



TaxNewsFlash

United States



No. 2020-088
February 24, 2020

Proposed regulations: Deductibility of meal and entertainment expenses

The U.S. Treasury Department and IRS on February 21, 2020, released for publication in the Federal Register a notice of proposed rulemaking (REG-100814-19) as guidance under section 274 and regarding changes made to section 274 by the U.S. tax law enacted in 2017.

Background

The 2017 tax law (Pub. L. No. 115-97)—the law that is often referred to as the “Tax Cuts and Jobs Act” (TCJA)—eliminated the deduction for any expenses related to activities generally considered entertainment, amusement or recreation. It also increased the scope of the deduction limitation for expenses related to food and beverages provided by employers.

The [proposed regulations](#) [PDF 309 KB] (12 pages as published in the Federal Register) address the elimination of the deduction for expenditures related to entertainment, amusement or recreation activities and provide guidance to determine whether an activity is considered to be entertainment. The proposed regulations also address the limitation on the deduction of food and beverage expenses and the applicability of exceptions under section 274(e).

According to a related IRS release—[IR-2020-39](#) (February 24, 2020)—the proposed regulations generally follow guidance provided by the IRS in Notice 2018-76, a notice that provided transitional guidance on the deductibility of expenses for certain business meals. Read [TaxNewsFlash](#)

Public hearing

The proposed regulations as originally published in the Federal Register in February 2020 provided that the date of the public hearing would be April 7, 2020. Subsequently, the date of the public hearing was changed to April 29, 2020.

Read the [notice](#) [PDF 131 KB] (March 2020) announcing this public hearing date change and also announcing that outlines of topics to be discussed at the public hearing and comments must be received by April 13, 2020.

Overview

The proposed regulations describe and clarify the statutory requirements of section 274(a), 274(k), and 274(n), as well as the applicability of certain exceptions under section 274(e) to food or beverage expenses.

- To implement the 2017 tax law's disallowance of entertainment expenditures under section 274(a), the proposed regulations add a new section for entertainment expenditures paid or incurred after December 31, 2017. Prop. Reg. section 1.274-11.
- The proposed regulations also add a new section to address food or beverage expenses under section 274(k) and 274(n) paid or incurred after December 31, 2017, including the application of the exceptions in section 274(e)(2), (3), (4), (7), (8), and (9). Prop. Reg. section 1.274-12.

Prop. Reg. section 1.274-12 addresses expenses for business meals as described in Notice 2018-76, as well as expenses for other meals including travel meals and employer-provided meals.

Entertainment expenditures

According to the preamble, the proposed regulations:

- Restate statutory rules under section 274(a), including the application of the entertainment deduction disallowance rule to dues or fees to any social, athletic, or sporting club or organization
- Substantially incorporate the existing definition of entertainment in Reg. section 1.274-2(b)(1) (including use of an "objective test"), with minor modifications to remove outdated language
- Confirm that the nine exceptions in section 274(e) continue to apply to entertainment expenditures under section 274(a)
- Provide that for purposes of section 274(a), the term "entertainment" does not include food or beverages unless the food or beverages are provided at or during an entertainment activity and the costs of the food or beverages are not separately purchased nor separately stated from the entertainment costs

Separately stated food or beverages, not entertainment

In addition, the proposed regulations:

- Substantially incorporate the guidance in Notice 2018-76 to distinguish between entertainment expenditures and food or beverage expenses in the context of business meals provided at or during an entertainment activity.
- Generally apply the guidance in Notice 2018-76 to all food or beverages, including travel meals and employer-provided meals, provided at or during an entertainment activity.
- Further clarify the rules applicable to food or beverages provided at or during an entertainment activity—Notice 2018-76 explained that taxpayers may deduct 50% of an otherwise allowable business expense if the food or beverages are purchased separately from the entertainment, or if the cost of the food or beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. Further, the entertainment disallowance rule may not be circumvented through inflating the amount charged for food and beverages.

- Provide that the amount charged for food or beverages on a bill, invoice, or receipt 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.
- Provide that unless food or beverages provided at or during an entertainment activity are purchased separately from the entertainment, or the cost of the food or beverages is 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.
- Clarify that 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, in accordance with the 2017 tax law’s amendments to section 274(a)(1) specifically repealing the “directly related” and “business discussion” exceptions to the general disallowance rule for entertainment expenditures.

Food or beverage expenses

Business meal expenses

Concerning business meal expenses, the proposed regulations:

- Substantially incorporate the guidance in Notice 2018-76 addressing business meals provided during or at an entertainment activity.
- Incorporate other statutory requirements taxpayers must meet to deduct 50% of an otherwise allowable business meal expense—specifically, the 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.
- Address the general requirement in Notice 2018- 76 that the food and beverages be provided to a business contact, which was described in the notice as a “current or potential business customer, client, consultant, or similar business contact”—this requirement is so that the meal expenses are directly connected with or pertaining to the taxpayer’s trade or business, as required under section 162.
- Provide 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”—
 - In addition to clarifying this definition for purposes of determining whether a business meal expense is deductible, the proposed regulations apply this standard to the deduction of food or beverage expenses generally.
 - In particular, the proposed regulations include employees as a type of business associate, making the standard applicable to employer-provided meals as well as to situations in which a taxpayer provides meals to both employees and non-employee business associates at the same event.

Travel meal expenses

According to the preamble, the proposed regulations:

- Are intended to provide comprehensive rules for food and beverage expenses and thus apply the general rules for meal expenses from Notice 2018-76, as revised in the proposed regulations, to travel meals
- Incorporate the substantiation requirements in section 274(d), unchanged by the 2017 tax law, to travel meals
- Apply the limitations in section 274(m)(3) to expenses for food or beverages paid or incurred while on travel for spouses, dependents or other individuals accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel

These limitations do not apply to deductions for moving expenses under section 217. However, the 2017 tax law amended section 217 to suspend the deduction for moving expenses for tax years beginning after December 31, 2017, and before January 1, 2026, except with respect to certain members of the Armed Forces. Thus, the proposed regulations revise the reference to section 217 to reflect that amendment.

Other food or beverage expenses

The proposed regulations:

- Apply the business meal guidance in Notice 2018-76, as revised in these proposed regulations, to food or beverage expenses generally.
 - Under section 274(n)(1), the deduction for food or beverage expenses generally is limited to 50% of the amount that would otherwise be allowable.
 - Prior to the 2017 tax law, under section 274(n)(2)(B), expenses for food or beverages that were excludable from employee income as de minimis fringe benefits under section 132(e) were not subject to the 50% deduction limitation under section 274(n)(1) and could be fully deducted. The 2017 tax law repealed section 274(n)(2)(B) so that expenses for food or beverages excludable from employee income under section 132(e) are subject to the section 274(n)(1) deduction limitation unless another exception under section 274(n)(2) applies.
 - Under section 274(k)(1), in order for food or beverage expenses to be deductible the food or beverages 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.
 - However, section 274(e) provides six exceptions to the limitations on the deduction of food or beverages in section 274(k)(1) and 274(n)(1) and the proposed regulations explain how those exceptions apply.
- Address several scenarios involving the deductibility of food or beverage expenses. Examples address factual scenarios including guidance on the deductibility of expenses for:
 - Food or beverages provided to food service workers who consume the food or beverages while working in a restaurant or catering business.
 - Snacks available to employees in a pantry, break room, or copy room.
 - Refreshments provided by a real estate agent at an open house.
 - Food or beverages provided by a seasonal camp to camp counselors.

- Food or beverages provided to employees at a company cafeteria.
- Food or beverages provided at company holiday parties and picnics.

Definitions

The deduction limitation rules generally apply to all food and beverages, whether characterized as meals, snacks, or other types of food or beverage items.

Unless one of the six exceptions under section 274(n)(2)(A) (by reference to subsection (e)) applies, the deduction limitations apply regardless of whether the food or beverages are treated as de minimis fringe benefits under section 132(e).

The proposed regulations define food or beverage expenses to mean the cost of food or beverages, including any delivery fees, tips, and sales tax

In the case of employer-provided meals at an eating facility, food or beverage expenses do not include expenses for the operation of the eating facility such as salaries of employees preparing and serving meals, and other overhead costs.

Section 274(e) exceptions to section 274(k) and 274(n)

Section 274(k)(2) and 274(n)(2)(A) provide that the limitations on deductions in section 274(k)(1) and 274(n)(1), respectively, do not apply to any expense described in section 274(e)(2), (3), (4), (7), (8), and (9). The proposed regulations, therefore, provide that the deduction limitations are not applicable to expenditures for business meals, travel meals, or other food or beverages that fall within one of these exceptions.

The proposed regulations provide guidance on:

- Expenses treated as compensation under section 274(e)(2) or (e)(9)
- Reimbursed food or beverage expenses
- Recreational expenses for employees
- Items available to the public
- Goods or services sold to customers

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](#)