



TaxNewsFlash

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Notice 2021-25: Temporary 100% deduction for certain business meal expenses

The IRS today released an advance version of Notice 2021-25 as guidance regarding the temporary 100% deduction for expenses that are paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant.

Background

Under section 274, there is a 50% limitation for business meal expenses.

A temporary 100% deduction was made available by the *Taxpayer Certainty and Disaster Tax Relief Act of 2020*, a division of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116- 260) (enacted December 27, 2020).

Specifically, section 274(n)(2)(D) was added to the Code to provide a temporary exception to the 50% limitation for expenses for food or beverages provided by a restaurant.

For expenses paid or incurred January 1, 2021, through December 31, 2022, businesses can claim 100% of their food or beverage expenses provided by a restaurants as long as the business owner (or an employee of the business) is present when food or beverages are provided and the expense is not lavish or extravagant under the circumstances.

Notice 2021-25

[Notice 2021-25](#) [PDF 71 KB] explains when the temporary 100% deduction applies and when the 50% limitation continues to apply.

According to the notice, the 50% limitation does not apply to the amount of any deduction otherwise allowable for any expense paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant.

For these purposes, the term “restaurant” means a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are

consumed on the business's premises. It does not include a business that primarily sells pre-packaged food or beverages not for immediate consumption—for example, a grocery store; a specialty food store; a beer, wine or liquor store; drug store; a convenience store; a newsstand; or a vending machine or kiosk. The 50% limitation continues to apply to the amount of any deduction otherwise allowable to the taxpayer for any expense paid or incurred for food or beverages acquired from such a business (unless another exception in section 274(n)(2) applies to such expense).

In addition, an employer may not treat any of the following as a restaurant for purposes of section 274(n)(2)(D):

- Any eating facility located on the business premises of the employer and used in furnishing meals excluded from an employee's gross income under section 119
- Any employer-operated eating facility treated as a de minimis fringe under section 132(e)(2), even if such eating facility is operated by a third party under contract with the employer

Read a related IRS release—[IR-2021-79](#) (April 8, 2021)

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