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## Expensing Employee Virtual Meals Under the Taxpayer Certainty Act

BY MARINA VISHNEPOLSKAYA

H.R. 133, Consolidated Appropriations Act, 2021 signed into law by President Donald Trump on Dec. 27, 2020, contains a nearly-\$900-billion, Covid-19 relief package. Division EE of the act, the Taxpayer Certainty and Disaster Relief Tax Act of 2020 (Taxpayer Certainty Act) contains numerous tax extenders and other tax relief legislation. Section 210 of the Taxpayer Certainty Act allows an employer a full deduction for certain business meals the expense for which an employer paid or incurred after Dec. 31, 2020, and before Jan. 1, 2023. The amendment to tax code Section 274(n) highlights the adverse effect Congress has anticipated the coronavirus pandemic to impart on the struggling restaurant industry, given government-imposed shutdowns in certain areas in the United States.

### Limited Deductibility of Business Meals Under Section 274

[Section 274](#) limits or disallows a deduction for certain meal or entertainment expenses, which otherwise would be allowable as ordinary and necessary business expenses of a taxpayer. The 2017 Tax Cuts and Jobs Act (TCJA) amended Section 274 by eliminating a deduction for business entertainment expenses. The TCJA also denied a deduction for meals provided at convenience of employer after Dec. 31, 2025, which would be excludible from employee gross income, such as employee cafeteria meals. Pared down by the TCJA amendments, Section 274(n) limits a deduction for certain business meals to 50% of the amount paid or incurred.

### Full Expensing of Business Meals Under Section 274(n)(D)

By contrast, new Section 274(n)(2)(D) would assist the restaurant industry by allowing temporarily an em-

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ployer to expense 100% of an amount paid or incurred for food or beverages provided by a restaurant. The provision does not define the term “restaurant.” September 2020 final Treasury regulations allow either a restaurant or a catering business to deduct 100% of the costs of food or beverage items purchased for its operations, some of which may be consumed by employees at the worksite.

### Work-From-Home Business Meal Expensing

A majority of employers have implemented work from home arrangements for employees. Business meetings and employee social gatherings that at times would have taken place on premises have been conducted virtually. Nevertheless, employers may want to deduct costs of food consumables for employee virtual get-togethers that, instead of being catered by a restaurant, may have been acquired at other types of venues.

Subject to clarifying Treasury and IRS guidance, food and beverage expenses for virtual meetings could be deductible under Section 274(e)(5), as expenses incurred by an employer directly related to business meetings of its employees, stockholders, agents, or directors. This exception would be subject to the 50% deduction limitation in Section 274(n)(1).

Also, an employer could deduct edible goods expenses for employee virtual happy hours under Section 274(e)(4) relating to employee recreational activities. Excepted employee recreational expenses are excluded from the 50% deductibility ceiling under Section 274(n)(2)(A), similarly to meals ordered from a restaurant under Section 274(n)(2)(D).

### Conclusion

Section 210 of the Taxpayer Certainty Act appears to incentivize employers to order food and beverages from restaurants for employees. However, in the virtual meeting context, restaurant deliveries to numerous employee home bases may not be feasible. Treasury and the IRS may issue interpretive guidance clarifying the definition of the term “restaurant” for purposes of Section 274(n)(D) and including within its scope caterers or similar providers of food and beverages for employee events, which could be delivered effectively to multiple employee locations.

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