

# **Temporary Changes for Deducting Business Food and Beverage Expenses in 2021 and 2022**

**Employers will be able to deduct 100% of their business meal expenses that are incurred in 2021 and 2022, rather than the standard 50%. ESsentials: The provision is limited to “food or beverages provided by a restaurant,” consistent with the policy objective behind this provision of assisting the restaurant industry.**

Restaurants have struggled mightily during the COVID-19 pandemic. Thankfully, they're specifically targeted for a new tax relief measure found in the massive Consolidated Appropriations Act (CAA), which became law on December 27, 2020. The new provision creates a temporary but meaningful tax incentive to spend more on business-related food and beverage costs.

Pre Existing tax breaks for certain food and beverage and entertainment costs are available in other limited circumstances. Here are the details.

## **Unfavorable Treatment under Tax Cuts and Jobs Act**

The Tax Cuts and Jobs Act (TCJA) permanently eliminated deductions for most business-related entertainment expenses paid or incurred after 2017. For example, you can no longer deduct any of the cost of taking clients out for a round of golf, to the theater or for a football game.

Before the IRS got around to issuing regulations, it was unclear what the impact of this general disallowance of deductions for entertainment would be on the deductibility of business-related meals.

## **Temporary Changes under the CAA**

A somewhat-controversial change in the CAA allows taxpayers to deduct 100% of the cost of business-related food and beverage expenses incurred at restaurants in 2021 and 2022.

In previous years, deductions for business meals at restaurants were limited to only 50% of the cost. While some have decried the CAA change as an unwarranted tax break for those who indulge in the proverbial three-martini lunch, it's intended to help restaurants survive the COVID-19 economic fallout. And, with the current COVID-related operating restrictions, restaurants need all the help they can get.

Under the new law, for 2021 and 2022, business meals provided by restaurants are 100% deductible, subject to the considerations identified in preexisting IRS regulations. Until the IRS issues additional guidance on the CAA relief provision, some issues will remain unclear. For example, do bars that serve food count as restaurants? Presumably they do, but IRS guidance is needed to answer that question.

## **Preexisting Recent IRS Regulations**

In October 2020, the IRS issued final regulations which clarified that taxpayers could still deduct 50% of business-related meal expenses under the TCJA. These regs were written *before* the CAA change that allows 100% deductions for business-related restaurant meals provided in 2021 and 2022. So, the regs will need to be updated, but they still provide some useful guidance on the following issues:

**Definition of food and beverage costs.** Food or beverages means all food and beverage items, regardless of whether they are characterized as meals, snacks, or other types of food and beverages. Food or beverage costs mean the full cost of food or beverages, including any delivery fees, tips and sales tax.

**Treatment of food and beverages provided with entertainment.** For purposes of the general disallowance rule for entertainment expenses, the term "entertainment" doesn't include food or beverages unless:

- The food or beverages are provided at or during an entertainment activity (such as a sporting event), and
- The costs of the food or beverages aren't separately stated.

Specifically, to be deductible, amounts paid for food and beverages provided at or during an entertainment activity must be:

- Purchased separately from the entertainment, or
- Stated separately on a bill, invoice or receipt that reflects the venue's usual selling price for such items if they were purchased separately from the entertainment or the approximate reasonable value of the items.

Otherwise, the taxpayer can't attempt to allocate costs between the entertainment and the food or beverages. The entire cost is treated as a nondeductible entertainment expense.

**Treatment of business meals.** Under the final regs, no deduction is allowed for business-related food or beverages unless:

- The expense isn't lavish or extravagant under the circumstances,
- The taxpayer or an employee of the taxpayer is present at the furnishing of the food or beverages, and
- The food or beverages are provided to the taxpayer or a business associate.

A business associate means a person with whom the taxpayer could reasonably expect to engage or deal with in the active conduct of the taxpayer's business such as a customer, client, supplier, employee, agent, partner or professional advisor — whether established or prospective.

**Treatment of meals while traveling on business.** Under the final regs, the long-standing rules for substantiating meal expenses still applies and they can be deductible.

The regs also reiterate the long-standing rule that no deductions are allowed for meal expenses incurred for spouses, dependents or other individuals accompanying the taxpayer on business travel (or accompanying an officer or employee of the taxpayer on business travel), unless the expenses would otherwise be deductible by the spouse, dependent or other individual. For example, meal expenses for the taxpayer's spouse would be deductible if the spouse works in the taxpayer's unincorporated business and accompanies the taxpayer for business reasons.

Under the new law, for 2021 and 2022, meals provided by restaurants while traveling on business are 100% deductible, subject to the preceding considerations.