

## You Can Finally Order The Lobster: IRS Issues Guidance On Business Deductions For Meals & Entertainment

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As part of the Tax Cuts and Jobs Act (TCJA), there have been changes to the treatment of certain business-related expenses, including travel, business meals, and entertainment. As I wrote [earlier this year](#), some tax professionals believe that the language in the TCJA created confusion, asking the Internal Revenue Service (IRS) for clarification on this issue. At the time, I advised, "Don't order the lobster just yet" since the rules were still unclear. Now, you can finally order the lobster: The IRS has issued transitional guidance on business meals and entertainment.

Under prior law, the rule was that you could deduct 50% of entertainment, amusement, or recreation expenses directly related to your trade or business. Under the TCJA, there is no deduction for any item generally considered to constitute entertainment, amusement, or recreation.

Under Section 1.274-2(b)(1)(i) of Regs, the term "entertainment" includes activities like entertaining at nightclubs, cocktail lounges, theaters, country clubs, golf and athletic clubs, sporting events, and on hunting, fishing, vacation, and similar trips, including such activity relating solely to the taxpayer or the taxpayer's family. The

term can also include certain business expenses which could be considered personal, such as a hotel suite or a car for a business customer or the customer's family.

The Regs make clear that "entertainment" should not be interpreted to mean only the entertainment of others, or that an item of expenditure for entertainment should be characterized as advertising or public relations to circumvent the test. The Regs also make clear that the taxpayer's trade or business matters. For example, my attending a baseball game would be considered entertainment, but it would not be considered entertainment for a scout to attend a game in a professional capacity.

The TCJA *did not* change the definition of entertainment. Where things get tricky, though, is whether providing food and beverages might constitute entertainment, especially if food and beverages were tied to an activity considered to be entertainment.

Under the prior law, expenses for meals were generally deductible at 50% so long as they were connected to business and otherwise met the deductibility criteria. But the loss of the entertainment deduction left some taxpayers confused. What happens, for example, if meals are tied to nondeductible entertainment like dinner at a show or lunch during a ballgame? The IRS intends to publish proposed regulations clarifying when business meal expenses are nondeductible entertainment expenses and when they are 50% deductible expenses. Until those regulations are published, however, taxpayers can rely on guidance issued in [Notice 2018-76](#) (downloads as a pdf).

That guidance allows taxpayers to continue to deduct 50% of meals so long as the expense is ordinary and necessary to carry on a trade or business. Just as before, the costs can't be lavish or extravagant under the circumstances (context matters). Further, the taxpayer or an employee of the taxpayer must be present when the food or beverages are served (you can't just offer up a smorgasbord and walk away).

But what about food and drinks provided during or at an activity considered to be entertainment? In that case, if food and drinks are purchased or stated separately from the entertainment, the cost of the food and drinks would remain deductible. In other words, food and drinks provided during entertainment events will not be considered entertainment so long as they are kept separate.

In my [earlier article](#), I raised the example of whether a business lunch during a ballgame would remain deductible. Under the IRS guidance, the cost of tickets to the game would be considered entertainment and would not be deductible. However, the cost of lunch, so long as it is purchased separately from the tickets, is not considered entertainment and would be subject to the 50% deductibility rule.

But what if the tickets to the game included access to a suite with food and beverages - a package deal? As before, the cost of the tickets would be considered an entertainment expense and would not be deductible. But in this case, the cost of the

food and beverages, which are not purchased separately from the game tickets and not stated separately on the invoice (remember, it's a package deal) would also be considered an entertainment expense and would be disallowed.

Those are pretty easy examples to sort out, but there are bound to be situations where the lines are blurred. The IRS has announced its intent to release future guidance on the issue and is seeking public comment.

In the meantime, my advice from before still stands:

- *Pay attention.* Last-minute changes and guidance may have significant consequences on Tax Day. You don't want to be taken by surprise.
- *Get a good tax professional.* I know that you don't have time to read every piece of guidance from IRS or to analyze the language in the TCJA over late-night cocktails. You're busy running a business, right? Leave that to the folks who like doing this for a living.
- *Keep excellent records.* This piece is more important than ever. In addition to filing or scanning receipts, annotate where appropriate. You should include the date of the event, the type of the expense and who was with you. It's also a good idea to write down the purpose of the meal, including the general topic of discussion. If there's an entertainment piece, be sure that it gets carved out—separate checks are even better.