

Buy Me Some Peanuts and Crackerjacks?

IRS Provides Guidance on Tax Deductions for Business Meals Provided with Entertainment

by Elizabeth J. Masson &
Christopher A. Karachale



On October 3, 2018, the IRS issued guidance for employers on how to claim tax deductions for business meals this year. Under the [Tax Cuts and Jobs Act](#), ("TCJA") business expenses for "entertainment" are no longer deductible, effective for 2018. However, the TCJA did not modify the separate 50% deduction for expenses for business meals, which left employers wondering how to distinguish a business meal from entertainment.

In [Notice 2018-76](#), the IRS confirmed that business meals remain 50% deductible, if certain conditions are met. The IRS also clarified that expenses for food and beverages may be deductible even if provided along with entertainment, such as a ball game, if meal expenses are billed or paid separately from entertainment expenses. The Notice explains which meal expenses are deductible and how employers will need to substantiate that the conditions for taking the deduction are met.

Employers are entitled to tax deductions for certain expenses that are "ordinary and necessary" in conducting business. Before the TCJA, that included up to 50% of expenses for entertainment that was directly related to the employer's business activities or was associated with such activities, so long as business was discussed immediately before or after the entertainment. A separate rule applies to business expenses for food and beverages, which generally are deductible only if: 1) the expense is not "lavish" or "extravagant" under the circumstances, and 2) an employee of the taxpayer is present when the food or beverage is furnished.

As used in the tax rules, the term "entertainment" includes activities objectively considered to be amusement or recreation, such as entertaining at night clubs, cocktail lounges, theaters, country clubs, golf and athletic clubs, sporting events, and on hunting, fishing, or vacation trips. It can also include activities that meet an individual's "personal, living, or family needs" such as providing food and beverages, a hotel suite, or an automobile to a customer or client. Based on this definition it was unclear whether the TCJA's elimination of the deduction for entertainment expenses would swallow the deduction for food and beverages provided to an employer's client or customer.

The Notice confirms that expenses for business meals are still

deducible, up to 50%, if:

- The expense is an ordinary and necessary expense paid or incurred during the taxable year in carrying on any trade or business;
- The expense is not lavish or extravagant under the circumstances;
- The taxpayer, or an employee of the taxpayer, is present at the furnishing of the food or beverages;
- The food and beverages are provided to a current or potential business customer, client, consultant, or similar business contact; and
- 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.

The Notice also warns that employers cannot circumvent the disallowance for entertainment expenses by inflating the amount paid or charged for food and beverages provided with entertainment.

Three examples in the Notice describe how the IRS will view expenses for business meals provided in connection with an activity that is considered entertainment:

- In the first example, the employer buys tickets to take a client to a baseball game. While at the ball game, the employer buys the client a hot dog and drinks. The tickets are an entertainment expense, which is not deductible. However, the cost of the hot dog and drinks, which were purchased separately from the game tickets, is not an entertainment expense and so 50% of those expenses are deductible.
- In the second example, the employer buys tickets to take a client to a basketball game in a suite, where they have access to food and beverages. The cost of the game tickets, as stated on the invoice, includes the food and beverages. Because the expenses for food and beverages are not purchased or billed separately from the entertainment expenses, the employer cannot deduct any of the cost of the food and beverages provided at the game.
- The facts in the third example are the same as in the second example, except that the invoice for the basketball game tickets separately states the cost of the food and beverages. In that case, the employer can deduct 50% of the food and beverage costs because those expenses are stated separately on the invoice for the game tickets, and therefore, are not entertainment expenses.

Employers should review their expense documentation procedures in light of these examples to ensure that business meal deductions can be properly substantiated.

The Notice announced that the IRS intends to publish regulations to provide guidance on the business expense deduction rules, and that taxpayers may rely on the guidance in the Notice in the meantime.

If you have questions or concerns, please contact the Hanson Bridgett [Employee Benefits Group](#) or [Tax Group](#).

For more information, please contact:

Elizabeth J. Masson, Partner
415-995-5106
LMasson@hansonbridgett.com

Christopher A. Karachale, Partner

415-995-5863
ckarachale@hansonbridgett.com