

NEWS ALERT**TAX GROUP****IRS Updates Guidance on Business Meal and Entertainment Deductions**

By Marc T. Finer | March 5, 2020

The 2017 Tax Cuts and Jobs Act (the “TCJA”) eliminated the 50% deduction for any expenses related to business entertainment, amusement or recreation activities. On February 21, 2020, the IRS issued proposed regulations that address the elimination of the deduction for these expenditures and provide guidance to determine whether an activity is considered to be entertainment. The proposed regulations also address the limitation on the 50% deduction for food and beverage expenses.

The proposed regulations substantially incorporate the guidance issued in Notice 2018-76 which provided transitional guidance on the deductibility of expenses for certain business meals. (See, [IRS Issues Favorable Taxpayer Guidance on Business Meal Deduction](#)).

The following are some of the highlights of the proposed regulations:

ENTERTAINMENT EXPENSES

- “Entertainment” does not include food or beverages unless the food or beverages are provided at or during an entertainment activity and the costs of the food or beverages are not separately stated from the entertainment costs.
- When provided in conjunction with an entertainment activity, no expenditure may be allocated to an otherwise qualifying food or beverage expense (and the entire amount is treated as a nondeductible entertainment expense) unless (i) the food or beverages provided at or during an entertainment activity are purchased separately from the entertainment, or (ii) the cost of the food or beverages is stated separately from the cost of the entertainment on one or more bills, invoices or receipts.
- To stop taxpayers from circumventing the entertainment disallowance rule by inflating the amount charged for food and beverages, the bill, invoice or receipt for the food or beverages must reflect the venue’s usual selling cost for those items if they were to be purchased separately from the entertainment, or must approximate the reasonable value of those items.
- The entertainment disallowance rule applies whether or not the expenditure for the activity is related to or associated with the active conduct of the taxpayer’s trade or business.
- An “objective test” is applied to determine whether an activity is of a type generally considered to be entertainment.

QUALIFYING BUSINESS MEAL EXPENSES

- The business meal expense must not be lavish or extravagant under the circumstances and the taxpayer, or an employee of the taxpayer, must be present at the furnishing of the food or beverages.

QUALIFYING BUSINESS MEAL EXPENSES (CONTINUED)

- The food or beverages must be provided to a “person with whom the taxpayer could reasonably expect to engage or deal in the active conduct of the taxpayer’s trade or business such as the taxpayer’s customer, client, supplier, employee, agent, partner, or professional adviser, whether established or prospective.”
- Qualifying business meals generally include food or beverage expenses for company holiday parties, annual picnics or summer outings.

To assist taxpayers in applying the above rules, the proposed regulations also provide a number of examples to address specific factual scenarios including:

- Food or beverages provided to food service workers who consume the food or beverages while working in a restaurant or catering business;
- The allocation of ticket, food and beverages expenditures while attending a sporting event with a business associate;
- Food or beverages provided at a company holiday party; and
- Snacks available to employees in a pantry, break room, or copy room.

The proposed regulations provide helpful 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. While the cost of standalone meals (e.g., client dinner) continue to be 50% deductible, taxpayers that provide business meals in connection with entertainment activities should insist that the meal cost be separately stated from the entertainment cost 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 revised documentation from the vendor which does separately identify the cost of the business meal and entertainment expenses. 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 costs remain partially deductible. Failure to do so is a trap for the unwary.

The proposed regulations are proposed to apply to tax years that begin on or after the date the final regulations are published. Until then, taxpayers may rely on the proposed regulations for entertainment and food and beverage expenditures paid or incurred after December 31, 2017. Taxpayers may also rely on Notice 2018-76 until the final regulations are published.

If you have any questions regarding the deductibility of business meal expenses following the enactment of the TCJA and how Notice 2018-76 and the proposed regulations 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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