

Business Meals and Entertainment Guidelines

On October 3, 2018, the IRS issued guidance (Notice 2018-76) updating the status of the business meals and entertainment deduction. The notice states, "Allowable meal expenses remain deductible, subject to the 50 percent limitation in Section 274(n)(1)." Thus, the business meals deduction remains intact post-Tax Cuts and Jobs Act of 2017 ('TCJA') as long as the following requirements, as outlined in Notice 2018-76, are met:

1. The expense is an ordinary and necessary expense under § 162(a) paid or incurred during the taxable year in carrying on any trade or business;
2. The expense is not lavish or extravagant under the circumstances;
3. The taxpayer, or an employee of the taxpayer, is present at the furnishing of the food or beverages;
4. The food and beverages are provided to a current or potential business customer, client, consultant, or similar business contact; and
5. In the case of food and beverages provided during or at an entertainment activity, the food and beverages are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more, bills, invoices, or receipts.

However, unlike the business meals deduction, the deduction for entertainment, amusement, or recreation expenses was generally eliminated by the TCJA. The Treasury defines entertainment as the following, "an activity of a type generally considered to constitute entertainment."

Examples of entertainment provided by the Treasury include entertaining at night clubs, cocktail lounges, theaters, country clubs, golf and athletic clubs, and sporting events. As with much of the TCJA, there was some confusion as to what exactly is the difference between a 'deductible and non-deductible expense.'

Generally speaking, meals that are provided during entertainment events are allowed to be deductible as long as the following conditions are met: the food and beverages are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more, bills, invoices, or receipts.

However, "entertainment" does not include the following:

1. Dinner money provided by an employer to employee working overtime;
2. A hotel room maintained by an employer for lodging of employees while in business travel status; or
3. An automobile used in the active conduct of trade or business even though also used for routine personal purposes such as commuting to and from work.

Following the guidelines set forth in Notice 2018-76 will contribute to taking full advantage of the new business meals and entertainment deduction rules set forth by the TCJA.

Contact your Herbein team member or visit www.herbein.com for additional information.

What Exactly is Deductible?

This table provides examples of the differences in how meals should be handled for 2018 and future years versus the prior years:

Example	Prior Year's Treatment	2018 and Future Treatment
Office Holiday Parties, Picnics, Outings, Etc.	100% Deductible	100% Deductible
Entertaining Clients (Night Clubs, Cocktail Lounges, Theaters, Sporting Events, Club Memberships Etc.)	50% Deductible	Nondeductible
Business Meals with Clients	50% Deductible	50% Deductible as long as business is conducted, and the meal is purchased separately if at an entertainment event
Meals Provided for Convenience of Employer, Meals Provided to Employees Occasionally and Overtime Employee Meals, Snacks at the Office	100% Deductible provided they are excluded from employees' gross income as de minimis fringe benefits; otherwise 50% deductible	50% Deductible (Nondeductible after 2025)
Meals During Business Travel	50% Deductible	50% Deductible
Tickets to Charitable Events	100% Deductible	Nondeductible
Transportation to/from Restaurant for Client Business Meal	100% Deductible	100% Deductible
Meals in Office During Meetings of Employees, Stockholders, Agents, or Directors	50% Deductible	50% Deductible
Meals at a Seminar or Conference, or at a Business League Event	50% Deductible	50% Deductible
Meals Provided as Part of a Package Involving Charitable Sports Tickets	100% Deductible	50% Deductible
Meals Included as Taxable Compensation to Employee or Independent Contractor	100% Deductible	100% Deductible
Meals Expensed to a Client or Customer (or Reimbursed)	100% Deductible	100% Deductible
Food Offered to the Public for Free	100% Deductible	100% Deductible