

The Bankler Report

September 23, 2014

INTRODUCTION

Recently the IRS announced that it plans to update guidance on the Meals and Entertainment rules. Meals served to employees on-premises that currently qualify for 100% deduction are being tested against increased regulations, and the IRS wants to make those regulations clear.

Background

Generally, meals and entertainment paid in connection with business are only 50% deductible. There are a couple of exceptions to this general rule. A major exception to this rule is an exclusion for company-provided meals. These meals are excludable from the general rule if they are furnished (a) to employees for the convenience of the employer and (b) on the business premises. The Regulations state that the convenience-of-the-employer test is met only if the meals are furnished for a substantial noncompensatory business purpose.

Substantial Noncompensatory Business Purpose

Although the finding of a substantial noncompensatory business purpose depends on the facts and circumstances, the Regulations provide a number of acceptable circumstances, including the following:

1. Meals are provided to have employees available for emergency call during the meal period, and such calls actually occur or can reasonably be expected to occur.
2. The meal period is short (30 to 45 minutes) because of the nature of the employer's business (e.g., the timing of peak working hours). A meal period shortened to let employees go home early doesn't qualify.
3. Employees can't otherwise secure proper meals within a reasonable meal period. By way of example, the Regulations say meals qualify under this test if there aren't enough eating facilities near the business.

Boyd Gaming

The Boyd Gaming Corp. line of cases, which dealt with casinos, ultimately led to the adoption of the Code Sec. 132(e)(2) rule that for purposes of the revenue test for determining whether an employer-operated eating facility is a de minimis fringe benefit.

Finally, in Ann. 99-77, the IRS announced its acquiescence to the decision in Boyd Gaming Corp. that a casino could deduct 100% of the cost of providing free on-premises meals to employees on the strength of its requirement that employees remain on-premises during their shifts for valid business reasons.

Result

If properly structured, these meals on the business premises become 100% deductible AND the employee does not have this value included into their income.