

NEWS ALERT

TAX GROUP



IRS Updates Guidance on Business Meal and Entertainment Deductions

By Marc T. Finer | October 15, 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. Taxpayers may, however, still deduct business expenses related to food and beverages if certain requirements are met. On September 30, 2020, the IRS issued [final regulations](#) that implement the 2017 legislation and largely follow, with some clarifications, the proposed regulations issued in February 2020 and the guidance in Notice 2018-76, as revised in the proposed regulations.

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

Entertainment Expenses

- When provided in conjunction with an entertainment activity, the final regulations confirm that 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. The final regulations clarify this requirement, however, by adding that the amount charged for 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. This clarification prevents taxpayers from inflating the food and beverage costs to benefit from the potential deduction.
- The final regulations confirm the continued application of the exceptions to entertainment expenses otherwise disallowed under the general rule including (i) expenses that are treated as compensation to the recipient (e.g., employer rewards employee and spouse with expense-paid vacation), (ii) expenses of recreational, social, or similar activities for employees (e.g., holiday parties, summer outings) and (iii) expenses for goods, services, and facilities made available to the general public (e.g., company offers complementary coffee in its reception area).
- In cases where the food or beverages provided at or during an entertainment activity are not purchased separately from the entertainment, and where the cost of the food or beverages is not stated separately from the cost of the entertainment on one or more bills, invoices, or receipts, no allocation can be made and the entire amount is a nondeductible entertainment expenditure.
- 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 final regulations confirm that 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.
- The final regulations confirm that 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.” Accordingly, this definition considers employees as a type of business associate and permits the deduction for meals provided by the taxpayer to both employees and non-employee business associates at the same event.
- The final regulations make it clear that the final regulations are intended to provide comprehensive rules for food and beverage expenses and thus also apply to travel meals.
- The exception to the 50 percent limitation on expenses for food and beverages made available to the general public also applies to expenses for food and beverages provided to employees only if the employer reasonably expects more than 50 percent of the refreshments will be consumed by customers, clients and visitors.
- The definition of “food and beverage expenses” includes any delivery fees, tips and sales tax but does not include the cost of transportation to the meal.

To assist taxpayers in applying the above rules, the final 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 parties and picnics;
- Food or beverages provided to employees in a company cafeteria for discounted or no charge;
- Snacks available to employees in a pantry, break room, or copy room; and
- Refreshments that are offered in a company waiting area when the refreshments are consumed by both employees and customers (i.e., general public).

The final regulations provide helpful guidance and clarifications to help taxpayers determine whether an activity should be considered a nondeductible entertainment, amusement or recreation activity or a deductible business meal expense following the TCJA complete elimination of any deduction for the costs associated with these activities. While the cost of a standalone business meal (e.g., client dinner) continues to be 50% deductible, taxpayers that provide business meals in connection with entertainment activities should require that the meal cost be separately stated from the entertainment cost on any invoice. Businesses that have not already done so based on the proposed regulations and Notice 2018-76 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 that 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 final regulations are effective on October 9, 2020.

If you have any questions regarding how deductibility of business meal expenses following the enactment of the TCJA and the final 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.