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Contents





M&E Expenses – Setting the Table

- Impacts businesses of every size and entity type.
- Results in permanent tax difference.
- Highly factual determination where amount of supporting documentation can be significant.
- Applies detailed substantiation requirements.





M&E History

Tax Reform Act of 1986

Omnibus Budget Reconciliation Act of 1993

Tax Cuts and Jobs Act







- M&E 100% deductible until 1986
- M&E limited to 80% for subsequent years

In general:

 Meals & entertainment limited to a 50% deduction

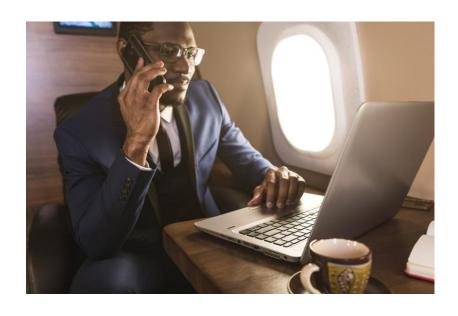
For post-2017, in general:

- Meals limited to a 50% deduction
- Entertainment is 0% deductible





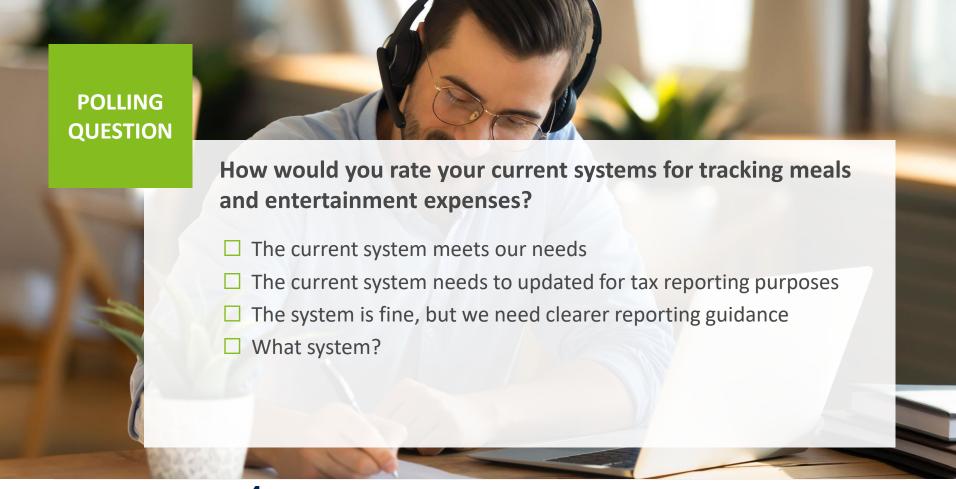
M&E General Requirements



Pre- and Post-TCJA:

- Expense cannot be "lavish" or "extravagant".
- Substantiation is required for all deductions.
- Certain exceptions are available that allow 100% deductibility.
- Limitations exist for certain employees.









M&E Exceptions

Pre- and Post-TCJA

- Reimbursed Expenses
- Expenses Treated as Compensation
- Recreational or Social Exception
- Items Available to Public
- Goods or Services Sold to Customers



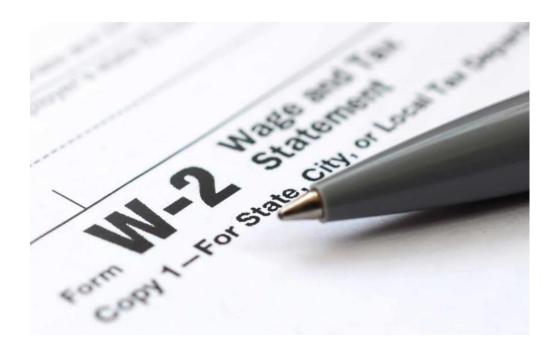


Reimbursed Expenses

- Expenses paid or incurred by the taxpayer in connection with the performance of services for another person under a reimbursement or other expense allowance arrangement.
- Sufficient documentation must be provided with bill for M&E expenses.
- Example: M&E included as part of travel costs billed from outside service provider.



Expenses Treated as Compensation



Deductible amount limited to the amount included in employees' income



Recreational or Social Exception

- Attendees generally cannot include clients, contractors, etc.
- Examples:
 - Team building events for employees
 - Employee holiday parties
 - Employee recognition events, end of busy season parties, etc.
- This is the ONLY form of "entertainment" that remains deductible after TCJA.





Items Available to the Public

- Expenses for goods, services and facilities made available by the taxpayer to the general public.
 - Examples:
 - Coffee and cookies in building lobby
 - Foot massages at a marathon
- Must be utilized >50% by the general public

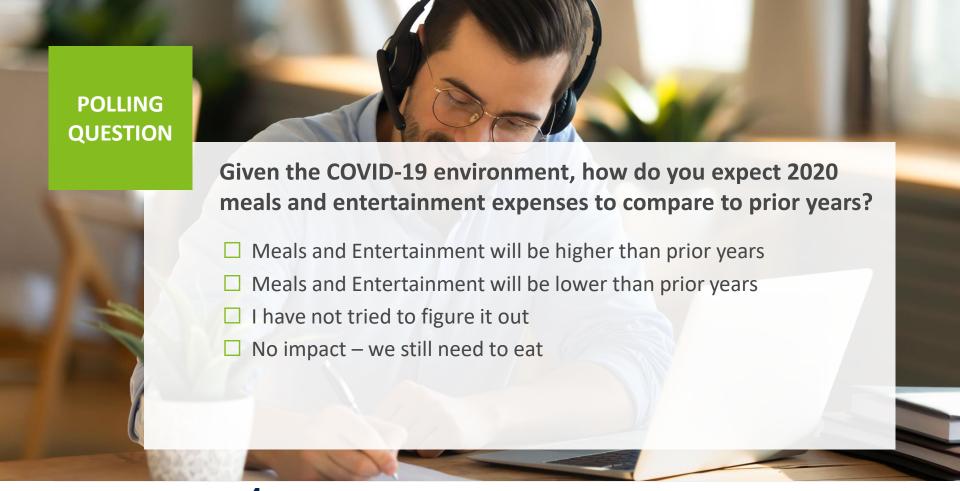




Goods or Services Sold to Customers

- Expenses paid or incurred for food or beverages, to the extent the food or beverages are sold to customers in a bona fide transaction for an adequate and full consideration.
- Applies to employees who pay in bona fide transaction.









TCJA Changes to M&E

The significant changes in TCJA ...

Entertainment expenses were generally disallowed

De minimis fringe benefit exception eliminated.

drove the need for additional guidance:

- Rev. Rul. 2018-76
- Proposed regulations published in February 2020
- Final regulations T.D. 9925





Final Regulations

- Limited changes from February 2020 proposed regulations
- Confirmed that "entertainment" does not include food or beverages if the meal expenses are separately stated from the entertainment costs
- Added or modified various examples to provide clarity on specific scenarios
- Clarified that food or beverage expenses includes the cost of food or beverages, as well as any delivery fees, tips, and sales tax
 - Indirect expenses, including the cost of transportation to a meal, are not included in the definition.



Entertainment Expenses

- Deductibility: Generally, 0%
- What is entertainment?
- Context may cause "entertainment" to be deductible.





Entertainment Expenses – New Guidance

Food and Beverage Provided in Conjunction with Entertainment

- Not deductible unless cost is broken out
 - Cost must represent the usual amount charged for the food and beverage when purchased separately from the entertainment, or approximate the reasonable value of the food and beverage
 - Deductibility still subject to other requirements



Elimination of de minimis fringe exception

- Deductibility: 50% after TCJA
- No longer allowed as an exception.
- "Frequency" and "amount" tests are somewhat subjective.
- Examples of de minimis benefits under IRS Reg. 1.132-6(d)(2):
 - Meals provided on an occasional basis or for overtime work
 - Snacks, coffee, donuts, etc.



Employee Cafeteria

- After TCJA, food and beverage provided in employer-operated eating facilities is limited to the 50% deduction.
 - The 50% limitation applies to expenses for food and beverage paid or incurred through 12/31/2025.
 - Limitation does not apply to overhead and labor costs (i.e., cafeteria worker salaries)
- Beginning on 1/1/2026, ALL subsidy amounts paid or incurred to operate a facility (beyond just food and beverage) are fully disallowed under the new Section 274(o).



Convenience of the Employer

- Meals provided for the convenience of the employer are now subject to the 50% limitation.
- The 50% limitation applies to expenses for food and beverage paid or incurred through 12/31/2025.
- Beginning on 1/1/2026, ALL amounts paid or incurred to operate a facility (beyond just food and beverage) are <u>fully disallowed</u> under the new Section 274(o).

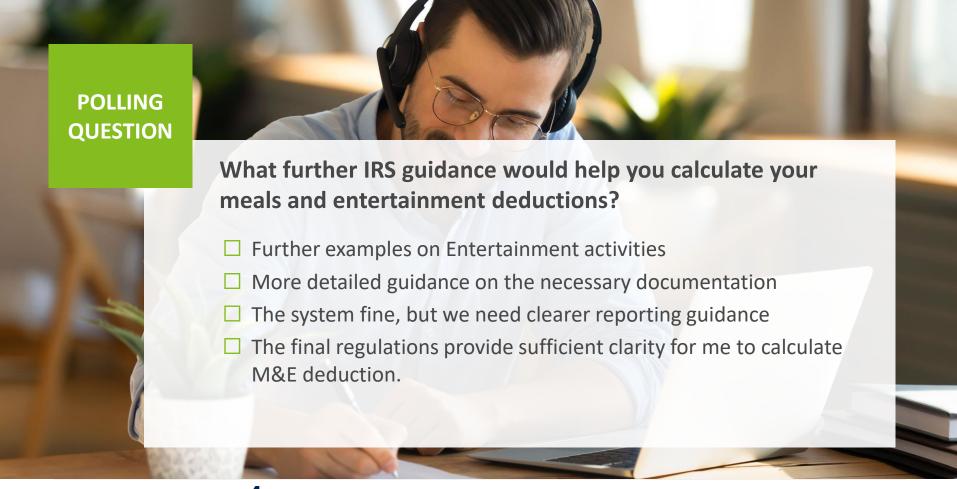


Substantiation Requirements

- The following documentation must be provided:
 - Amount of each separate expenditure for entertainment.
 - Date and description of type of entertainment (i.e., dinner, theater, etc.).
 - Place of activity.
 - Business purpose of activity, including a description of any business benefit derived or expected, and nature of any business discussion with person entertained.
 - Business relationship to persons entertained, including name and affiliation.











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Virtual Coffee Talk: Final Meal and Expense Regulations

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Kevin M. Jacobs

Kevin M. Jacobs is a Managing Director with Alvarez & Marsal Taxand in Washington D.C. and the National Tax Office Practice Leader. He brings more than 15 years of experience in tax matters in both the public and the private sector.

Prior to joining A&M, Mr. Jacobs was a Senior Technician Reviewer (TCJA) with the IRS Office of Associate Chief Counsel (Corporate) for more than six years, where he advised on tax issues such as corporate reorganizations and corporation-shareholder issues, earning and profits, recovery and allocation of stock basis, liquidations, redemptions, bankruptcies, spin-offs and consolidated returns.

Mr. Jacobs was the principal Associate Chief Counsel (Corporate) attorney on several regulatory projects including the proposed section 382(h) regulations on built-in gains and losses, the global intangible low-taxed income regulations, and debt-equity regulations. He provided substantial contributions to numerous other guidance projects, such as the limitation on interest deductions regulations, and assisted in overseeing the Corporate Division's response to TCJA, including the coordination with Treasury's Offices of Tax Legislative Counsel and International Tax Counsel. Previously, Mr. Jacobs spent more than nine years at law and certified public accounting firms (Ropes & Gray LLP, Latham & Watkins LLP, Dewey Ballantine LLP and Arthur Andersen LLP).

Mr. Jacobs earned a bachelor's degree in accounting, a master's degree in accounting (with a concentration in taxation), a J.D. (magna cum laude) from the University of Florida and an LL.M. in taxation from New York University. He is admitted to practice before multiple courts, including the Supreme Court of the United States, the U.S. Tax Court and the U.S. Court of Federal Claims. He is admitted to the District of Columbia and Florida Bars and is a licensed Certified Public Accountant (CPA) in Florida and Colorado. Mr. Jacobs is a member of several organizations including the American Bar Association and the New York State Bar Association. He is also a frequent speaker on numerous corporate transaction tax matters.



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Kathleen King, A&M Taxand Managing Director, has over 25 years of experience advising corporate clients on federal tax matters. Her experience includes helping clients claim, document and sustain tax incentives, including federal and state research tax credits, domestic production deductions, meals and entertainment deductions, and fixed asset reviews. Her projects range from targeted consulting engagements designed to address a specific issue to large scale projects utilizing engagement teams working concurrently in multiple locations. Ms. King has advised clients in a wide variety of industries including aerospace and defense, food products, manufacturing, pharmaceutical products, and software.

Ms. King has extensive experience in all phases of research credit matters including project implementation, IRS audit, IRS appeals, and litigation support. She is a frequent author and speaker on research credit matters.

Prior to joining A&M, Ms. King served as a National Office Resource for the Research Credit at two Big Four firms. She is a Certified Public Accountant.

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James A. Deets is a Senior Director at Alvarez & Marsal Taxand LLC in Dallas. He specializes in executive compensation, employee benefits and qualified retirement plans and has served as a consulting expert on employee benefits issues within the context of bankruptcy proceedings.

With over 20 years of experience, Mr. Deets' expertise includes qualified plans, such as nondiscrimination and other qualification issues, compliance and correction of plan defects. He has significant experience in health and welfare plans, including PPACA, FMLA, HIPAA and COBRA issues, cafeteria plans, retiree welfare benefits, VEBA trusts, severance plans and multiemployer welfare plans. Mr. Deets advises clients on plans related to executive compensation, nonqualified and stock, employee stock purchase, performance bonus and incentive, split dollar life insurance and top-hat.

He has managed the benefits and executive compensation components of mergers and acquisitions, including the applicability and impact of the golden parachute rules. Mr. Deets has garnered considerable experience in ERISA litigation matters involving benefit claims, fiduciary breaches, subrogation/reimbursement and preemption issues.

Prior to joining A&M, Mr. Deets was Counsel in the Dallas office of Hunton & Williams LLP, where he focused his practice on employee benefits and executive compensation.

Mr. Deets earned a law degree with honors from the Baylor University Law School, where he served as Assistant Managing Editor of the Baylor Law Review. He earned a bachelor's degree in mathematical sciences from Baylor University.

Mr. Deets is a member of the State Bar of Texas. He serves on the Board of Directors of Legal Hospice of Texas and is a member of the National Association of Corporate Directors, Southwestern Benefits Association, DallasHR and the Dallas Bar Association.



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