

# 100-Percent Deduction for Business Meals

## Cross References

- Notice 2021-25

The IRS has released guidance regarding the temporary 100% deduction for expenses paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant. The guidance explains when the 100% deduction applies and when the 50% limitation continues to apply for purposes of IRC section 274.

In general, a deduction for entertainment, amusement, or recreation is disallowed. A deduction for business meals is generally limited to 50% if the expense is separately purchased from the entertainment activity or the cost of the food or beverages is separately stated from the cost of any entertainment on an invoice, bill, or receipt. [Reg. §1.274-11(b)(1)(ii)]

The Consolidated Appropriations Act, 2021, added IRC section 274(n)(2)(D) to the Internal Revenue Code which provides a temporary exception to the 50% limitation for business meals that are provided by a restaurant.

The new IRS guidance explains that 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% limitation continues to apply for the purchase of food or beverage from any of these non-restaurant businesses provided the expense is otherwise allowable under the business meal rules.

In addition, the IRS guidance provides that an employer may not treat as a restaurant:

- 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 IRC section 119, or
- 2) Any employer-operated eating facility treated as a de minimis fringe under IRC section 132(e)(2), even if such eating facility is operated by a third party under contract with the employer.

### Author’s Comment

Notice 2021-25 appears to lack specifics in cases where a grocery store or a convenience store includes a restaurant in the same building under the same ownership that is not separated by walls or barriers. How is it determined what the primary business of the business is when the business is in both businesses under the same roof?