

¶535 Employer's Deduction for Entertainment, Commuting Benefits, and Meals

NEW LAW EXPLAINED

Deductions eliminated for some entertainment, meal and transportation expenses.—Business expense deductions are eliminated or reduced as follows:

- 1) Deductions are eliminated for certain entertainment expenses after 2017 (Code Sec. 274(a)(1), as amended by the Tax Cuts and Jobs Act).
- 2) Deductions are eliminated for transportation and commuting benefits after 2017 (Code Sec. 274(a)(4), as added by the 2017 Tax Cuts Act, and Code Sec. 274(l), as amended by the 2017 Tax Cuts Act).
- 3) Deductions are eliminated after 2025 for employer-provided meals that are excludable from an employee's income or are de minimis fringes (Code Sec. 274(o), as added by the 2017 Tax Cuts Act).

Entertainment expenses. Entertainment expenses, including expenses for a facility used in connection with entertainment, that are paid or incurred after 2017 generally are not deductible. The exception that allowed deductions for entertainment expenses that were directly related to, or associated with, the active conduct of the taxpayer's trade or business is eliminated (Code Sec. 274(a)(1), as amended by the 2017 Tax Cuts Act).

Since directly-related and associated-with entertainment expenses are not deductible, the following related provisions are also removed: (a) the rules that treated a club as an entertainment facility unless it was used primarily to further, and was directly related to the active conduct of, the taxpayer's trade or business (Code Sec. 274(a)(2)(C), as stricken by the 2017 Tax Cuts Act); (b) the limit on deductions for tickets to entertainment and sporting events, including the special rules for seats in skyboxes and the special exception for charitable sporting events (Code Sec. 274(l)(1)(B), as stricken by the 2017 Tax Cuts Act); and (c) the 50-percent limit on entertainment expense deductions (Code Sec. 274(n)(1)(B), as stricken by the 2017 Tax Cuts Act).

COMMENT

Some entertainment-related rules do no change. As under current law, club dues and membership costs are not deductible (Code Sec. 274(a)(3)); and when entertainment deductions are disallowed with respect to any portion of a facility, that portion is treated as a personal, rather than a business asset (Code Sec. 274(g)).

Some entertainment expenses also remain fully deductible, including: (a) certain entertainment expenses for goods, services, and facilities that are treated as compensation to an employee-recipient; (b) expenses for recreational, social, or similar activities and related facilities primarily for the benefit of employees who are not highly compensated employees; (c) expenses for entertainment sold to customers; and (d) entertainment expenses for goods, services, and facilities that are includible in the gross income of a non-employee recipient as compensation for services rendered or as a prize or award (Code Sec. 274(e) and (n)(2)(A)). As under current law, these deductions must satisfy strict substantiation requirements; however, the taxpayer will not have to substantiate the time and place of the entertainment (Code Sec. 274(d), as amended by the 2017 Tax Cuts Act).

Transportation and commuting benefits. An employer cannot deduct expenses paid or incurred after December 31, 2017, for any Code Sec. 132(f) qualified transportation fringe (van pools, transit passes, qualified parking, and bicycle commuting) (Code Sec. 274(a)(4), as added by the 2017 Tax Cuts Act).

An employer also cannot deduct expenses paid or incurred after 2017 for providing any transportation, or any payment or reimbursement, to an employee in connection with travel between the employee's residence and place of employment, except as necessary to ensure the employee's safety. However, this prohibition does not apply to a qualified bicycle commuting reimbursement (as described in Code Sec. 132(f)(5)(F)) that is paid or incurred after December 31, 2017, and before January 1, 2026 (Code Sec. 274(l), as added by the 2017 Tax Cuts Act).

COMMENT

Qualified bicycle commuting benefits are includible in the employee's income for tax years beginning after 2017 and before 2026 (Code Sec. 132(f)(8), as added by the 2017 Tax Cuts Act). See ¶615.

CAUTION

It is not clear how this exception for qualified bicycle commuting benefits will coordinate with the blanket prohibition on deductions for qualified transportation fringes.

Employer-provided meals. No deduction is allowed for amounts that an employer pays or incurs after December 31, 2025, for (a) meals that are excludable from an employee's income under Code Sec. 119(a) because they are provided to employees and their spouses and dependents for the employer's convenience and on the employer's business premises; or (b) food, beverage and facility expenses for meals that are de minimis fringes under Code Sec. 132(e) (Code Sec. 274(o), as added by the 2017 Tax Cuts Act).

COMMENT

The employer's deduction for meal expenses is eliminated only for expenses described in Code Secs. 119(a) or 132(e). Thus, an employer may continue to deduct 50 percent of its expenses for food, beverages, and related facilities that are furnished on its business premises primarily for its employees, such as in a typical company cafeteria or executive dining room (Code Sec. 274(e)(1); Reg. §1.274-2(f)(2)(ii)).

Effective date. The amendments generally apply to amounts incurred or paid after December 31, 2017 (Act Sec. 13304(e) of the Tax Cuts and Jobs Act). However, the elimination of the deduction for employer-provided meals that are excludable by employees or are de minimis fringes applies to amounts incurred or paid after December 31, 2025.