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Business Meals Remain Deductible

INTERNAL REVENUE SERVICE, TAX, TAX REFORM
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On Wednesday, October 3, 2018, the Internal Revenue Service (IRS) issued Tax Notice 2018-76 confirming our conclusion reached in March 2018 that certain business meals will remain 50% deductible. The results are more favorable than we had originally hoped for as food and beverages purchased separately at an entertainment event can still be deducted and are not to be considered non-deductible entertainment expenses.

The Tax Cuts and Jobs Act (the Act) amended §274 of the Internal Revenue Code disallowing a deduction for expenses with respect to entertainment, amusement, or recreation. In the haste that the Act was drafted and passed, it was not clear whether the statutory language relating to the new non-deductible entertainment provisions would also negatively impact the deductibility of expenses for business meals. There were conflicting conclusions among tax professionals as to whether business meals were included in the new law, or whether the old law remained. Our analysis led us to the conclusion that the Act did not change the law related to business meals that existed prior to its enactment. Now, there is specific support from the IRS that those meals remain deductible assuming other requirements are met.

The notice provides that the Treasury Department and the IRS intend to publish proposed regulations under §274 clarifying when business meal expenses are nondeductible entertainment expenses and when they are 50 percent deductible expenses. Until the proposed regulations are effective however, taxpayers may rely on the guidance in the notice for the treatment for certain business meals.

In accordance with the notice, taxpayers may deduct 50 percent of an otherwise allowable business meal expense 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 does indicate that the Treasury Department and the IRS intend to issue separate guidance addressing the treatment of expenses for food and beverages furnished primarily to employees on the employer's business premises. At this time, we believe these expenses remain 50% deductible.

We will continue to monitor the tax changes and provide our insight into their application to help you optimize your own unique tax situation. Please contact your Schneider Downs tax representative for additional information regarding the above and/or for any other tax issues you may be facing.

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