IRS defines ‘restaurant’ for food and beverage deduction

April 13, 2021

In brief

Under Section 274(n), a taxpayer generally may deduct only 50% of the taxpayer’s otherwise allowable business expenses for food and beverages. The Consolidated Appropriations Act, 2021, removed this limitation for business expenses paid or incurred after 2020 and before 2023 for food or beverages provided by a restaurant. The IRS has released Notice 2021-25, which provides guidance on what is a ‘restaurant’ for this purpose.

Taxpayers that incur expenses for food or beverages that qualify as deductible trade or business expenses should become familiar with this definition in seeking to take advantage of the 100% deduction.

In detail

Notice 2021-25 defines a restaurant as 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.

Observation: Under this definition, an establishment that prepares and sells food on only a takeout basis, a bar that sells beverages but no food, and a food truck that prepares food, should qualify as restaurants.

Notice 2021-25 excludes from the definition of restaurant businesses that primarily sell pre-packaged food or beverages not for immediate consumption. The notice specifies grocery stores, specialty food stores, beer/wine/liquor stores, drug stores, convenience stores, newsstands, and vending machines and kiosks as examples of businesses that sell food or beverages but are not restaurants.

Observation: An employee or other recipient of a per diem for meal expenses paid under Rev. Proc. 2019-48 may use the per diem to purchase food or beverages from a source that is not a restaurant. Therefore, a per diem paid without additional substantiation should remain subject to the 50% disallowance.

Notice 2021-25 also specifies that a restaurant does not include (1) an 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 or (2) an employer-operated eating facility treated as a de minimis fringe benefit under Section 132(e)(2), including an eating facility operated by a third party.
**Observation:** This rule excludes employer-operated eating facilities and certain other eating facilities on an employer's premises from the definition of restaurant. However, the cost of food or beverages an employer purchases off the employer's business premises from a source that qualifies as a restaurant may be 100% deductible even though the value is excluded from the income of employees under Section 119 or Section 132(e)(1) (dealing with de minimis fringes generally).

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**The takeaway**

Taxpayers that incur trade or business expenses for food or beverages may deduct 100% of those expenses if they purchase the food or beverages from a business that prepares and sells food or beverages to retail customers for immediate consumption.

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**Let’s talk**

For a deeper discussion of how this issue might affect your business, please contact:

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