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Temporary 100-Percent Deduction for Business Meal Expenses

Notice 2021-25

I. PURPOSE

This notice provides guidance regarding the temporary 100-percent deduction for expenses that are paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant. In particular, the notice explains when the temporary 100-percent deduction applies and when the 50-percent limitation continues to apply for purposes of § 274 of the Internal Revenue Code (Code), as amended by § 210 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (December 27, 2020).

II. BACKGROUND

Section 274 generally limits or disallows deductions for certain meal and entertainment expenses that otherwise would be allowable under chapter 1 of the Code (chapter 1). Section 274(a)(1) generally disallows deductions for expenses for entertainment, amusement, or recreation. Section 1.274-11 of the Income Tax Regulations provides that the disallowance under section 274(a)(1) does not apply to food or beverages provided at an entertainment activity if the food or beverages are separately purchased from the entertainment activity or the cost of the food or

beverages is separately stated from the cost of the entertainment in an invoice, bill, or receipt. See § 1.274-11(b)(1)(ii).

Section 274(k) generally provides that no deduction is allowed under chapter 1 for the expense of any food or beverage unless: (1) such expense is not lavish or extravagant under the circumstances; and (2) the taxpayer (or an employee of the taxpayer) is present at the furnishing of such food or beverages. Section 274 provides additional rules that may apply to the deduction of food or beverage expenses, depending on the circumstances.

Section 274(n)(1) provides that a deduction for any expense for food or beverages generally is limited to 50 percent of the amount otherwise deductible under chapter 1. Section 274(n)(2) provides exceptions to the 50-percent limitation of deductions for food or beverage expenses. Section 210(a) of the Act added § 274(n)(2)(D) to the Code, which provides a temporary exception to the 50-percent limitation for expenses for food or beverages provided by a restaurant. Section 274(n)(2)(D) applies to amounts paid or incurred after December 31, 2020, and before January 1, 2023. To provide certainty to taxpayers in determining whether § 274(n)(2)(D) applies, this notice explains when the temporary 100-percent deduction applies and when the 50-percent limitation continues to apply.

III. APPLICATION OF § 274(n)(2)(D)

Pursuant to § 274(n)(2)(D), the 50-percent limitation of § 274(n)(1) does not apply to the amount of any deduction otherwise allowable to a taxpayer under chapter 1 for any expense paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant. For this purpose, the term “restaurant”

means 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. However, a restaurant does not include a business that primarily sells pre-packaged food or beverages not for immediate consumption, such as a grocery store; specialty food store; beer, wine, or liquor store; drug store; convenience store; newsstand; or a vending machine or kiosk. The 50-percent limitation of § 274(n)(1) continues to apply to the amount of any deduction otherwise allowable to the taxpayer under chapter 1 for any expense paid or incurred for food or beverages acquired from such a business (unless another exception in § 274(n)(2) applies to such expense).

In addition, an employer may not treat as a restaurant for purposes of § 274(n)(2)(D), (1) any eating facility located on the business premises of the employer and used in furnishing meals excluded from an employee's gross income under § 119, or (2) any employer-operated eating facility treated as a de minimis fringe under § 132(e)(2), even if such eating facility is operated by a third party under contract with the employer as described in § 1.132-7(a)(3).

IV. EFFECTIVE DATE

This notice is effective for amounts paid or incurred after December 31, 2020, and before January 1, 2023.

V. DRAFTING INFORMATION

The principal author of this notice is Deena Devereux of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Ms. Devereux at (202) 317-4602 or Patrick Clinton at (202) 317-4651 (not toll-

free numbers).