

O'NEIL & STEINER, PLLC
BUSINESS MEALS & ENTERTAINMENT

Under pre-TCJA law, no deduction was allowed for ordinary and necessary expenses for an activity of a type generally considered to be entertainment, amusement, or recreation, or for a facility used in connection with such an activity, unless the taxpayer established that the expense was (1) directly related to, or (2), in the case of an item directly preceding or following a substantial and bona fide business discussion, associated with the active conduct of the taxpayer's trade or business or income-producing activity. In practical terms, meal expenses were treated as a subset of entertainment expenses and under the Tax Reform Act of 1986 ('86 TRA), were subject to the "directly related to" or "associated with" business requirements. The deduction for meal and entertainment expenses was limited to 50% of the otherwise deductible amount of the expense.

Effective for amounts paid or incurred after Dec. 31, 2017, the TCJA repeals the rule that allowed a deduction for entertainment, amusement, or recreation expenses that were directly related to or associated with the active conduct of the taxpayer's trade or business. Instead, as a general rule, the Code provides that an otherwise allowable deduction can't be claimed for an activity which is of a type generally considered to constitute entertainment, amusement or recreation, or with respect to a facility used in connected with such an activity. Thus, the bar on deductions applies to the cost of tickets to sporting events, stadium license fees, private boxes at sporting events, theater tickets, golf club dues, etc.

The TJCA also provides, generally, that only 50% of otherwise allowable expenses for meals—food and beverages—are allowable as a deduction.

The TCJA does not explain the tax treatment of an expense commonly described as a "business meal." For example, a substantial and bona fide business discussion, such as a strategy session attended by the leaders of a business unit, or a business meeting between a business person and a client, takes place during lunch or dinner at a restaurant. Or the discussion may begin at the office and continue over a meal at a restaurant.

Under pre-TCJA regs, such a meal was treated as "directly related" to the active conduct of a trade or business if, the main purpose of the event was the active conduct of business, the taxpayer had more than a general expectation of deriving income, or another specific benefit, from the meal, and the taxpayer did, in fact, actively engage in a business meeting, negotiation, discussion, or transaction during the meal. The cost of such a meal was 50% deductible if the requirements were met, and the expense was substantiated (time, place, amount & purpose).

The TCJA keeps intact "business meals" which carries additional requirements that apply to meals only, including the unique requirement that the taxpayer (or his agent) be present at the meal, implying that a "business meal" such as the ones we've described above might continue to be 50% deductible. But the TCJA abolishes the "directly related to" or "associated with", so it's not clear what requirements a "business meal" would have to meet in order to be deductible, other than the ordinary and necessary business expense standard.

The committee report declared that "Taxpayers may still generally deduct 50 percent of the food and beverage expenses associated with operating their trade or business. Our hope is the IRS will address this quickly once the shutdown has ended.