

NEWS ALERT**TAX GROUP****IRS Issues Favorable Taxpayer Guidance on Business Meal Deduction**

By Marc T. Finer | October 23, 2018

In December 2017, President Trump signed the Tax Cuts and Jobs Act (the "TCJA") into law. While some of the most publicized provisions of the TCJA related to the reduction in the corporate and personal income tax rates, the TCJA offset some of the tax savings that would have resulted from these rate reductions by pairing back or completely eliminating certain common business deductions. For tax years beginning on or after January 1, 2018, one of the eliminated deductions is the 50 percent deduction for any expenses related to business entertainment, amusement or recreation activities. Even though the TCJA did not change the 50 percent deduction for the cost of qualifying business meals, businesses and tax practitioners were unsure whether business meals associated with entertainment activities would also be nondeductible. On October 3, 2018, the IRS issued favorable taxpayer guidance in Notice 2018-76 that resolves this confusion.

Under Notice 2018-76, taxpayers may deduct 50 percent of the cost of a meal provided in connection with an entertainment activity if the following requirements are met:

1. The expense is an ordinary and necessary expense paid or incurred during the taxable year in carrying on any trade or business;
2. The expense is not lavish or extravagant under the circumstances;
3. The taxpayer, or an employee of the taxpayer, is present at the furnishing of the food or beverages;
4. The food and beverages are provided to a current or potential business customer, client, consultant, or similar business contact; and
5. In the case of food and beverages provided during or at an entertainment activity, the food and beverages are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts.

With regard to the fifth requirement, Notice 2018-76 states that the taxpayer cannot circumvent the entertainment disallowance rule by inflating the amount paid for food and beverages.

Notice 2018-76 also provides helpful examples to illustrate the operation of these requirements.

Notice 2018-76 provides welcome and helpful taxpayer guidance regarding the deductibility of business meal expenses following the complete elimination of any deduction for the costs associated with business entertainment, amusement or recreation activities. Taxpayers that provide business meals in connection with entertainment activities should insist

that the meal cost be separately stated from the cost of the entertainment on any invoice. Businesses should also review their documentation regarding previously incurred business meal and entertainment expenses to make sure the documentation can support a division of these expenses. If not, it may be possible to obtain a revised invoice which does separately identify the cost of the business meal and entertainment activity. Substantiation and invoicing of a separate cost for business meals provided in the context of entertainment activities will be critical to ensuring that the meal cost remains partially deductible.

Notice 2018-76 states that it may be relied upon until proposed regulations become effective.

If you have any questions regarding the deductibility of business meal expenses following the enactment of the TCJA and how Notice 2018-76 might affect your business and/or create potential tax planning opportunities, please contact Marc T. Finer, Tax Partner, at 860-240-6096 or mfiner@murthalaw.com.

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