

Meals v Entertainment – Some IRS Guidance

The Tax Cuts and Jobs Act eliminated the deduction for entertainment, but kept the deduction for meals. Questions have been asked about meals in connection with entertainment. IRS plans to issue regulations on this issue and in the meantime has issued Notice 2018-76 to provide some guidance.

Regulation Section §1.274-2(b)(1)(i) provides, in part, that the term “entertainment” means any activity which is of a type generally considered to constitute entertainment, amusement, or recreation, such as entertaining at night clubs, cocktail lounges, theaters, country clubs, golf and athletic clubs, sporting events, and on hunting, fishing, vacation, and similar trips, including such activity relating solely to the taxpayer or the taxpayer’s family. The term “entertainment” may include an activity, the cost of which is claimed as a business expense by the taxpayer, which satisfies the personal, living, or family needs of any individual, such as providing food and beverages, a hotel suite, or an automobile to a business customer or the customer’s family.

Generally Section 274(k) permits a deduction for business related food and beverage if:

1. The expense is an ordinary and necessary expense under §162(a) 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. The entertainment disallowance rule may not be circumvented through inflating the amount charged for food and beverages.

The Notice provides three examples, which we have copied here.

Example 1. Taxpayer A invites B, a business contact, to a baseball game. A purchases tickets for A and B to attend the game. While at the game, A buys hot dogs and drinks for A and B. The baseball game is entertainment as defined in §1.274-2(b)(1)(i) and, thus, the cost of the game tickets is an entertainment expense and is not deductible by A. The cost of the hot dogs and drinks, which are purchased separately from the game tickets, is not an entertainment expense and is not subject to the §274(a)(1) disallowance. Therefore, A may deduct 50 percent of the expenses associated with the hot dogs and drinks purchased at the game.

Example 2. Taxpayer C invites D, a business contact, to a basketball game. C purchases tickets for C and D to attend the game in a suite, where they have access to food and beverages. The cost of the basketball game tickets, as stated on the invoice, includes the food and beverages. The basketball game is entertainment as defined in §1.274-2(b)(1)(i)

and, thus, the cost of the game tickets is an entertainment expense and is not deductible by C. The cost of the food and beverages, which are not purchased separately from the game tickets, is not stated separately on the invoice. Thus, the cost of the food and beverages also is an entertainment expense that is subject to the §274(a)(1) disallowance. Therefore, C may not deduct any of the expenses associated with the basketball game.

Example 3. Assume the same facts as in Example 2, except that the invoice for the basketball game tickets separately states the cost of the food and beverages. As in Example 2, the basketball game is entertainment as defined in §1.274-2(b)(1)(i) and, thus, the cost of the game tickets, other than the cost of the food and beverages, is an entertainment expense and is not deductible by C. However, the cost of the food and beverages, which is stated separately on the invoice for the game tickets, is not an entertainment expense and is not subject to the §274(a)(1) disallowance. Therefore, C may deduct 50 percent of the expenses associated with the food and beverages provided at the game.

At the end of the Notice is information on when and where to send comments regarding this Notice.

Notice 2018-76

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