

Part III – Administrative, Procedural, and Miscellaneous

Temporary 100-Percent Deduction Applies to Meal Portion of 2021 and 2022 Per Diem Rate or Allowance

Notice 2021-63

SECTION 1. 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 for purposes of § 274(n)(2)(D) of the Internal Revenue Code (Code). In particular, the notice sets forth a special rule for applying the temporary 100-percent deduction to the meal portion of a per diem rate or allowance.

SECTION 2. 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(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. However, § 274(n)(2)(D) provides a temporary exception to the 50-percent

limitation for expenses that are paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant. Notice 2021-25, 2021-17 I.R.B. 1118, explains when the temporary 100-percent deduction applies and when the 50-percent deduction continues to apply for purposes of § 274.

Section 274(d) generally provides that no deduction is allowed for any traveling expense (including meals while away from home) unless the taxpayer substantiates such expense by adequate records or by sufficient corroborating evidence. However, § 274(d) authorizes the Secretary of the Treasury or her delegate to prescribe by regulation that some or all of the substantiation requirements do not apply in the case of an expense which does not exceed a particular amount. Section 1.274-5(j)(1) of the Income Tax Regulations authorizes the Commissioner of Internal Revenue (Commissioner) to establish a method allowing a taxpayer to treat a specific amount as paid or incurred for meals while traveling away from home instead of substantiating the actual cost. See also § 1.274-5(g).

In Rev. Proc. 2019-48, 2019-51 I.R.B. 1392, the Commissioner provides rules for taxpayers that choose to use a per diem rate to substantiate, under § 274(d) and § 1.274-5, the amount of ordinary and necessary business expenses paid or incurred while traveling away from home for: lodging, meal, and incidental expenses; meals and incidental expenses only; or incidental expenses only. Taxpayers that follow the rules in Rev. Proc. 2019-48 are deemed to meet the substantiation requirements in § 274(d) for the applicable travel expenses. See, for example, section 4.01 of Rev. Proc. 2019-48. Except for incidental expenses only deductions, all or part of the amount of an expense deemed substantiated under Rev. Proc. 2019-48 is subject to the appropriate limitation

under § 274(n) on the deductibility of food or beverage expenses. See section 6.05 of Rev. Proc. 2019-48.

SECTION 3. SPECIAL RULE

Solely for purposes of § 274(n)(2)(D), a taxpayer that properly applies the rules of Rev. Proc. 2019-48 may treat the meal portion of a per diem rate or allowance paid or incurred after December 31, 2020, and before January 1, 2023, as being attributable to food or beverages provided by a restaurant.

SECTION 4. EFFECTIVE DATE

This notice is effective for the meal portion of per diem allowances for lodging, meal and incidental expenses, or for meal and incidental expenses only that are paid or incurred by an employer after December 31, 2020, and before January 1, 2023. For purposes of computing the amount allowable as a deduction to a self-employed individual or employee described in § 62(a)(2)(B)-(E) for travel away from home, this notice is effective for the meal portion of per diem rates for meal and incidental expenses paid or incurred after December 31, 2020, and before January 1, 2023.

DRAFTING INFORMATION

The principal author of this notice is James Liechty of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact James Liechty at (202) 317-4657 (not a toll-free call).