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KPMG report: Full deduction for business meals provided by a restaurant

The “Taxpayer Certainty and Disaster Tax Relief Act of 2020” (the Act), enacted as part of the “Consolidated Appropriations Act, 2021” (CAA 2021), allows a full deduction for certain business meal expenses—an increase from the 50% deduction limit. The expenses must be paid or incurred during calendar year 2021 or 2022, and the relevant food and beverages provided by a restaurant. The Act itself does not specifically extend the full deduction to entertainment expenses.

Summary

Under section 274(n), the deduction for food or beverage expenses generally is limited to 50% of the amount that would otherwise be allowable, subject to certain exceptions. To be deductible as a business meal, section 274(k) provides that 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.

Section 274 was amended by the 2017 tax law (Pub. L. No. 115-97)—the law that is often referred to as the “Tax Cuts and Jobs Act” (TCJA). Those legislative changes revised the rules for deducting expenditures for meals and entertainment, effective for amounts paid or incurred after December 31, 2017. Specifically, the TCJA repealed deductions for entertainment, amusement, and recreation—even when directly related to the conduct of the taxpayer’s trade or business. The 50% deduction limitation for food and beverage expenses associated with a trade or business was generally retained. However, the TCJA increased the scope of the deduction limitation for expenses related to food and beverages provided by employers by eliminating some of the existing exceptions. Certain food and beverages that were previously fully deductible, such as de minimis food and beverage items, are now subject to the 50% deduction limitation.

Final regulations were published in 2020 addressing the section 274 deduction limitations for meals and entertainment as changed by the TCJA. Read [TaxNewsFlash](#)

The Act under CAA 2021 further amends section 274(n) to allow a 100% deduction for business-related expenses for food and beverages provided by a restaurant and that are paid or incurred in

calendar years 2021 and 2022. The Act did not provide further clarification or guidance on the application of this provision.

KPMG observation

This limited expansion of the deductibility for food and beverage provided by a restaurant appears intended to benefit the restaurant industry and encourage businesses to utilize restaurants for business meals. The term "restaurant" is not generally defined in the Internal Revenue Code. As a result, much is dependent upon that definition for purposes of this provision. Until such guidance is provided, a best practice could be to consider the general definition of restaurant in developing expense policies and complying with this provision.

Taxpayers frequently wonder whether the expenses for this purpose are broad enough to cover fees in addition to the food and beverage cost. Fortunately, the final section 274 regulations provide that food and beverage expenses include the full cost of food or beverages, including any delivery fees, tips, and sales tax. Based on this definition, delivery fees and tips from a separate food delivery service may be deductible, so long as the food and beverages are provided by a restaurant.

While the deduction has been expanded for food and beverage expenses provided by a restaurant, the expansion does not appear to apply more broadly to other section 274 expense limitations and does not address entertainment. Additional guidance is anticipated, and taxpayers need to check for updates given the limited application of this provision over the next two years in the ever evolving business environment.

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