

November 5, 2018

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2018-76)
1111 Constitution Avenue, NW
Washington, DC 20224

Via email to: Notice.Comments@irs.counsel.treas.gov

Re: Expenses for Business Meals Under § 274 of the Internal Revenue Code (Notice 2018-76)

Dear Sir/Madam:

This letter is submitted by the National Business Aviation Association (“NBAA”) in response to the request for comments on Notice 2018-76 (“Notice”) dealing with the deductibility of certain business meals under § 274 of the Internal Revenue Code.¹

NBAA represents more than 11,000-member companies and is the leading organization for companies that own or operate general aviation aircraft to make their businesses more efficient, productive and successful. We welcome the opportunity to provide comments on this Notice and appreciate your efforts to provide interim guidance to taxpayers.

We wish to express our support for the following conclusions implicit in the Notice, and request that these conclusions be confirmed in the proposed regulations:

1. A meal is not, in and of itself, an entertainment activity.
2. The cost of a meal furnished in connection with an entertainment activity is not subject to the entertainment disallowance in § 274(a) where the cost of the meal is separately stated.

Further, we wish to request guidance confirming that while the cost of the food is only 50% deductible under § 274(n), travel costs incurred on business trips where food is provided, should be fully deductible.

With regard to business meals, we agree with the approach taken in the Notice that eating a meal does not constitute an inherent entertainment activity. As the notice provides, taxpayers should generally be able to deduct 50 percent of their business meal expenses so long as they meet the specified criteria. Since meals are not inherently entertainment activities under the Notice, we respectfully request that the Treasury Department and IRS maintain this approach as proposed regulations are developed to address the Tax Cuts and Jobs Act (“Act”) amendments to § 274.

The modifications to § 274 in the Act, which eliminated the deduction for entertainment expenses directly related to (or associated with) a taxpayer’s trade or business, presented unique challenges related to business meals. Prior to issuance of the Notice, taxpayers lacked an objective standard to determine the deductibility of business meals when taking into consideration the amendments to § 274. For tax administration purposes, it is impractical and unworkable to analyze each individual meal without clear guidance. The guidance provided in the Notice, that business meals meeting the specific

¹ Unless otherwise noted, section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

criteria are non-entertainment and deductible, subject to the 50% limitation, provides much needed clarity to taxpayers and we hope that approach can be continued in proposed regulations.

Meals are Not Entertainment

In the normal course of a day, it is necessary for taxpayers (or employees of taxpayers) to consume meals. These could be business meals with a client, or non-business meals consumed simply for sustenance. Under Treas. Reg. § 1.274-2(b)(1), there is an acknowledgment that “routine personal activities,” which we believe should include eating a meal, are non-entertainment activities. To determine whether a meal is a deductible business expense, § 162 should be the controlling standard consistent with the Notice. Any concerns regarding meals in excessively expensive restaurants are addressed in § 162(a) and § 274(k), both of which limit deductions in the case of meals that are “lavish or extravagant under the circumstances.”

This conclusion is supported by the Conference report to the Act which makes it clear that business meals in the context of operating a trade or business should not be viewed as entertainment expenses subject to the entertainment deduction disallowance. In this regard, the legislative history of the Act states:

Taxpayers may still generally deduct 50 percent of the food and beverage expenses associated with operating their trade or business (e.g., meals consumed by employees on work travel).

H.R. Rep. No. 115- 466, at 407 (2017) (Conf. Rep.)

Likewise, the section-by-section explanation of the Act provided by the Senate Finance Committee also explains that the new deduction limitations under § 274 are designed to “eliminate the subjective determination of whether such (entertainment) expenses are sufficiently business related. See Tax Cuts and Jobs Act, Chairman’s Mark, Section by Section Summary, at 32 (November 16, 2017).

This means that the amendments to § 274 in the Act to eliminate deductions for entertainment directly related to business should not have an impact on the deductibility of business meals. It would be helpful for the proposed regulations to clarify that eating a meal is not regarded as an inherent entertainment activity.

Separately Stated Business Meals

We also agree with the position taken in the Notice regarding food and beverages provided during or at an entertainment activity. So long as the cost of the business meals is separately stated from the cost of the entertainment, the meals should remain deductible under § 162, subject to the 50% limitation present in § 274(n). It is common for business-related discussions to take place in a setting where entertainment may occur, and the provision of business meals is treated as a deductible non-entertainment activity in the Notice. We respectfully request that this treatment of food and beverages provided during or at an entertainment activity continue in the proposed regulations.

Transportation to Business Meals Should be Fully Deductible

It is common for companies that own business aircraft to conduct trips to meetings where meals are held at the destination. For example, employees could travel to business meetings in another city, and

during their time at the destination, host a business meal with clients. In this scenario, the primary purpose of the trip is to conduct business, not eat a meal. While the cost of the food is only 50% deductible under § 274(n), the travel to the business meeting should remain fully deductible.

While § 274(n) provides for the 50% disallowance with respect to food and beverages, the legislative history indicates that the disallowance does not apply to transportation expenses. The Joint Committee on Taxation explanation of the Tax Reform Act of 1986, specifically excludes transportation from the 50% disallowance:

However, an otherwise allowable deduction for the cost of transportation to and from a business meal (e.g., cab fare to a restaurant) is not reduced pursuant to the rule.

General Explanation of the Tax Reform Act of 1986 (the “Blue Book”), at 64 (J. Comm. Print 1987)

While the legislative history indicates there is a 50% disallowance for deductions related to a business meal, transportation to and from the meal is not subject to the disallowance. The percentage disallowance under § 274(n) is designed to cover “any expense for food or beverages.” The proposed regulations should clarify that § 274(n) is not applicable to transportation costs.

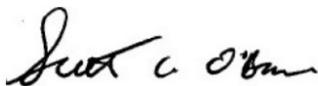
Conclusion

The interim guidance provided in the Notice offers much needed clarity on the tax treatment of meals considering the amendments to § 274 made by the Act. Eating a meal does not constitute an inherently entertainment activity, and taxpayers should generally be able to deduct 50 percent of their business meal expenses so long as they meet the specified criteria.

NBAA respectfully requests that the Treasury Department and IRS continue the approach to deductibility of meals that is taken in the Notice as proposed regulations to implement the amendments to § 274 made by the Act are developed.

Thank you for your consideration of our comments. Should you have questions, please contact me at 202-783-9451 or sobrien@nbaa.org.

Sincerely,



Scott O'Brien
Senior Director, Government Affairs

cc: David J. Kautter, Assistant Secretary for Tax Policy, U.S. Department of the Treasury

Shelley de Alth Leonard, Deputy Tax Legislative Counsel, U.S. Department of the Treasury

William M. Paul, Acting Chief Counsel and Deputy Chief Counsel (Technical),
Internal Revenue Service

Thomas C. West, Tax Legislative Counsel, U.S. Department of the Treasury