

NEWS ALERT**TAX GROUP****IRS Provides Guidance on Temporary 100% Business Meal Deduction**

By Marc T. Finer | April 20, 2021

The 2017 Tax Cuts and Jobs Act eliminated the 50% deduction for any expenses related to business entertainment, amusement or recreation activities but preserved the 50% deduction for business expenses related to food and beverages if certain requirements are met. To assist the restaurant industry, in which more than 110,000 eating and drinking establishments closed during the year 2020 as a result of the COVID-19 pandemic, the Consolidated Appropriations Act, 2021 temporarily increased the deduction for expenses that are paid or incurred for food or beverages provided by a *restaurant* to 100% of the expenses. This temporary increase is effective for the years 2021 and 2022.

On April 8, 2021, the IRS issued [Notice 2021-25](#) (the "Notice") to provide taxpayers with guidance regarding the temporary 100% deduction for the cost of business meals and beverages provided by a restaurant. The Notice also describes when the 50% business meal deduction continues to apply. For purposes of this temporary additional deduction, the Notice defines "restaurant" as "a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business's premises." This means that the cost for restaurant take-out and delivery, including sales tax, delivery fees and tips, also qualifies for the temporary 100% deduction.

The Notice excludes from the definition of "restaurant" a business "that primarily sells pre-packaged food or beverages not for immediate consumption, such as: a grocery store; specialty food store; beer, wine, or liquor store, drug store, convenience store, newsstand, or a vending machine or kiosk." In addition, the Notice excludes from the definition of "restaurant:" (1) any eating facility located on the business premises of the employer and used in furnishing meals excluded from an employee's gross income as a convenience of the employer; and (2) any employer-operated eating facility treated as a de minimis fringe, even if such eating facility is operated by a third party under contract with the employer. As a result, the 50% deduction limitation continues to apply to these establishments.

The increased deduction for business meals is a meaningful incentive for businesses to spend more on an industry that has been significantly impacted by the COVID-19 pandemic. The Notice provides helpful guidance and clarifications to help taxpayers determine whether the entire cost or only 50% of the cost of meals and beverages should be a deductible business meal expense. Regardless, business owners should require that the cost of business meals provided in connection with entertainment activities be separately stated from the entertainment cost on any invoice. This is because substantiation and invoicing of the separate cost for business meals provided in the context of entertainment activities will be critical to ensuring that the meal costs remain fully or partially deductible.

If you have any questions regarding the deductibility of business meal expenses following the issuance of IRS Notice 2021-25, please contact Marc T. Finer, Tax Partner, at 860-240-6096 or mfiner@murthalaw.com.

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