

IRS Shows How Difficult It Can Be To Exclude Business Meals From Income

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03.29.2019

The IRS recently issued a Technical Advice Memorandum (TAM) demonstrating the level of scrutiny that the IRS will apply in the case of the business meal exclusion.

The Tax Code permits employees to exclude from income the value of meals provided by their employer on the employer's premises for the convenience of the employer. Regulations also require that the meal is provided for a "substantially non-compensatory business reason." A substantial non-compensatory business reason requires a business nexus under which the employee accepts the meals in order properly to perform his or her duties. This test is analyzed by the IRS on a facts and circumstances basis.

In the TAM, the IRS reviewed an employer program that provided free meals to all employees, without distinction as to the employee's position, specific job duties, ongoing responsibilities, or other facts and circumstances. Meals were provided in snack areas, at employee desks, and in cafeterias. The IRS found that the employer did not have any policies or procedures that supported the proffered reasons for providing the employee meals—(i) to provide a secure business environment for business discussions; (ii) for collaboration and innovation among employees; (iii) for employee safety due to surrounding area; (iv) to improve employee health; and (v) to keep employees on site to address emergency situations that commonly occur.

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Additionally, the IRS noted that the employer did not adequately consider the impact of the proliferation of meal delivery services on the employer's justification for providing meals.

In light of this guidance, employers providing meals to employees on the employer's premises should review their policies on employee meals to ensure that they are not exposing themselves and their employees to potential liability for failure to include these amounts in income.