KPMG

TaxNewsFlash

United States

No. 2019-062
February 15, 2019

IRS acquiescence: Tax Court decision, hockey team's pregame meals as de minimis fringe benefit

The IRS released an "Action on Decision" (AOD 2019-01) for publication in the Internal Revenue Bulletin (IRB) for Tuesday, February 19, 2019.

AOD 2019-01 states the IRS "acquiescence in result only" concerning a 2017 decision of the U.S. Tax Court, in a case concluding that pregame meals provided by a professional hockey team to its players and personnel at away-city hotels were fully deductible because the meals were provided at employer-operated facilities.

The IRS "acquiescence in result only" means that the IRS accepts the holding of the Tax Court and that the IRS will follow the decision in disposing of cases with the same controlling facts. While "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons.

Read AOD 2019-01 in **IRB 2019-08** [PDF 144 KB]

Tax Court case

The U.S. Tax Court in June 2017 held that pregame meals at away-city hotels, provided by a professional hockey team to its players and personnel, qualified as a de minimis fringe and that the costs of the pregame meals were not subject to the 50% limitation under section 274(n)(1). The case is: *Jacobs v. Commissioner,* 148 T.C. No. 24 (June 26, 2017).

In this case, the taxpayer husband and wife were the owners of the Boston Bruins professional hockey team. [Team ownership was held through subchapter S corporations and other entities, of which the taxpayers were the direct or indirect owners.] During the years at issue, the Bruins' team members and personnel traveled to away games, and arrangements were made at the away-game hotels for pregame meals to be provided to the players and personnel. For the tax years 2009 and 2010, the taxpayers claimed meal expense deductions of approximately $128,000 and $142,000, respectively.

The IRS issued deficiency notices reflecting a disallowance of 50% of the claimed deductions for meal expenses provided to the Bruins' traveling hockey employees in cities other than Boston.

The taxpayers petitioned the Tax Court, asserting, in part, that the 50% limit imposed on meal expenses under section 274(n)(1) did not apply in this instance because the meals qualified as a de minimis fringe benefit under sections 132(e)(2) and 274(n)(2)(B).

Reg. section 1.132-7(a)(2) provides that an employer-operated eating facility satisfies the revenue/operating cost test if the employer can reasonably determine that the meals are excludable to the recipient employees under section 119. Under section 119(a), meals are excludable from income to recipient employees under section 119 if they are: (1) furnished for the convenience of the employer; and (2) furnished on the business premises of the employer. Under Reg. section 1.119-1(a)(2)(i), the meals are furnished for the convenience of the employer if they are furnished for a substantial business reason.

The Tax Court agreed with the taxpayers, and held that the meals satisfied the requirements under sections 119 and 132(e)(2) such that the taxpayers were entitled to deduct the full cost of the meals without regard to the 50% limitation imposed by section 274(n)(1). The court found that the pregame meals at away-city hotels were provided to the Bruins' traveling hockey employees for substantial noncompensatory business reasons. The court reached this conclusion by finding, among other items, that:

- The employee meals were provided pursuant to the nondiscriminatory manner requirement of section 132(e)(2).

- The Bruins' contracts with the away-city hotels for the right to use and occupy the meal rooms to conduct team business were substantively leases (thus satisfying the "operated by the employer" criterion).

- The contract with each away-city hotel regarding the operation of the meal rooms as well as food preparation and service was in effect the taxpayers "contracting with another to operate an eating facility for its employees."

- The rented hotel space in the away cities constituted part of the Bruins' business premises, given that the traveling hockey employees' performance of "significant business duties at away city hotels along with the unique nature of the Bruins' business (i.e., professional hockey)."

- It was "illogical" for the IRS to ignore the nature of the Bruins' business and the NHL and to analyze the amount of time spent at each away-city hotel in isolation.

Read ***TaxNewsFlash***

KPMG observation

The IRS Action on Decision is not unexpected in light of the U.S. tax law enacted in December 2017 (Pub. L. No. 115-97). Perhaps in response to the Tax Court's decision in *Jacobs* in which the court found in favor of the taxpayer, the de minimis fringe benefit exemption under section 274(n) is now no longer available as a means to avoid the 50% deduction disallowance.

In addition, beginning in 2026, new section 274(o) completely denies a deduction for such cafeteria meals, along with the cost of operating the eating facility and meals for the convenience of the employer.

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to Washington National Tax.

Privacy | Legal