a qualified transportation fringe, regardless of its value.

(B) *A taxpayer must not deduct expenses related to reserved employee spaces.* A taxpayer must determine the allocable portion of total parking expenses that relate to any reserved employee spaces. No deduction is allowed for the parking expenses that relate to reserved employee spaces.

(C) *A taxpayer must not improperly apply the exception for qualified parking made available to the public.* A taxpayer must not improperly apply the exception in section 274(e)(7) or paragraph (e)(2)(ii) of this section to parking facilities, for example, by treating a parking facility regularly used by employees as available to the general public merely because the general public has access to the parking facility.

(ii) *Additional simplified methodologies.* Instead of using the general rule in paragraph (d)(2)(i) of this section for a taxpayer owned or leased parking facility, a taxpayer may use a simplified methodology under paragraph (d)(2)(ii)(A), (B), or (C) of this section.

(A) *Qualified parking limit methodology.* A taxpayer that uses the qualified parking limit methodology in this paragraph (d)(2)(ii)(A) must calculate the disallowance of deductions for qualified transportation fringe parking expenses by multiplying the total number of spaces used by employees during the peak demand period, or the total number of taxpayer's employees, by the section 132(f)(2) monthly per employee limitation on exclusion (adjusted for inflation), for each month in the taxable year. The result is the amount of the taxpayer's expenses that are disallowed under section 274(a)(4). In applying this methodology, a taxpayer calculates the disallowed amount as required under this paragraph (d)(2)(ii)(A), regardless of the actual amount of the taxpayer's total parking expenses. This methodology may be used only if the taxpayer includes the value of the qualified transportation fringe in excess of the sum of the amount, if any, paid by the employee for the qualified transportation fringe and the applicable statutory monthly limit in section 132(f)(2) as compensation paid to the employee under chapter 1 of the Code (chapter 1) and as wages to the employee for purposes of withholding under chapter 24 of the Code (chapter 24), relating to collection of Federal income tax at source on wages. In addition, the exception to the disallowance for amounts treated as employee compensation provided for in section 274(e)(2) and in paragraph (e)(2)(i) of this section cannot be applied to reduce a section 274(a)(4) disallowance calculated using this method. A taxpayer using this methodology may not use the aggregation rule in paragraph (c) of this section.

(B) *Primary use methodology.* A taxpayer that uses the primary use methodology in this paragraph (d)(2)(ii)(B) must use the following four-step methodology to calculate the disallowance of deductions for qualified transportation fringe parking expenses for each parking facility for which the taxpayer uses the primary use methodology. A taxpayer using this methodology may use the aggregation rule in paragraph (c) of this section for determining total parking spaces.

(*1*) *Step 1—Calculate the disallowance for reserved employee spaces.* A taxpayer must identify the total parking spaces in the parking facility, or the taxpayer's portion thereof, exclusively reserved for the taxpayer's employees. The taxpayer must then determine the percentage of reserved employee spaces in relation to total parking spaces and multiply that percentage by the taxpayer's total parking expenses for the parking facility. The product is the amount of the deduction for total parking expenses that is disallowed under section 274(a)(4) for reserved employee spaces. There is no disallowance for reserved employee spaces if the following conditions are met:

(*i*) The primary use (as defined in paragraphs (b)(11) and (d)(2)(ii)(B)(*2*) of this section) of the available parking spaces is to provide parking to the general public;

(*ii*) There are five or fewer reserved employee spaces in the parking facility; and

(*iii*) The reserved employee spaces are 5 percent or less of the total parking spaces.

(*2*) *Step 2—Determine the primary use of available parking spaces.* A taxpayer must identify the available parking spaces in the parking facility and determine whether their primary use is to provide parking to the general public. If the primary use of the available parking spaces in the parking facility is to provide parking to the general public, then total parking expenses allocable to available parking spaces at the parking facility are excepted from the section 274(a)(4) disallowance by the general public exception under section 274(e)(7) and paragraph (e)(2)(ii) of this section. Primary use of available parking spaces is based on the number of available parking spaces used by employees during the peak demand period.

(*3*) *Step 3—Calculate the allowance for reserved nonemployee spaces.* If the primary use of a taxpayer's available parking spaces is not to provide parking to the general public, the taxpayer must identify the number of available parking spaces in the parking facility, or the taxpayer's portion thereof, exclusively reserved for nonemployees. A taxpayer that has no reserved nonemployee spaces may proceed to Step 4 in paragraph (d)(2)(ii)(B)(*4*) of this section. If the taxpayer has reserved nonemployee spaces, it may determine the percentage of reserved nonemployee spaces in relation to remaining total parking spaces and multiply that percentage by the taxpayer's remaining total parking expenses. The product is the amount of the deduction for remaining total parking expenses that is not disallowed because the spaces are not available for employee parking.

(*4*) *Step 4—Determine remaining use of available parking spaces and allocable expenses.* If a taxpayer completes Steps 1—3 in paragraph (d)(2)(ii)(B) of this section and has any remaining total parking expenses not specifically categorized as deductible or nondeductible, the taxpayer must reasonably allocate such expenses by determining the total number of available parking spaces used by employees during the peak demand period.

(C) *Cost per space methodology.* A taxpayer using the cost per space methodology in this paragraph (d)(2)(ii)(C) must calculate the disallowance of deductions for qualified transportation fringe parking expenses by multiplying the cost per space by the number of total parking spaces used by employees during the peak demand period. The product is the amount of the deduction for total parking expenses that is disallowed under section 274(a)(4). A taxpayer may calculate cost per space by dividing total parking expenses by total parking spaces. This calculation may be performed on a monthly basis. A taxpayer using this methodology may use the aggregation rule in paragraph (c) of this section for determining total parking spaces.

(3) *Expenses for transportation in a commuter highway vehicle or transit pass.* If a taxpayer pays a third party an amount for its employees' commuter highway vehicle or a transit pass qualified transportation fringe, the section 274(a)(4) disallowance generally is equal to the taxpayer's total annual cost of employee commuter highway vehicle or a transit pass qualified transportation fringes paid to the third party. If a taxpayer provides transportation in a commuter highway vehicle or transit pass qualified transportation fringes in kind directly to its employees, the taxpayer must calculate the disallowance of deductions for expenses for such fringes based on a reasonable interpretation of section 274(a)(4). However, a taxpayer may not use the value of the qualified commuter highway vehicle or transit pass fringe to the employee to determine expenses allocable to such fringe because section 274(a)(4) disallows a deduction for the expense of providing a qualified transportation fringe, regardless of its value to the employee.

(e) *Specific exceptions to disallowance of deduction for qualified transportation fringe expenses*—(1) *In general.* The provisions of section 274(a)(4) and paragraph (a) of this section (imposing limitations on deductions for qualified transportation fringe expenses) are not applicable in the case of expenditures set forth in paragraph (e)(2) of this section. Such expenditures are deductible to the extent allowable under chapter 1 of the Code. This paragraph (e) cannot be construed to affect whether a deduction under section 162 or 212 is allowed or allowable. The fact that an expenditure is not covered by a specific exception provided for in this paragraph (e) is not determinative of whether a deduction for the expenditure is disallowed under section 274(a)(4) and paragraph (a) of this section.

(2) *Exceptions to disallowance.* The expenditures referred to in paragraph (e)(1) of this section are set forth in paragraphs (e)(2)(i) through (iii) of this section.

(i) *Certain qualified transportation fringe expenses treated as compensation*—(A) *Expenses includible in income of persons who are employees and are not specified individuals.* In accordance with section 274(e)(2)(A), and except as provided in paragraph (e)(2)(i)(C) of this section, an expense paid or incurred by a taxpayer for a qualified transportation fringe, if an employee who is not a specified individual is the recipient of the qualified transportation fringe, is not subject to the disallowance of deductions provided for in paragraph (a) of this section to the extent that the taxpayer—

(*1*) Properly treats the expense relating to the recipient of the qualified transportation fringe as compensation to an employee under chapter 1 and as wages to the employee for purposes of chapter 24; and

(*2*) Treats the proper amount as compensation to the employee under § 1.61–21.

(B) *Specified Individuals.* In accordance with section 274(e)(2)(B), in the case of a specified individual (as defined in section 274(e)(2)(B)(ii)), the disallowance of deductions provided for in paragraph (a) of this section does not apply to an expense for a qualified transportation fringe of the specified individual to the extent that the amount of the expense does not exceed the sum of—

(*1*) The amount treated as compensation to the specified individual under chapter 1 and as wages to the specified individual for purposes of chapter 24; and

(*2*) Any amount the specified individual reimburses the taxpayer.

(C) *Expenses for which an amount is excluded from income or is less than the proper amount.* Notwithstanding paragraph (e)(2)(i)(A) of this section, in the case of an expense paid or incurred by a taxpayer for a qualified transportation fringe for which an amount is wholly or partially excluded from a recipient's income under subtitle A of the Code (other than because the amount is reimbursed by the recipient), or for which an amount included in compensation and wages to an employee is less than the amount required to be included under § 1.61–21, the disallowance of deductions provided for in paragraph (a) of this section does not apply to the extent that the amount of the expense does not exceed the sum of—

(*1*) The amount treated as compensation to the recipient under chapter 1 and as wages to the recipient for purposes of chapter 24; and

(*2*) Any amount the recipient reimburses the taxpayer.

(ii) *Expenses for transportation in a commuter highway vehicle, transit pass, or parking made available to the public.* Under section 274(e)(7) and this paragraph (e)(2)(ii), any expense paid or incurred by a taxpayer for transportation in a commuter highway vehicle, a transit pass, or parking that otherwise qualifies as a qualified transportation fringe is not subject to the disallowance of deductions provided for in paragraph (a) of this section to the extent that such transportation, transit pass, or parking is made available to the general public. With respect to parking, this exception applies to the entire amount of the taxpayer's parking expense, less any expenses specifically attributable to employees (for example, expenses allocable to reserved employee spaces), if the primary use of the parking is by the general public. If the primary use of the parking is not by the general public, this exception applies only to the costs attributable to the parking used by the general public.

(iii) *Expenses for transportation in a commuter highway vehicle, transit pass, or parking sold to customers.* Under section 274(e)(8) and this paragraph (e)(2)(iii), any expense paid or incurred by a taxpayer for transportation in a commuter highway vehicle, a transit pass, or parking that otherwise qualifies as a qualified transportation fringe to the extent such transportation, transit pass, or parking is sold to customers in a bona fide transaction for an adequate and full consideration in money or money's worth, is not subject to the disallowance of deductions provided for in paragraph (a) of this section. For purposes of this paragraph (e)(2)(iii), the term *customer* includes an employee of the taxpayer who purchases transportation in a commuter highway vehicle, a transit pass, or parking in a bona fide transaction for an adequate and full consideration in money or money's worth. If in a bona fide transaction, the adequate and full consideration for qualified parking is zero, the exception in this paragraph (e)(2)(iii) applies even though the taxpayer does not actually sell the parking to its employees. To apply the exception in this case, the taxpayer bears the burden of proving that the fair market value of the qualified parking is zero. However, solely for purposes of this paragraph (e)(2)(iii), a taxpayer will be treated as satisfying this burden if the qualified parking is provided in a rural, industrial, or remote area in which no commercial parking is available and an individual other than an employee ordinarily would not pay to park in the parking facility.

(f) *Examples.* The following examples illustrate the provisions of this section related to parking expenses for qualified transportation fringes. For each example, unless otherwise stated, assume the parking expenses are otherwise deductible expenses paid or incurred during the 2020 taxable year; all or some portion of the expenses relate to a qualified transportation fringe under section 132(f); the section 132(f)(2) monthly per employee limitation on an employee's exclusion is $270; the fair market value of the qualified parking is not $0; all taxpayers are calendar-year taxpayers; and the length of the 2020 taxable year is 12 months.

(1) *Example 1.* Taxpayer A pays B, a third party who owns a parking garage adjacent to A's place of business, $100 per month per parking space for each of A's 10 employees to park in B's garage, or $12,000 for parking in 2020 (($100 × 10) × 12 = $12,000). The $100 per month paid for each of A's 10 employees for parking is excludible from the employees' gross income under section 132(a)(5), and none of the exceptions in section 274(e) or paragraph (e) of this section are applicable. Thus, the entire $12,000 is subject to the section 274(a)(4) disallowance under paragraphs (a) and (d)(1) of this section.

(2) *Example 2.* (i) Assume the same facts as in paragraph (f)(1) of this section (*Example 1*), except A pays B $300 per month for each parking space, or $36,000 for parking for 2020 (($300 × 10) × 12 = $36,000). Of the $300 per month paid for parking for each of 10 employees, $270 is excludible under section 132(a)(5) for 2020 and none of the exceptions in section 274(e) or paragraph (e) of this section are applicable to this amount. A properly treats the excess amount of $30 ($300 − $270) per employee per month as compensation and wages. Thus, $32,400 (($270 × 10) × 12 = $32,400) is subject to the section 274(a)(4) disallowance under paragraphs (a) and (d)(1) of this section.

(ii) The excess amount of $30 per employee per month is not excludible under section 132(a)(5). As a result, the exceptions in section 274(e)(2) and paragraph (e)(2)(i) of this section are applicable to this amount. Thus, $3,600 ($36,000 − $32,400 = $3,600) is not subject to the section 274(a)(4) disallowance and remains deductible.

(3) *Example 3.* (i) Taxpayer C leases from a third party a parking facility that includes 200 parking spaces at a rate of $500 per space, per month in 2020. C's annual lease payment for the parking spaces is $1,200,000 ((200 × $500) × 12 = $1,200,000). The number of available parking spaces used by C's employees during the peak demand period is 200.

(ii) C uses the qualified parking limit methodology described in paragraph (d)(2)(ii)(A) of this section to determine the disallowance under section 274(a)(4). Under this methodology, the section 274(a)(4) disallowance is calculated by multiplying the number of available parking spaces used by employees during the peak demand period, 200, the section 132(f)(2) monthly per employee limitation on exclusion, $270, and 12, the number of months in the applicable taxable year. The amount subject to the section 274(a)(4) disallowance is $648,000 (200 × $270 × 12 = $648,000). This amount is excludible from C's employees' gross incomes under section 132(a)(5) and none of the exceptions in section 274(e) or paragraph (e) of this section are applicable to this amount. The excess $552,000 ($1,200,000 − $648,000) for which C is not disallowed a deduction under 274(a)(4) is included in C's employees' gross incomes because it exceeds the section 132(f)(2) monthly per employee limitation on exclusion.

(4) *Example 4.* (i) *Facts.* Taxpayer D, a big box retailer, owns a surface parking facility adjacent to its store. D incurs $10,000 of total parking expenses for its store in the 2020 taxable year. D's parking facility has 510 spaces that are used by its customers, employees, and its fleet vehicles. None of D's parking

spaces are reserved. The number of available parking spaces used by D's employees during the peak demand period is 50. Approximately 30 nonreserved parking spaces are empty during D's peak demand period. D's fleet vehicles occupy 10 parking spaces.

(ii) *Methodology.* D uses the primary use methodology in paragraph (d)(2)(ii)(B) of this section to determine the amount of parking expenses that are disallowed under section 274(a)(4).

(iii) *Step 1.* Because none of D's parking spaces are exclusively reserved for employees, there is no amount to be specifically allocated to reserved employee spaces under paragraph (d)(2)(ii)(B)(*1*) of this section.

(iv) *Step 2.* D's number of available parking spaces is the total parking spaces reduced by the number of reserved employee spaces and inventory/unusable spaces or 500 (510 − 0 − 10 = 500). The number of available parking spaces used by D's employees during the peak demand period is 50. Of the 500 available parking spaces, 450 are used to provide parking to the general public, including the 30 empty nonreserved parking spaces that are treated as provided to the general public. The primary use of D's available parking spaces is to provide parking to the general public because 90% (450/500 = 90%) of the available parking spaces are used by the general public under paragraph (d)(2)(ii)(B)(*2*) of this section. Because the primary use of the available parking spaces is to provide parking to the general public, the exception in section 274(e)(7) and paragraph (e)(2)(ii) of this section applies and none of the $10,000 of total parking expenses is subject to the section 274(a)(4) disallowance.

(5) *Example 5.* (i) *Facts.* Taxpayer E, a manufacturer, owns a surface parking facility adjacent to its plant. E incurs $10,000 of total parking expenses in 2020. E's parking facility has 500 spaces that are used by its visitors and employees. E reserves 25 of these spaces for nonemployee visitors. The number of available parking spaces used by E's employees during the peak demand period is 400.

(ii) *Methodology.* E uses the primary use methodology in paragraph (d)(2)(ii)(B) of this section to determine the amount of parking expenses that are disallowed under section 274(a)(4).

(iii) *Step 1.* Because none of E's parking spaces are exclusively reserved for employees, there is no amount to be specifically allocated to reserved employee spaces under paragraph (d)(2)(ii)(B)(*1*) of this section.

(iv) *Step 2.* The primary use of E's parking facility is not to provide parking to the general public because 80% (400/500 = 80%) of the available parking spaces are used by its employees. Thus, expenses allocable to those spaces are not excepted from the section 274(a) disallowance by section 274(e)(7) and paragraph (e)(2)(ii) of this section under the primary use test in paragraph (d)(2)(ii)(B)(*2*) of this section.

(v) *Step 3.* Because 5% (25/500 = 5%) of E's available parking spaces are reserved nonemployee spaces, up to $9,500 ($10,000 × 95% = $9,500) of E's total parking expenses are subject to the section 274(a)(4) disallowance under this step as provided in paragraph (d)(2)(ii)(B)(*3*) of this section. The remaining $500 ($10,000 × 5% = $500) of expenses allocable to reserved nonemployee spaces is excepted from the section 274(a) disallowance and continues to be deductible.

(vi) *Step 4.* E must reasonably determine the employee use of the remaining parking spaces by using the number of available parking spaces used by E's employees during the peak demand period and determine the expenses allocable to employee parking spaces under paragraph (d)(2)(ii)(B)(*4*) of this section.

(6) *Example 6.* (i) *Facts.* Taxpayer F, a manufacturer, owns a surface parking facility adjacent to its plant. F incurs $10,000 of total parking expenses in 2020. F's parking facility has 500 spaces that are used by its visitors and employees. F reserves 50 spaces for management. All other employees park in nonreserved spaces in F's parking facility; the number of available parking spaces used by F's employees during the peak demand period is 400. Additionally, F reserves 10 spaces for nonemployee visitors.

(ii) *Methodology.* F uses the primary use methodology in paragraph (d)(2)(ii)(B) of this section to determine the amount of parking expenses that are disallowed under section 274(a)(4).

(iii) *Step 1.* Because F reserved 50 spaces for management, $1,000 ((50/500) × $10,000 = $1,000) is the amount of total parking expenses that is nondeductible for reserved employee spaces under section 274(a)(4) and paragraphs (a) and (d)(2)(ii)(B)(*1*) of this section. None of the exceptions in section 274(e) or paragraph (e) of this section are applicable to this amount.

(iv) *Step 2.* The primary use of the remainder of F's parking facility is not to provide parking to the general public because 89% (400/450 = 89%) of the available parking spaces in the facility are used by its employees. Thus, expenses allocable to these spaces are not excepted from the section 274(a)(4) disallowance by section 274(e)(7) and paragraph (e)(2)(ii) of this section under the primary use test in paragraph (d)(2)(ii)(B)(*2*) of this section.

(v) *Step 3.* Because 2% (10/450 = 2.22%) of F's available parking spaces are reserved nonemployee spaces, the $180 allocable to those spaces (($10,000 − $1,000) × 2%) is not subject to the section 274(a)(4) disallowance and continues to be deductible under paragraph (d)(2)(ii)(B)(*3*) of this section.

(vi) *Step 4.* F must reasonably determine the employee use of the remaining parking spaces by using the number of available parking spaces used by F's employees during the peak demand period and determine the expenses allocable to employee parking spaces under paragraph (d)(2)(ii)(B)(*4*) of this section.

(7) *Example 7.* (i) *Facts.* Taxpayer G, a financial services institution, owns a multi-level parking garage adjacent to its office building. G incurs $10,000 of total parking expenses in 2020. G's parking garage has 1,000 spaces that are used by its visitors and employees. However, one floor of the parking garage is segregated by an electronic barrier that can only be accessed with a card provided by G to its employees. The segregated parking floor contains 100 spaces. The other floors of the parking garage are not used by employees for parking during the peak demand period.

(ii) *Methodology.* G uses the primary use methodology in paragraph (d)(2)(ii)(B) of this section to determine the amount of parking expenses that are disallowed under section 274(a)(4).

(iii) *Step 1.* Because G has 100 reserved spaces for employees, $1,000 ((100/1,000) × $10,000 = $1,000) is the amount of total parking expenses that is nondeductible for reserved employee spaces under section 274(a)(4) and paragraph (d)(2)(ii)(B)(*1*) of this section. None of the exceptions in section 274(e) or paragraph (e) of this section are applicable to this amount.

(iv) *Step 2.* The primary use of the available parking spaces in G's parking facility is to provide parking to the general public because 100% (900/900 = 100%) of the available parking spaces are used by the public. Thus, expenses allocable to those spaces, $9,000, are excepted from the section 274(a)(4) disallowance by section 274(e)(7) and paragraph (e)(2)(ii) of this section under the primary use test in paragraph (d)(2)(ii)(B)(*2*).

(8) *Example 8.* (i) *Facts.* Taxpayer H, an accounting firm, leases a parking facility adjacent to its office building. H incurs $10,000 of total parking expenses related to the lease payments in 2020. H's leased parking facility has 100 spaces that are used by its clients and

employees. None of the parking spaces are reserved. The number of available parking spaces used by H's employees during the peak demand period is 60.

(ii) *Methodology.* H uses the primary use methodology in paragraph (d)(2)(ii)(B) of this section to determine the amount of parking expenses that are disallowed under section 274(a)(4).

(iii) *Step 1.* Because none of H's leased parking spaces are exclusively reserved for employees, there is no amount to be specifically allocated to reserved employee spaces under paragraph (d)(2)(ii)(B)(*1*) of this section.

(iv) *Step 2.* The primary use of H's leased parking facility under paragraph (d)(2)(ii)(B)(2) of this section is not to provide parking to the general public because 60% (60/100 = 60%) of the lot is used by its employees. Thus, H may not utilize the general public exception from the section 274(a)(4) disallowance provided by section 274(e)(7) and paragraph (e)(2)(ii) of this section.

(v) *Step 3.* Because none of H's parking spaces are exclusively reserved for nonemployees, there is no amount to be specifically allocated to reserved nonemployee spaces under paragraph (d)(2)(ii)(B)(*3*) of this section.

(vi) *Step 4.* H must reasonably determine the use of the parking spaces and the related expenses allocable to employee parking. Because the number of available parking spaces used by H's employees during the peak demand period is 60, H reasonably determines that 60% (60/100 = 60%) of H's total parking expenses or $6,000 ($10,000 × 60% = $6,000) is subject to the section 274(a)(4) disallowance under paragraph (d)(2)(ii)(B)(*4*) of this section.

(9) *Example 9.* (i) *Facts.* Taxpayer I, a large manufacturer, owns multiple parking facilities adjacent to its manufacturing plant, warehouse, and office building at its complex in the city of X. All of I's tracts or parcels of land at its complex in city X are located in a single geographic location. I owns parking facilities in other cities. I incurs $50,000 of total parking expenses related to the parking facilities at its complex in city X in 2020. I's parking facilities at its complex in city X have 10,000 total parking spaces that are used by its visitors and employees of which 500 are reserved for management. All other spaces at parking facilities in I's complex in city X are nonreserved. The number of nonreserved spaces used by I's employees other than management during the peak demand period at I's parking facilities in city X is 8,000.

(ii) *Methodology.* I uses the primary use methodology in paragraph (d)(2)(ii)(B) of this section to determine the amount of parking expenses that are disallowed under section 274(a)(4). I chooses to apply the aggregation rule in paragraph (c) of this section to aggregate all parking facilities in the geographic location that comprises its complex in city X. However, I may not aggregate parking facilities in other cities with its parking facilities in city X because they are in different geographic locations.

(iii) *Step 1.* Because 500 spaces are reserved for management, $2,500 ((500/10,000) × $50,000 = $2,500) is the amount of total parking expenses that is nondeductible for reserved employee spaces for I's parking facilities in city X under section 274(a)(4) and paragraphs (a) and (d)(2)(ii)(B)(*1*) of this section.

(iv) *Step 2.* The primary use of the remainder of I's parking facility is not to provide parking to the general public because 84% (8,000/9,500 = 84%) of the available parking spaces in the facility are used by its employees. Thus, expenses allocable to these spaces are not excepted from the section 274(a)(4) disallowance by section 274(e)(7) or paragraph (e)(2)(ii) of this section under the primary use test in paragraph (d)(2)(ii)(B)(*2*) of this section.

(v) *Step 3.* Because none of I's parking spaces in its parking facilities in city X are exclusively reserved for nonemployees, there is no amount to be specifically allocated to reserved nonemployee spaces under paragraph (d)(2)(ii)(B)(*3*) of this section.

(vi) *Step 4.* I must reasonably determine the use of the remaining parking spaces and the related expenses allocable to employee parking for its parking facilities in city X. Because the number of available parking spaces used by I's employees during the peak demand period in city X during an average workday is 8,000, I reasonably determines that 84.2% (8,000/9,500 = 84.2%) of I's remaining parking expense or $39,900 (($50,000 − $2,500) × 84% = $39,900) is subject to the section 274(a)(4) disallowance under paragraph (d)(2)(ii)(B)(*4*) of this section.

(10) *Example 10.* (i) Taxpayer J, a manufacturer, owns a parking facility and incurs the following mixed parking expenses (along with other parking expenses): Property taxes, utilities, insurance, security expenses, and snow removal expenses. In accordance with paragraph (b)(12)(i) and (ii) of this section, J determines its total parking expenses by allocating 5% of its property tax, utilities, and insurance expenses to its parking facility. J uses a reasonable methodology to allocate to its parking facility an applicable portion of its security and snow removal expenses. J determines that it incurred $100,000 of total parking expenses in 2020. J's parking facility has 500 spaces that are used by its visitors and employees. The number of total parking spaces used by J's employees during the peak demand period is 475.

(ii) J uses the cost per space methodology described in paragraph (d)(2)(ii)(C) of this section to determine the amount of parking expenses that are disallowed under section 274(a)(4). Under this methodology, J multiplies the cost per space by the number of total parking spaces used by J's employees during the peak demand period. J calculates the cost per space by dividing total parking expenses by the number of total parking spaces ($100,000/500 = $200). J determines that $95,000 ($200 × 475 = $95,000) of J's total parking expenses is subject to the section 274(a)(4) disallowance and none of the exceptions in section 274(e) or paragraph (e) of this section are applicable.

(11) *Example 11.* Taxpayer K operates an industrial plant with a parking facility in a rural area in which no commercial parking is available. K provides qualified parking at the plant to its employees free of charge. Further, an individual other than an employee ordinarily would not consider paying any amount to park in the plant's parking facility. Although K does not charge its employees for the qualified parking, the exception in section 274(e)(8) and this paragraph (e)(3)(iii) will apply to K's total parking expenses if in a bona fide transaction, the adequate and full consideration for the qualified parking is zero. In order to treat the adequate and full consideration as zero, K bears the burden of proving that the parking has no objective value. K is treated as satisfying this burden because the parking is provided in a rural area in which no commercial parking is available and in which an individual other than an employee ordinarily would not consider paying any amount to park in the parking facility. Therefore, the exception in paragraph (e)(2)(iii) of this section applies to K's total parking expenses and a deduction for the expenses is not disallowed by reason of section 274(a)(4).

(g) *Applicability date.* This section applies to taxable years beginning on or after December 16, 2020. However, taxpayers may choose to apply § 1.274–13(b)(14)(ii) to taxable years ending after December 31, 2019.

■ **Par. 3.** Section 1.274–14 is added to read as follows:

§ 1.274–14 Disallowance of deductions for certain transportation and commuting benefit expenditures.

(a) *General rule.* Except as provided in this section, 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. The disallowance is not subject to the exceptions provided in section 274(e). The disallowance applies regardless of whether the travel between the employee's residence and place of employment includes more than one mode of transportation, and regardless of whether the taxpayer provides, or pays or reimburses the employee for, all modes of transportation used during the trip. For example, the disallowance applies if an employee drives a personal vehicle to a location where a different mode of transportation is used to complete the trip to the place of employment, even though the taxpayer may not incur any expense for the portion of travel in the employee's personal vehicle. The rules in section 274(l) and this section do not apply to business expenses under section 162(a)(2) paid or incurred while traveling away from home. The rules in section 274(l) and this section also do not apply to any expenditure for any qualified transportation fringe (as defined in section 132(f)) provided to an employee of the taxpayer. All qualified transportation fringe expenses are required to be analyzed under section 274(a)(4) and § 1.274–13.

(b) *Exception.* The disallowance for the deduction for expenses incurred for providing any transportation or commuting in paragraph (a) of this section does not apply if the transportation or commuting expense is necessary for ensuring the safety of the employee. The transportation or commuting expense is necessary for ensuring the safety of the employee if unsafe conditions, as described in § 1.61–21(k)(5), exist for the employee.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Employee.* The term *employee* means an employee of the taxpayer as defined in section 3121(d)(1) and (2) (that is, officers of a corporate taxpayer and employees of the taxpayer under the common law rules).

(2) *Residence.* The term *residence* means a residence as defined in § 1.121–1(b)(1). An employee's residence is not limited to the employee's principal residence.

(3) *Place of employment.* The term *place of employment* means the employee's regular or principal (if more than one regular) place of business. An employee's place of employment does not include temporary or occasional places of employment. An employee must have at least one regular or principal place of business.

(d) *Applicability date.* This section applies to taxable years beginning on or after December 16, 2020.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: December 4, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–27505 Filed 12–15–20; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 50

[Docket No. OAG 163; AG Order No. 4927–2020]

RIN 1105–AB62

Prohibition on Settlement Payments to Non-Governmental Third Parties

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations to set forth the principles of the Attorney General's Memorandum of June 5, 2017, prohibiting the inclusion of provisions in settlement agreements directing or providing for a payment or loan to a non-governmental person or entity that is not a party to the dispute, except in defined circumstances.

DATES: *Effective Date:* December 16, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514–8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 5, 2017, then-Attorney General Sessions issued a Memorandum to the Heads of all Department of Justice Components and to all United States Attorneys titled, ''Prohibition on Settlement Payments to Third Parties.'' In this Memorandum, he stated: ''Our Department is privileged to represent the United States and its citizens in courts across our country. We take this responsibility seriously. In the course of this representation, there may come a time when it is in the best interests of the United States to settle a lawsuit or end a criminal prosecution. Settlements, including civil settlement agreements, deferred prosecution agreements, non-prosecution agreements, and plea agreements, are a useful tool for Department attorneys to achieve the ends of justice at a reasonable cost to the taxpayer. The goals of any settlement are, first and foremost, to compensate victims, redress harm, or punish and deter unlawful conduct.''

However, certain previous settlement agreements involving the Department included provisions requiring payments to various non-governmental, third-party organizations as a condition of settlement with the United States. Those third-party organizations were neither victims nor parties to the lawsuits.

The June 5, 2017, Memorandum announced that the Department would no longer engage in this practice. Pursuant to the June 5, 2017, Memorandum, except in specific limited circumstances, ''Department attorneys may not enter into any agreement on behalf of the United States in settlement of federal claims or charges, including agreements settling civil litigation, accepting plea agreements, or deferring or declining prosecution in a criminal matter, that directs or provides for a payment or loan to any non-governmental person or entity that is not a party to the dispute.'' This policy is already incorporated into the Justice Manual at *https://www.justice.gov/jm/jm/1-17000-settlement-payments-third-parties.*

This final rule amends the Department's regulations to reflect this policy, with certain changes from the June 5, 2017, Memorandum to clarify the scope of exceptions. This rule specifically clarifies that the policy extends to a payment or loan, whether in cash or in kind, to any non-governmental person or entity that is not a party to the dispute. The Miscellaneous Receipts Act provides that Government officials ''receiving money for the Government from any source shall deposit that money with the Treasury.'' *See* 31 U.S.C. 3302(b). ''Receiving money for the Government'' includes the ''constructive receipt'' of money ''if a federal agency could have accepted possession and retains discretion to direct the use of the money.'' *See* Effect of 31 U.S.C. 484 on the Settlement Authority of the Attorney General, 4B Op. O.L.C. 684, 688 (1980). This rule thus similarly forbids circumvention of the policy reflected in this statute via the use of in-kind payments.