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TD 9925

Meals and Entertainment Expenses Under Section 274

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations that provide guidance under section 274 of the Internal Revenue Code (Code) regarding certain recent amendments made to that section. Specifically, the final regulations address the elimination of the deduction under section 274 for expenditures related to entertainment, amusement, or recreation activities, and provide guidance to determine whether an activity is of a type generally considered to be entertainment. The final regulations also address the limitation on the deduction of food and beverage expenses under section 274(k) and (n), including the applicability of the exceptions under section 274(e)(2), (3), (4), (7), (8), and (9). The final regulations affect taxpayers who pay or incur expenses for meals or entertainment.

DATES:

Effective Date: These regulations are effective on October 9, 2020.

Applicability Date: These regulations apply for taxable years that begin on or after October 9, 2020.

FOR FURTHER INFORMATION CONTACT: Patrick Clinton of the Office of the Associate Chief Counsel (Income Tax and Accounting), (202) 317-7005 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under section 274 of the Code that amend the Income Tax Regulations (26 CFR part 1). In general, section 274 limits or disallows deductions for certain meal and entertainment expenditures that otherwise would be allowable under chapter 1 of the Code (chapter 1), primarily under section 162(a), which allows a deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

On December 22, 2017, section 274 was amended by section 13304 of Public Law 115-97 (131 Stat. 2054), commonly referred to as the Tax Cuts and Jobs Act, (TCJA) to revise the rules for

deducting expenditures for meals and entertainment, effective for amounts paid or incurred after December 31, 2017.

On February 26, 2020, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-100814-19) in the Federal Register (85 FR 11020) containing proposed regulations under section 274 to implement certain of the TCJA's amendments to section 274 (proposed regulations). The proposed regulations would update existing regulations in § 1.274-2 by adding a new section at § 1.274-11 for entertainment expenditures. The proposed regulations would also add a new section at § 1.274-12 to address the limitations on food or beverage expenses under section 274(k) and (n), including the application of the exceptions in section 274(e)(2), (3), (4), (7), (8), and (9). Pending the issuance of these final regulations, taxpayers were permitted to rely upon the proposed regulations for entertainment and food or beverage expenses, as applicable, paid or incurred after December 31, 2017.

The Treasury Department and the IRS did not receive any requests to speak at a public hearing on the proposed regulations. Therefore, the scheduled public hearing was cancelled. The Treasury Department and the IRS received 14 written and electronic comments in response to the proposed regulations. All comments were considered and are available at <https://www.regulations.gov> or upon request. The comments addressing the proposed regulations are summarized in the Summary of Comments and Explanation of Revisions section. However, comments recommending statutory revisions or addressing issues outside the scope of these final regulations are not discussed in this preamble. After full consideration of the comments, this Treasury decision adopts the proposed regulations with modifications in response to certain comments, as described in the Summary of Comments and Explanation of Revisions section.

1. Business Meals and Entertainment

Section 274(a)(1)(A) generally disallows a deduction for any item with respect to an activity of a type considered to constitute entertainment, amusement, or recreation (entertainment expenditures). However, prior to the amendment by the TCJA, section 274(a)(1)(A) provided exceptions to that disallowance if the taxpayer established that: (1) The item was directly related to the active conduct of the taxpayer's trade or business (directly related exception); or (2) in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), the item was associated with the active conduct of the taxpayer's trade or business (business discussion exception). Section 274(e)(1) through (9) also provide exceptions to the rule in section 274(a) that disallows a deduction for entertainment expenditures. The TCJA did not change the application of the section 274(e) exceptions to entertainment expenditures.

Section 274(a)(1)(B) disallows a deduction for any item with respect to a facility used in connection with an activity referred to in section 274(a)(1)(A). Section 274(a)(2) provides that, for purposes of applying section 274(a)(1), dues or fees to any social, athletic, or sporting club or organization shall be treated as items with respect to facilities. Section 274(a)(3) disallows a deduction for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.

Prior to amendment by the TCJA, section 274(n)(1) generally limited the deduction of food or beverage expenses and entertainment expenditures to 50 percent of the amount that otherwise

would have been allowable. Thus, under prior law, taxpayers could deduct 50 percent of meal expenses, and 50 percent of entertainment expenditures that met the directly related or business discussion exception. Distinguishing between meal expenses and entertainment expenditures was unnecessary for purposes of the 50 percent limitation.

Section 13304(a)(1) of the TCJA repealed the directly related and business discussion exceptions to the general prohibition on deducting entertainment expenditures in section 274(a)(1)(A). Also, section 13304(a)(2)(D) of the TCJA amended the 50 percent limitation in section 274(n)(1) to remove the reference to entertainment expenditures. Thus, entertainment expenditures are no longer deductible unless one of the nine exceptions to section 274(a) in section 274(e) applies.

While the TCJA eliminated the deduction for entertainment expenses, Congress did not amend the provisions relating to the deductibility of business meals. Thus, taxpayers generally may continue to deduct 50 percent of the food and beverage expenses associated with operating their trade or business, including meals consumed by employees on work travel. See H.R. Rep. No. 115-466, at 407 (2017) (Conf. Rep.). However, as before the TCJA, no deduction is allowed for the expense of any food or beverages unless (a) the expense is not lavish or extravagant under the circumstances, and (b) the taxpayer (or an employee of the taxpayer) is present at the furnishing of the food or beverages. See section 274(k).

Prior to amendment by the TCJA, section 274(d) provided substantiation requirements for deductions under section 162 or 212 for any traveling expense (including meals and lodging while away from home), and for any item with respect to an activity of a type considered to constitute entertainment, amusement, or recreation or with respect to a facility used in connection with such activity. Section 13304(a)(2)(A) of the TCJA repealed the substantiation requirements for entertainment expenditures. Traveling expenses (including meals and lodging while away from home), however, remain subject to the section 274(d) substantiation requirements. Food and beverage expenses are subject to the substantiation requirements under section 162 and the requirement to maintain books and records under section 6001.

On October 15, 2018, the Treasury Department and the IRS published Notice 2018-76, 2018-42 I.R.B. 599, providing transitional guidance on the deductibility of expenses for certain business meals and requesting comments for future guidance to further clarify the treatment of business meal expenses and entertainment expenditures under section 274. Under the notice, taxpayers may deduct 50 percent of an otherwise allowable business meal expense if: (1) The expense is an ordinary and necessary expense under section 162(a) paid or incurred during the taxable year in carrying on any trade or business; (2) the expense is not lavish or extravagant under the circumstances; (3) the taxpayer, or an employee of the taxpayer, is present at the furnishing of the food or beverages; (4) the food and beverages are provided to a current or potential business customer, client, consultant, or similar business contact; and (5) in the case of food and beverages provided at or during an entertainment activity, the food and beverages are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. The notice provides that the entertainment disallowance rule may not be circumvented through inflating the amount charged for food and beverages.

2. Travel Meals

Section 274(n)(1) generally limits the deduction of food or beverage expenses, including expenses for food or beverages consumed while away from home, to 50 percent of the amount that otherwise would have been allowable, unless one of the six exceptions to section 274(n) in section 274(e) applies. However, no deduction is allowed for the expense of any food or beverages unless: (1) The expense is not lavish or extravagant under the circumstances; and (2) the taxpayer (or an employee of the taxpayer) is present at the furnishing of the food or beverages. See section 274(k). Section 274(d) provides substantiation requirements for traveling expenses, including food and beverage expenses incurred while on business travel away from home.

Section 274(m) provides additional limitations on travel expenses, including expenses for meals consumed while away from home. Section 274(m)(1) generally limits the deduction for luxury water transportation expenses to twice the highest federal per diem rate allowable at the time of travel, and section 274(m)(2) generally disallows a deduction for expenses for travel as a form of education. Section 274(m)(3) provides that no deduction is allowed under chapter 1 (other than section 217) for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless: (1) The spouse, dependent, or other individual is an employee of the taxpayer; (2) the travel of the spouse, dependent, or other individual is for a bona fide business purpose; and (3) such expenses would otherwise be deductible by the spouse, dependent, or other individual.

3. Employer-Provided Meals

Prior to amendment by the TCJA, section 274(n)(1) generally limited the deduction for food or beverage expenses to 50 percent of the amount that otherwise would have been allowable, subject to an exception in section 274(n)(2)(B) in the case of an expense for food or beverages that is excludable from the gross income of the recipient under section 132 by reason of section 132(e), relating to de minimis fringes. Section 132(e)(1) defines "de minimis fringe" as any property or service the value of which is, after taking into account the frequency with which similar fringes are provided by the employer to its employees, so small as to make accounting for it unreasonable or administratively impracticable. Section 132(e)(2) provides that the operation by an employer of any eating facility for employees is treated as a de minimis fringe if (1) the facility is located on or near the business premises of the employer, and (2) revenue derived from the facility normally equals or exceeds the direct operating costs of the facility. Thus, under prior law, employers generally were allowed to fully deduct an expense for food or beverages provided to their employees if the amount was excludable from the gross income of the employee as a de minimis fringe. However, the TCJA repealed section 274(n)(2)(B), meaning that expenses for food or beverages that are de minimis fringes under section 132(e) are no longer excepted from section 274(n)(1). As a result, these expenses, like other food or beverage expenses generally, are subject to the 50 percent limitation unless one of the six exceptions to section 274(n) in section 274(e) applies.

The TCJA also added section 274(o) that, effective for amounts paid or incurred after December 31, 2025, disallows a deduction for (1) any expense for the operation of an employer-operated facility described in section 132(e)(2), and any expense for food or beverages, including under section 132(e)(1), associated with such facility, or (2) any expense for meals provided to an employee for the convenience of the employer, as described in section 119(a). Thus, beginning with amounts paid or incurred in 2026, expenses for food or beverages provided to employees, as

well as expenses for the operation of certain eating facilities for employees, will be fully nondeductible.

4. Section 274(e) Exceptions to Section 274(k) and (n)

Section 274(k)(2)(A) and (n)(2)(A) provide that the limitations on the deduction of food or beverage expenses in section 274(k)(1) and (n)(1), respectively, do not apply if the expense is described in paragraph (2), (3), (4), (7), (8), or (9) of section 274(e). Expenses described in paragraph (1), (5), and (6) of section 274(e) are not exceptions to the limitations on the deduction of food or beverage expenses in section 274(k)(1) and (n)(1). However, they are exceptions to the disallowance of the deduction of entertainment expenses in section 274(a).

Section 274(e)(2) applies to expenses for goods, services, and facilities to the extent that the expenses are treated as compensation to the recipient. Section 274(e)(3) applies to expenses incurred by a taxpayer in connection with the performance of services for an employer or other person under a reimbursement or other expense allowance arrangement. Section 274(e)(4) applies to expenses for recreational, social, or similar activities for employees. Section 274(e)(7) applies to expenses for goods, services, and facilities made available to the general public. Section 274(e)(8) applies to expenses for goods or services that are sold by the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth. Section 274(e)(9) applies to expenses for goods, services, and facilities to the extent that the expenses are treated as income to a person other than an employee.

Summary of Comments and Explanation of Revisions

1. Entertainment Expenditures

The final regulations restate the statutory rules under section 274(a), at § 1.274-11(a), including the application of the entertainment deduction disallowance rule to dues or fees to any social, athletic, or sporting club or organization. The existing definition of entertainment in § 1.274-2(b)(1), with minor modifications to remove outdated language, is incorporated into the final regulations, at § 1.274-11(b)(1). The final regulations provide that for purposes of section 274(a), the term "entertainment" does not include food or beverages unless the food or beverages are provided at or during an entertainment activity and the costs of the food or beverages are not separately stated from the entertainment costs. The final regulations do not affect the application of the special rules in § 1.274-10 to expenses related to aircraft used for entertainment.

A. Section 274(e) Exceptions to Section 274(a)

The final regulations, at § 1.274-11(c), confirm the continued application of the nine exceptions in section 274(e) to entertainment expenditures otherwise disallowed by section 274(a). The application of section 274(e) to food or beverage expenses is discussed in part 2.E. of this Summary of Comments and Explanation of Revisions section, which discusses the exceptions under section 274(e) to section 274(k) and (n).

A commenter on the proposed regulations requested that the Treasury Department and the IRS clarify that for purposes of the section 274(e)(8) exception to the entertainment deduction limitations in section 274(a) for goods or services sold by the taxpayer, the goods or services may be sold to an employee of the taxpayer in a bona fide transaction for an adequate and full

consideration in money or money's worth. The Treasury Department and the IRS decline to adopt this suggestion because the section 274(e)(8) exception to the entertainment disallowance is outside the scope of these regulations. The proposed regulations and these final regulations were initiated in response to the changes made to section 274 by the TCJA and generally are limited to addressing those changes. In particular, with regard to entertainment expenditures, the final regulations under § 1.274-11 primarily distinguish between meals and entertainment, as that distinction is now relevant, for purposes of determining whether the deduction of a particular expense is disallowed entirely or is limited to 50 percent. However, the TCJA did not change the application of the section 274(e) exceptions to entertainment expenditures. Thus, other than confirming that the section 274(e) exceptions continue to apply to entertainment expenditures, the final regulations do not provide rules addressing how the section 274(e) exceptions apply to entertainment expenditures. Taxpayers may, however, continue to rely upon the existing rules and examples in § 1.274-2 to the extent they are not superseded by the TCJA or other legislation and are not inconsistent with the final regulations.

B. Separately Stated Food or Beverages not Entertainment

The final regulations substantially incorporate the guidance in Notice 2018-76 to distinguish between entertainment expenditures and food or beverage expenses in the context of business meals provided at or during an entertainment activity. In addition, the final regulations generally apply the guidance in Notice 2018-76 to all food or beverages, including travel meals and employer-provided meals, provided at or during an entertainment activity. The final regulations also clarify the rules applicable to food or beverages provided at or during an entertainment activity.

Notice 2018-76 explains that in the case of food and beverages provided at or during an entertainment activity, the taxpayer may deduct 50 percent of an otherwise allowable business expense if the food and beverages are purchased separately from the entertainment, or if the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. The notice provides that the entertainment disallowance rule may not be circumvented through inflating the amount charged for food and beverages. The final regulations clarify this requirement by providing that the amount charged for food or beverages on a bill, invoice, or receipt must reflect the venue's usual selling cost for those items if they were to be purchased separately from the entertainment, or must approximate the reasonable value of those items.

The final regulations provide that in cases where the food or beverages provided at or during an entertainment activity are not purchased separately from the entertainment, and where the cost of the food or beverages is not stated separately from the cost of the entertainment on one or more bills, invoices, or receipts, no allocation can be made and the entire amount is a nondeductible entertainment expenditure. Finally, in accordance with the TCJA's amendments to section 274(a)(1) specifically repealing the "directly related" and "business discussion" exceptions to the general disallowance rule for entertainment expenditures, the final regulations clarify that the entertainment disallowance rule applies whether or not the expenditure for the activity is related to or associated with the active conduct of the taxpayer's trade or business.

A commenter suggested that the final regulations provide that the consumption of food and beverages is not entertainment in the case of both business and nonbusiness activities and include an example of a specified individual consuming food and beverages while traveling on an

employer-provided aircraft to visit family members for nonbusiness purposes. The specific question presented in this comment relates to whether air travel is an entertainment activity and is addressed in the existing rules in § 1.274-10. Therefore, this question is not addressed in the final regulations. In addition, § 1.274-11(b)(1)(ii) provides that the term entertainment does not include food or beverages unless the food or beverages are provided at or during an entertainment activity and are not purchased separately from the entertainment.

2. Food or Beverage Expenses

A. Business Meal Expenses

The final regulations substantially incorporate the guidance in Notice 2018-76 addressing business meals provided at or during an entertainment activity. The final regulations also incorporate other statutory requirements taxpayers must meet to deduct 50 percent of an otherwise allowable food or beverage expense. Specifically, the expense must not be lavish or extravagant under the circumstances, and the taxpayer, or an employee of the taxpayer, must be present at the furnishing of the food or beverages.

The final regulations also address the general requirement in Notice 2018-76 that the food and beverages be provided to a business contact, which was described in the notice as a "current or potential business customer, client, consultant, or similar business contact." This requirement is to ensure that the meal expenses are directly connected with or pertaining to the taxpayer's trade or business, as required under section 162. One commenter on Notice 2018-76 requested a definition of "potential business contact," suggesting that the term could be interpreted broadly to include almost anyone. In response to the comment, and to conform the rule more closely to the trade or business requirement in section 162, the proposed regulations follow the definition of "business associate" as currently provided in § 1.274-2(b)(2)(iii). The final regulations adopt this definition of "business associate" in § 1.274-12(b)(3). Thus, the final regulations provide that the food or beverages must be provided to a "person with whom the taxpayer could reasonably expect to engage or deal in the active conduct of the taxpayer's trade or business such as the taxpayer's customer, client, supplier, employee, agent, partner, or professional adviser, whether established or prospective." Accordingly, the final regulations apply this definition to employer-provided food or beverage expenses by considering employees as a type of business associate as well as to the deduction for expenses for meals provided by a taxpayer to both employees and non-employee business associates at the same event.

A commenter on the proposed regulations asked whether the Treasury Department and the IRS have legal authority to allow taxpayers to claim deductions for business meal expenses that have been considered part of entertainment since the enactment of section 274. The commenter acknowledged that the legislative history of the TCJA provides that taxpayers may still generally deduct 50 percent of the food and beverage expenses associated with operating their trade or business (e.g., meals consumed by employees on work travel). H.R. Rep No. 115-466 at 407. However, the commenter argued that the legislative history merely recognizes that travel meals remain 50 percent deductible. The commenter further argued that the term "entertainment" clearly encompasses many business meals and that the proposed regulations unsettle the longstanding position that expenditures for the personal enjoyment of an individual fall within the ordinary meaning of "entertainment."

The Treasury Department and the IRS believe that Congress, in amending section 274 in the TCJA, intended that expenses for business meals be considered food or beverage expenses associated with operating a taxpayer's trade or business, and therefore generally remain 50 percent deductible. The Treasury Department and the IRS acknowledge that, prior to the TCJA, some meals were considered to be entertainment. However, prior to the TCJA, neither section 274 nor the regulations under section 274 attempted to define meal expenses or to distinguish meal expenses from entertainment expenses. In considering the comment, the Treasury Department and the IRS believe that the proposed regulations are consistent with the plain reading of section 274 after the TCJA, which clearly contemplates different treatment for meal expenses and entertainment expenses. In addition, the existing regulatory definition of entertainment relies upon an objective test to determine whether an activity is of a type generally considered to constitute entertainment. Providing that business meals are not of a type generally considered to constitute entertainment results in an administrable rule that does not depend on subjective factors such as whether the taxpayer enjoys the business meal. Thus, the final regulations adopt the proposed rule providing that business meals generally remain 50 percent deductible. The Treasury Department and the IRS believe that the final regulations provide a rule that is legally supportable and that draws a clear line between meals and entertainment that taxpayers can understand and the IRS can administer.

One commenter also asked whether the proposed regulations were intended to provide new guidance under section 162(a), specifically as to the definition of "ordinary and necessary expense." The proposed regulations provide guidance only under section 274 and are not intended to provide guidance under section 162. In response to the comment, the final regulations modify Examples 1 and 2 in proposed § 1.274-12(a)(3) by removing any mention of a discussion that takes place during lunch because the facts already explain that in each example, the food or beverage expenses are assumed to be ordinary and necessary expenses under section 162(a). In addition, the final regulations clarify, as necessary, in the introductory language to the examples in § 1.274-11 and § 1.274-12 that the examples assume that the underlying expenses are deductible under section 162.

Two commenters requested that the final regulations add an example addressing the treatment of expenses for food and beverages provided to attendees at a business meeting, such as a conference for clients or a training seminar for employees. In response to these comments, the final regulations add two new examples to § 1.274-12(a)(3) to address these scenarios.

A commenter also asked whether under proposed § 1.274-12(a), a taxpayer may claim a 50 percent deduction for food or beverages provided to the taxpayer (or an employee of the taxpayer), as well as food or beverages provided to a business associate. The commenter noted that proposed § 1.274-12(a)(1) refers to "food or beverages provided to a business associate," raising a question about whether the rule applies to food or beverages provided to the taxpayer or the taxpayer's employees. In addition, § 1.274-12(a)(1) of the proposed regulations refers to food or beverages provided "to another person or persons." It was intended that the 50 percent deduction applies to food and beverages provided to the taxpayer (or an employee of the taxpayer), as well as a business associate or another person. In response to the comment, the final regulations revise § 1.274-12(a)(1) to remove the reference to food or beverages being provided "to another person or persons." In addition, as discussed in part 2.A. of this Summary of Comments and Explanation of Revisions, the final regulations include employees in the definition of "business associate" (as defined in § 1.274-12(b)(3)). Finally, to make clear that the rules in § 1.274-12(a)(1) also apply to food or beverages provided to a taxpayer such as a sole

proprietor or other business owner, the final regulations revise § 1.274-12(a)(1)(iii) to refer to food or beverages provided "to the taxpayer or a business associate."

One commenter asked whether a sole proprietor can deduct the cost of meals when working throughout the day. As explained in the Background section of this preamble, section 274 limits or disallows deductions for certain meal and entertainment expenditures that otherwise would be allowable under chapter 1, primarily under section 162(a), which allows a deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. The requirements imposed by section 274 are in addition to the requirements for deductibility imposed by other provisions of the Code. If a taxpayer intends to claim a deduction for an expenditure for meals or entertainment, the taxpayer must first establish that the expenditure is otherwise allowable as a deduction under chapter 1 before the provisions of section 274 become applicable. Therefore, the sole proprietor must first establish that the food or beverage expense is deductible under chapter 1 before section 274 would apply. For example, if the sole proprietor can establish that the food or beverage expenses are ordinary and necessary expenses under section 162(a) that are paid or incurred during the taxable year in carrying on a trade or business, the sole proprietor may deduct 50 percent of the food or beverage expenses under section 274(k) and (n) and § 1.274-12(a) of the final regulations if: (1) The expenses are not lavish or extravagant; (2) the sole proprietor, or an employee of the sole proprietor, is present at the furnishing of the food or beverages; and (3) the food or beverages are provided to the sole proprietor or a business associate (as defined in § 1.274-12(b)(3)).

B. Travel Meal Expenses

Although the TCJA did not specifically amend the rules for travel expenses, the final regulations are intended to provide comprehensive rules for food and beverage expenses and thus, apply the general rules for meal expenses from Notice 2018-76 and the proposed regulations, to travel meals. In addition, the final regulations incorporate the substantiation requirements in section 274(d), unchanged by the TCJA, to travel meals. Finally, the final regulations apply the limitations in section 274(m)(3) to expenses for food or beverages paid or incurred while on travel for spouses, dependents or other individuals accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel. These limitations do not apply to deductions for moving expenses under section 217. However, the TCJA amended section 217 to suspend the deduction for moving expenses for taxable years beginning after December 31, 2017, and before January 1, 2026, except with respect to certain members of the Armed Forces. Thus, the final regulations revise the reference to section 217 to reflect that amendment.

One commenter asked how the proposed regulations affect employees that are paid a per diem rate for travel expenses and are subject to the hours of service limitations of the Department of Transportation. The proposed regulations describe and clarify the statutory requirements of section 274(a), 274(k), and 274(n) for entertainment and food or beverage expenses, as well as the applicability of certain exceptions under section 274(e) to food or beverage expenses. The TCJA did not change the rules for using a per diem rate to substantiate, under section 274(d), the amount of ordinary and necessary business expenses paid or incurred while traveling away from home. Thus, neither the proposed regulations nor the final regulations address the substantiation rules.

C. Other Food or Beverage Expenses

The final regulations apply the business meal guidance in Notice 2018-76, as revised in the proposed regulations, to food or beverage expenses generally. Under section 274(n)(1), the deduction for food or beverage expenses generally is limited to 50 percent of the amount that would otherwise be allowable. Prior to the TCJA, under section 274(n)(2)(B), expenses for food or beverages that were excludable from employee income as de minimis fringe benefits under section 132(e) were not subject to the 50 percent deduction limitation under section 274(n)(1) and could be fully deducted. The TCJA repealed section 274(n)(2)(B) so that expenses for food or beverages excludable from employee income under section 132(e) are subject to the section 274(n)(1) deduction limitation unless another exception under section 274(n)(2) applies.

Under section 274(k)(1), in order for food or beverage expenses to be deductible the food or beverages must not be lavish or extravagant under the circumstances and the taxpayer or an employee of the taxpayer must be present at the furnishing of the food or beverages. However, as discussed in the Background section of this preamble, section 274(e) provides six exceptions to the limitations on the deduction of food or beverages in section 274(k)(1) and (n)(1). The final regulations explain how those exceptions apply. The Background section of this preamble also explains that the exceptions in section 274(e)(1), (e)(5), and (e)(6) do not apply to food or beverage expenses. Section 1.274-12(a)(3) of the final regulations adds an example illustrating that the exception in section 274(e)(5) does not apply to food or beverage expenses that are directly related to business meetings of a taxpayer's employees.

In response to comments that the Treasury Department and the IRS received after enactment of the TCJA, the final regulations address several scenarios involving the deductibility of food or beverage expenses. For example, commenters requested guidance on the deductibility of expenses for: (1) Food or beverages provided to food service workers who consume the food or beverages while working in a restaurant or catering business; (2) snacks available to employees in a pantry, break room, or copy room; (3) refreshments provided by a real estate agent at an open house; (4) food or beverages provided by a seasonal camp to camp counselors; (5) food or beverages provided to employees at a company cafeteria; and (6) food or beverages provided at company holiday parties and picnics.

D. Definitions

The final regulations provide that the deduction limitation rules generally apply to all food and beverages, whether characterized as meals, snacks, or other types of food or beverage items. In addition, unless one of six exceptions under section 274(e) applies, the deduction limitations apply regardless of whether the food or beverages are treated as de minimis fringe benefits under section 132(e).

The final regulations define food or beverage expenses to mean the cost of food or beverages, including any delivery fees, tips, and sales tax. In the case of employer-provided meals at an eating facility, food or beverage expenses do not include expenses for the operation of the eating facility such as salaries of employees preparing and serving meals and other overhead costs.

A commenter requested clarification that the cost of transportation to a meal is not included in food or beverage expenses. The Treasury Department and the IRS considered this comment and note that food or beverage expenses under § 1.274-12(b)(2) of the final regulations means the full cost of food or beverages, including any delivery fees, tips, and sales tax. Indirect expenses, including the cost of transportation to a meal, are not included in the definition.

E. Section 274(e) Exceptions to Section 274(k) and (n)

Section 274(k)(2)(A) and (n)(2)(A) provide that the limitations on deductions in section 274(k)(1) and (n)(1), respectively, do not apply to any expense described in section 274(e)(2), (3), (4), (7), (8), and (9). Section 1.274-12(c) of the final regulations, therefore, provides that the deduction limitations are not applicable to expenditures for business meals, travel meals, or other food or beverages that fall within one of these exceptions.

i. Expenses Treated as Compensation Under Section 274(e)(2) or (e)(9)

Pursuant to section 274(e)(2), the final regulations provide that the limitations in section 274(k)(1) and (n)(1) do not apply to expenditures for food or beverages provided to an employee of the taxpayer to the extent the taxpayer treats the expenses as compensation to the employee on the taxpayer's income tax return as originally filed, and as wages to the employee for purposes of withholding under chapter 24 of the Code, relating to collection of income tax at source on wages.

Pursuant to section 274(e)(9), the final regulations provide that the limitations in section 274(k)(1) and (n)(1) do not apply to expenses for food or beverages provided to a person who is not an employee of the taxpayer to the extent the expenses are includible in the gross income of the recipient of the food or beverages as compensation for services rendered or as a prize or award under section 74.

The exceptions in section 274(e)(2) related to employees and in section 274(e)(9) related to non-employees have been interpreted as allowing a taxpayer to deduct the full amount of an expense if the expense has properly been included in the compensation and wages of the employee, or gross income of the recipient, even if the amount of the expense exceeds the amount included in compensation or income. See *Sutherland Lumber-Southwest Inc. v. Commissioner*, 114 T.C. 197 (2000), *affd.*, 255 F.3d 495 [88 AFTR 2d 2001-5026] (8th Cir. 2001), *acq.*, AOD 2002-02 (February 11, 2002). In 2004, Congress reversed the result in the *Sutherland Lumber-Southwest* case by enacting section 274(e)(2)(B) with regard to specified individuals. Thus, with regard to employees or non-employees who are specified individuals, section 274(e)(2)(B) provides an exception to the section 274(n) limitation only "to the extent that the expenses do not exceed the amount of the expenses which" are treated as compensation and wages to the employee or as income to a non-employee. This methodology is also referred to in this preamble as the "dollar-for-dollar" methodology.

The Treasury Department and the IRS are aware that some taxpayers may attempt to claim a full deduction under section 274(e)(2) or (e)(9) by including a value that is less than the amount required to be included under § 1.61-21, which provides the rules for valuation of fringe benefits, or by purportedly including a value of zero, as compensation and wages to the employee, or as includible in gross income by a person who is not an employee of the taxpayer. As a result, the proposed regulations provide that expenses for food or beverages for which the taxpayer calculates a value that is less than the amount required to be included in gross income under § 1.61-21, or for which the amount required to be included in gross income is zero, will not be considered as having been treated as compensation and as wages to the employee, or as includible in gross income by a recipient of the food or beverages who is not an employee of the taxpayer, for purposes of section 274(e)(2) and (e)(9).

Commenters argued that the proposed rule disallowing the application of section 274(e)(2) and (e)(9) to expenses for which an improper amount is included in compensation and wages or in gross income, as applicable, is unduly harsh given the difficulty in determining the value of food or beverages under § 1.61-21 and the possibility of good faith errors. In addition, a commenter noted that neither the "to the extent that" language in section 274(e)(2)(A) nor the holding in *Sutherland Lumber-Southwest* support applying an "all or nothing" rule against the taxpayer.

The Treasury Department and the IRS agree that the "all or nothing" rule included in the proposed regulations may lead to unduly harsh results. Therefore, in response to these comments, the Treasury Department and the IRS revised the rules in proposed § 1.274-12(c)(2)(i) to allow a taxpayer to apply section 274(e)(2) and (e)(9), as applicable, in cases where the taxpayer includes an improper amount in compensation and wages, or gross income, of the recipient. However, if a taxpayer includes less than the proper amount in compensation and wages or gross income, the final regulations provide that the taxpayer must apply the dollar-for-dollar methodology that applies in the case of a specified individual. Under that dollar-for-dollar methodology, the taxpayer may deduct meal expenses to the extent that the expenses do not exceed the amount of the expenses that are treated as compensation and wages, or gross income, as applicable.

The Treasury Department and the IRS believe the rules provided in the final regulations avoid the unduly harsh result that could arise by prohibiting application of section 274(e)(2) or (e)(9) in cases where the taxpayer includes some, but not all, of the value of a food or beverage expense in the recipient's income. In addition, the rules maintain consistency with the IRS's acquiescence in *Sutherland Lumber*, which provides that the IRS will no longer litigate application of section 274(e)(2) in cases in which a taxpayer demonstrates that it has "properly" included in compensation and wages the value of an employee vacation flight in accordance with § 1.61-21(g). See AOD-2002-02. The rules are also consistent with § 1.274-10(a)(2)(ii)(A), which applies the section 274(e)(2) exception to entertainment air travel and provides that a taxpayer must "properly" treat expenses as compensation and wages to an employee and treat the proper amount as compensation under § 1.61-21.

For administrability, a commenter suggested that the rule apply to the amounts included on the employee's Form W-2 or other recipient's Form 1099-MISC instead of amounts reported as compensation on the service provider's return. The language in the proposed regulations refers to the treatment of the amount on the "taxpayer's income tax return as originally filed," meaning the tax return of the employer, not the employee or service provider. However, to further clarify the rule, § 1.274-12(c)(2)(i)(A) of the final regulations no longer references the treatment of the amount on the taxpayer's income tax return, but instead refers to the treatment of the expense as compensation and wages, consistent with the language in § 1.274-10(a)(2)(ii)(A).

A commenter suggested the final regulations address the effect of reimbursements by employees, specified individuals, or other recipients of the food or beverages on the amount excepted from the limitations under section 274(k)(1) and (n)(1) by section 274(e)(2) and (e)(9). The commenter explained that § 1.274-10(a)(2)(ii)(C)(2) treats reimbursements in the same manner as compensation and wages for specified individuals, and a similar rule should be provided for reimbursements from non-specified individuals. The commenter pointed out that without a similar rule, expenses for food or beverages provided to specified individuals may be accorded more favorable treatment than expenses provided to non-specified individuals. The Treasury Department and the IRS agree that in cases in which expenditures for food and beverages are

reimbursed to the taxpayer, similar treatment should be provided under section 274, regardless of whether the food or beverages are provided to a specified or non-specified individual.

With regard to non-specified individuals, the final regulations provide that a taxpayer may deduct its food or beverage expenses under the exception in section 274(e)(2)(A) or section 274(e)(9) if the taxpayer includes the proper amount in compensation and wages, or gross income, as applicable. Section 1.61-21(b)(1) provides rules for the valuation of fringe benefits and requires that an employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the sum of the amount paid for the benefit by or on behalf of the recipient and the amount, if any, specifically excluded from gross income under the Code. Thus, in the case of reimbursements by a recipient, the amount of the reimbursement is taken into account in determining the amount properly includible in the recipient's income and does not affect the taxpayer's ability to use the exception in section 274(e)(2)(A) or section 274(e)(9).

With regard to improper inclusions in compensation and wages or gross income, the final regulations provide that the taxpayer must apply the dollar-for-dollar methodology as described in § 1.274-12(c)(2)(i)(D). Under that rule, food and beverage expenses are deductible to the extent that the expenses do not exceed the sum of the amount of the expenses that are treated as compensation and wages or gross income, and any amount the recipient reimburses the taxpayer. This dollar-for-dollar rule is the same methodology that applies under section 274(e)(2)(B) for food or beverages provided to specified individuals.

The final regulations also include a provision for specified individuals providing that the exceptions of section 274(e)(2) and (e)(9) generally apply only to the extent that the food or beverage expenses do not exceed the amount of the food or beverage expenses treated as compensation (under section 274(e)(2)) or as income (under section 274(e)(9)) to the specified individual. The final regulations provide, however, that amounts reimbursed to the taxpayer by the specified individual, will reduce the amount subject to the limitations under section 274(k)(1) and (n)(1). This rule conforms to the statutory language in section 274(e)(2)(B) and the regulatory language in § 1.274-10. Thus, the final regulations address the comment asking for clarification of the effect of reimbursements by employees, specified individuals, and other recipients of the food or beverages on the amount excepted from the limitations under section 274(k)(1) and (n)(1) by section 274(e)(2) and (e)(9).

The Treasury Department and the IRS continue to believe that if the amount to be included in compensation and wages or gross income is zero, whether zero is a proper or improper amount, the exceptions in section 274(e)(2) and section 274(e)(9) do not apply because no amount has been included in compensation and wages or gross income. For example, if the amount to be included is zero because the value of the food or beverages is excluded as a fringe benefit under section 132, the exceptions in section 274(e)(2) and (e)(9) do not apply. Similarly, the exceptions in section 274(e)(2) and (e)(9) do not apply if the amount to be included is zero solely because the recipient has fully reimbursed the taxpayer for the food or beverages. In that case, however, the exception in section 274(e)(8) may apply if the food or beverages are sold to the recipient in a bona fide transaction for an adequate and full consideration in money or money's worth.

ii. Food or Beverage Expenses Provided Under Reimbursement Arrangements

Pursuant to section 274(e)(3), the final regulations provide that in the case of expenses for food or beverages paid or incurred by one person in connection with the performance of services for another person (whether or not the other person is an employer) under a reimbursement or other expense allowance arrangement, the limitations on deductions in section 274(k)(1) and (n)(1) apply either to the person who makes the expenditure or to the person who actually bears the expense, but not to both. Section 274(e)(3)(B) provides that if the services are performed for a person other than an employer, such as by an independent contractor, the exception in section 274(e)(3) applies only if the taxpayer, in this case, the independent contractor, accounts, to the extent provided by section 274(d), to such person. The final regulations therefore provide that the deduction limitations in section 274(k)(1) and (n)(1) apply to an independent contractor unless, under a reimbursement or other expense allowance arrangement, the contractor accounts to its client or customer with substantiation that satisfies the requirements of section 274(d).

iii. Recreational Expenses for Employees

Pursuant to section 274(e)(4), the final regulations provide that any food or beverage expense paid or incurred by a taxpayer for a recreational, social, or similar activity, primarily for the benefit of the taxpayer's employees, is not subject to the deduction limitations in section 274(k)(1) and (n)(1). However, activities that discriminate in favor of highly compensated employees, officers, shareholders or others who own a 10-percent or greater interest in the business are not considered paid or incurred primarily for the benefit of employees.

Many of the comments received after enactment of the TCJA requested confirmation that food or beverage expenses for company holiday parties and picnics that do not discriminate in favor of highly compensated employees are not subject to the deduction limitations in section 274(k)(1) and (n)(1) because the exception in section 274(e)(4) applies. These comments also suggested that expenses for snacks and beverages available to all employees in a pantry, break room, or copy room are not subject to the deduction limitations in section 274(k)(1) and (n)(1) because the exception in section 274(e)(4) applies.

In response to the questions and comments received, the proposed regulations confirm the rules in the existing regulations at § 1.274-2(f)(2)(v) that the exception in section 274(e)(4) applies to food or beverage expenses for company holiday parties, annual picnics, or summer outings that do not discriminate in favor of highly compensated employees. However, an example in the proposed regulations demonstrates that the section 274(e)(4) exception does not apply to free food or beverages available to all employees in a pantry, break room, or copy room because the mere provision or availability of food or beverages is not a recreational, social, or similar activity, despite the fact that employees may incidentally socialize while they are in the break room. The final regulations adopt the proposed regulations with respect to the application of section 274(e)(4) in this context.

In addition, the final regulations provide that the exception in section 274(e)(4) does not apply to food or beverage expenses that are excludable from employees' income under section 119 as meals provided for the convenience of the employer. Because these food or beverages are, by definition, furnished for the employer's convenience, they cannot also be primarily for the benefit of the employees, even if some social activity occurs during the provision of the food or beverages.

iv. Items Available to the Public

Pursuant to section 274(e)(7), the final regulations provide that food or beverage expenses of a taxpayer are not subject to the deduction limitations in section 274(k)(1) and (n)(1) to the extent the food or beverages are made available to the general public. In addition, the final regulations provide that this exception applies to expenses for food or beverages provided to employees if similar food or beverages are provided by the employer to, and are primarily consumed by, the general public. For this purpose, "primarily consumed" means greater than 50 percent of actual or reasonably estimated consumption, and "general public" includes, but is not limited to, customers, clients, and visitors. The final regulations also provide that the general public does not include employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), or independent contractors of the taxpayer. Further, an exclusive list of guests also is not considered the general public. See *Churchill Downs, Inc. v. Commissioner*, 307 F.3d 423 [90 AFTR 2d 2002-6615] (6th Cir. 2002).

Comments received in response to Notice 2018-76 requested guidance as to whether the exception in section 274(e)(7) for food or beverages made available by the taxpayer to the general public applies in various situations. The Treasury Department and the IRS considered these comments and included examples in the proposed regulations to illustrate that the exception in section 274(e)(7) generally applies to the entire food or beverage expense if the food or beverages are primarily consumed by the general public. The final regulations retain these examples.

v. Goods or Services Sold to Customers

Pursuant to section 274(e)(8), the final regulations provide that any expense for food or beverages that are sold to customers in a bona fide transaction for an adequate and full consideration in money or money's worth is not subject to the deduction limitations in section 274(k)(1) and (n)(1). The final regulations clarify that money or money's worth does not include payment through services provided.

The Treasury Department and the IRS are aware of concerns raised by commenters that it is a common business practice for employers of restaurant and food service workers to provide food or beverages at no cost or at a discount to their employees. The Joint Committee on Taxation's Bluebook on the TCJA explains that amendments made by the TCJA to limit the deduction for expenses of the employer associated with providing food or beverages to employees through an employer-operated eating facility that meets the requirements of section 132(e)(2) do not affect other exceptions to the 50-percent limitation on deductions for food or beverage expenses. For example, a restaurant or catering business may continue to deduct 100 percent of its costs for food or beverage items, purchased in connection with preparing and providing meals to its paying customers, which are also consumed at the worksite by employees who work in the employer's restaurant or catering business. Joint Committee on Taxation, General Explanation of Public Law 115-97 (JCS-1-18), at 186 n.940 and at 188 n.956, December 2018. The final regulations adopt this interpretation of the exception in section 274(e)(8).

Finally, the final regulations provide that for purposes of the section 274(e)(8) exception to the deduction limitations in section 274(k)(1) and (n)(1), the term "customer" includes anyone who is sold food or beverages in a bona fide transaction for an adequate and full consideration in money or money's worth. For example, employees of the taxpayer are customers when they purchase food or beverages from the taxpayer in a bona fide transaction for arm's length, fair market value prices.

Statement of Availability of IRS Documents

Notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Applicability Date

These regulations apply to taxable years that begin on or after October 9, 2020.

Special Analyses

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Although the rule may affect a substantial number of small entities, the economic impact of the regulations is not likely to be significant. Data are not readily available about the number of taxpayers affected, but the number is likely to be substantial for both large and small entities because the rule may affect entities that incur meal and entertainment expenses. The economic impact of these regulations is not likely to be significant, however, because these final regulations substantially incorporate prior guidance and otherwise clarify the application of the TCJA changes to section 274 related to meals and entertainment. These final regulations will assist taxpayers in understanding the changes to section 274 and make it easier for taxpayers to comply with those changes. Accordingly, the Secretary of the Treasury's delegate certifies that the rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these regulations on small entities.

Pursuant to section 7805(f), these final regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business. No comments on the proposed regulations were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

Effect on Other Documents

The following publications are obsolete as of October 9, 2020.

Notice 2018-76 (2018-42 I.R.B. 599).

Drafting Information

The principal author of these final regulations is Patrick Clinton, Office of the Associate Chief Counsel (Income Tax & Accounting). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1-INCOME TAX

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805

Section 1.274-11 also issued under 26 U.S.C. 274.

Section 1.274-12 also issued under 26 U.S.C. 274.

■Par. 2. Section 1.274-11 is added to read as follows:

§ 1.274-11 Disallowance of deductions for certain entertainment, amusement, or recreation expenditures paid or incurred after December 31, 2017.

(a) In general. Except as provided in this section, no deduction otherwise allowable under chapter 1 of the Internal Revenue Code (Code) is allowed for any expenditure with respect to an activity that is of a type generally considered to be entertainment, or with respect to a facility used in connection with an entertainment activity. For this purpose, dues or fees to any social, athletic, or sporting club or organization are treated as items with respect to facilities and, thus, are not deductible. In addition, no deduction otherwise allowable under chapter 1 of the Code is allowed for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.

(b) Definitions-

(1) Entertainment-

(i) In general. For section 274 purposes, the term entertainment means any activity which is of a type generally considered to constitute entertainment, amusement, or recreation, such as entertaining at bars, theaters, country clubs, golf and athletic clubs, sporting events, and on hunting, fishing, vacation and similar trips, including such activity relating solely to the taxpayer or the taxpayer's family. These activities are treated as entertainment under this section, subject to the objective test, regardless of whether the expenditure for the activity is related to or associated with the active conduct of the taxpayer's trade or business. The term entertainment may include an activity, the cost of which otherwise is a business expense of the taxpayer, which satisfies the personal, living, or family needs of any individual, such as providing a hotel suite or an automobile to a business customer or the customer's family. The term entertainment does not include activities which, although satisfying personal, living, or family needs of an individual, are clearly not regarded as constituting entertainment, such as the providing of a hotel room maintained by an employer for lodging of employees while in business travel status or an automobile used in the active conduct of a trade or business even though used for routine personal purposes such as commuting to and from work. On the other hand, the providing of a hotel room or an automobile by an employer to an employee who is on vacation would constitute entertainment of the employee.

(ii) Food or beverages. Under this section, the term entertainment does not include food or beverages unless the food or beverages are provided at or during an entertainment

activity. Food or beverages provided at or during an entertainment activity generally are treated as part of the entertainment activity. However, in the case of food or beverages provided at or during an entertainment activity, the food or beverages are not considered entertainment if the food or beverages are purchased separately from the entertainment, or the cost of the food or beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. The amount charged for food or beverages on a bill, invoice, or receipt must reflect the venue's usual selling cost for those items if they were to be purchased separately from the entertainment or must approximate the reasonable value of those items. If the food or beverages are not purchased separately from the entertainment, or the cost of the food or beverages is not stated separately from the cost of the entertainment on one or more bills, invoices, or receipts, no allocation between entertainment and food or beverage expenses may be made and, except as further provided in this section and section 274(e), the entire amount is a nondeductible entertainment expenditure under this section and section 274(a).

(iii) Objective test. An objective test is used to determine whether an activity is of a type generally considered to be entertainment. Thus, if an activity is generally considered to be entertainment, it will be treated as entertainment for purposes of this section and section 274(a) regardless of whether the expenditure can also be described otherwise, and even though the expenditure relates to the taxpayer alone. This objective test precludes arguments that entertainment means only entertainment of others or that an expenditure for entertainment should be characterized as an expenditure for advertising or public relations. However, in applying this test the taxpayer's trade or business is considered. Thus, although attending a theatrical performance generally would be considered entertainment, it would not be so considered in the case of a professional theater critic attending in a professional capacity. Similarly, if a manufacturer of dresses conducts a fashion show to introduce its products to a group of store buyers, the show generally would not be considered entertainment. However, if an appliance distributor conducts a fashion show, the fashion show generally would be considered to be entertainment.

(2) Expenditure. The term expenditure as used in this section includes amounts paid or incurred for goods, services, facilities, and other items, including items such as losses and depreciation.

(3) Expenditures for production of income. For purposes of this section, any reference to trade or business includes an activity described in section 212.

(c) Exceptions. Paragraph (a) of this section does not apply to any expenditure described in section 274(e)(1), (2), (3), (4), (5), (6), (7), (8), or (9).

(d) Examples. The following examples illustrate the application of paragraphs (a) and (b) of this section. In each example, assume that the taxpayer is engaged in a trade or business for purposes of section 162 and that neither the taxpayer nor any business associate is engaged in a trade or business that relates to the entertainment activity. Also assume that none of the exceptions under section 274(e) and paragraph (c) of this section apply.

(1) Example 1. Taxpayer A invites, B, a business associate, to a baseball game to discuss a proposed business deal. A purchases tickets for A and B to attend the game. The baseball game is entertainment as defined in § 1.274-11(b)(1) and thus, the cost of the game tickets is an entertainment expenditure and is not deductible by A.

(2) Example 2. The facts are the same as in paragraph (d)(1) of this section (Example 1), except that A also buys hot dogs and drinks for A and B from a concession stand. The cost of the hot dogs and drinks, which are purchased separately from the game tickets, is not an entertainment expenditure and is not subject to the disallowance under § 1.274-11(a) and section

274(a)(1). Therefore, A may deduct 50 percent of the expenses associated with the hot dogs and drinks purchased at the game if the expenses meet the requirements of section 162 and § 1.274-12.

(3) Example 3. Taxpayer C invites D, a business associate, to a basketball game. C purchases tickets for C and D to attend the game in a suite, where they have access to food and beverages. The cost of the basketball game tickets, as stated on the invoice, includes the food or beverages. The basketball game is entertainment as defined in § 1.274-11(b)(1), and, thus, the cost of the game tickets is an entertainment expenditure and is not deductible by C. The cost of the food and beverages, which are not purchased separately from the game tickets, is not stated separately on the invoice. Thus, the cost of the food and beverages is an entertainment expenditure that is subject to disallowance under section 274(a)(1) and paragraph (a) of this section, and C may not deduct the cost of the tickets or the food and beverages associated with the basketball game.

(4) Example 4. The facts are the same as in paragraph (d)(3) of this section (Example 3), except that the invoice for the basketball game tickets separately states the cost of the food and beverages and reflects the venue's usual selling price if purchased separately. As in paragraph (d)(3) of this section (Example 3), the basketball game is entertainment as defined in § 1.274-11(b)(1), and, thus, the cost of the game tickets, other than the cost of the food and beverages, is an entertainment expenditure and is not deductible by C. However, the cost of the food and beverages, which is stated separately on the invoice for the game tickets and reflects the venue's usual selling price of the food and beverages if purchased separately, is not an entertainment expenditure and is not subject to the disallowance under section 274(a)(1) and paragraph (a) of this section. Therefore, C may deduct 50 percent of the expenses associated with the food and beverages provided at the game if the expenses meet the requirements of section 162 and § 1.274-12.

(e) Applicability date. This section applies for taxable years that begin on or after October 9, 2020.

•Par. 3.

Section 1.274-12 is added to read as follows:

§ 1.274-12 Limitation on deductions for certain food or beverage expenses paid or incurred after December 31, 2017.

(a) Food or beverage expenses-

(1) In general. Except as provided in this section, no deduction is allowed for the expense of any food or beverages provided by the taxpayer (or an employee of the taxpayer) unless-

(i) The expense is not lavish or extravagant under the circumstances;

(ii) The taxpayer, or an employee of the taxpayer, is present at the furnishing of such food or beverages; and

(iii) The food or beverages are provided to the taxpayer or a business associate.

(2) Only 50 percent of food or beverage expenses allowed as deduction. Except as provided in this section, the amount allowable as a deduction for any food or beverage expense described in paragraph (a)(1) of this section may not exceed 50 percent of the amount of the expense that otherwise would be allowable.

(3) Examples. The following examples illustrate the application of paragraph (a)(1) and (2) of this section. In each example, assume that the food or beverage expenses are ordinary and necessary expenses under section 162(a) that are paid or incurred during the taxable year in

carrying on a trade or business and are not lavish or extravagant under the circumstances. Also assume that none of the exceptions in paragraph (c) of this section apply.

(i) Example 1. Taxpayer A takes client B out to lunch. Under section 274(k) and (n) and paragraph (a) of this section, A may deduct 50 percent of the food or beverage expenses.

(ii) Example 2. Taxpayer C takes employee D out to lunch. Under section 274(k) and (n) and paragraph (a) of this section, C may deduct 50 percent of the food or beverage expenses.

(iii) Example 3. Taxpayer E holds a business meeting at a hotel during which food and beverages are provided to attendees. Expenses for the business meeting, other than the cost of food and beverages, are not subject to the deduction limitations in section 274 and are deductible if they meet the requirements for deduction under section 162. Under section 274(k) and (n) and paragraph (a) of this section, E may deduct 50 percent of the food and beverage expenses.

(iv) Example 4. The facts are the same as in paragraph (a)(3)(iii) of this section (Example 3), except that all the attendees of the meeting are employees of E. Expenses for the business meeting, other than the cost of food and beverages, are not subject to the deduction limitations in section 274 and are deductible if they meet the requirements for deduction under section 162. Under section 274(k) and (n) and paragraph (a) of this section, E may deduct 50 percent of the food and beverage expenses. The exception in section 274(e)(5) does not apply to food and beverage expenses under section 274(k) and (n).

(4) Special rules for travel meals.

(i) In general. Food or beverage expenses paid or incurred while traveling away from home in pursuit of a trade or business generally are subject to the deduction limitations in section 274(k) and (n) and paragraph (a)(1) and (2) of this section, as well as the substantiation requirements in section 274(d). In addition, travel expenses generally are subject to the limitations in section 274(m)(1), (2), and (3).

(ii) Substantiation. Except as provided in this section, no deduction is allowed for the expense of any food or beverages paid or incurred while traveling away from home in pursuit of a trade or business unless the taxpayer meets the substantiation requirements in section 274(d).

(iii) Travel meal expenses of spouse, dependent or others. No deduction is allowed under chapter 1 of the Internal Revenue Code (Code), except under section 217 for certain members of the Armed Forces of the United States, for the expense of any food or beverages paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer, or an officer or employee of the taxpayer, on business travel, unless-

(A) The spouse, dependent, or other individual is an employee of the taxpayer;

(B) The travel of the spouse, dependent, or other individual is for a bona fide business purpose of the taxpayer; and

(C) The expenses would otherwise be deductible by the spouse, dependent or other individual.

(D) Example. The following example illustrates the application of paragraph (a)(4)(iii) of this section:

(1) Example. Taxpayer F, a sole proprietor, and Taxpayer F's spouse travel from New York to Boston to attend a series of business meetings related to F's trade or business. F's spouse is not an employee of F, does not travel to Boston for a bona fide business purpose of F, and the expenses would not otherwise be deductible. While in Boston, F and F's spouse go out to dinner. Under section 274(m)(3) and paragraph (a)(4)(iii) of this section, the expenses associated with the food and beverages consumed by F's spouse are not deductible. Therefore, the cost of F's spouse's dinner is not deductible. F may deduct 50 percent of the expense associated with the

food and beverages F consumed while on business travel if F meets the requirements in sections 162 and 274, including section 274(k) and (d).

(2) [Reserved]

(b) Definitions. Except as otherwise provided in this section, the following definitions apply for purposes of section 274(k) and (n), § 1.274-11(b)(1)(ii) and (d), and this section:

(1) Food or beverages. Food or beverages means all food and beverage items, regardless of whether characterized as meals, snacks, or other types of food and beverages, and regardless of whether the food and beverages are treated as de minimis fringes under section 132(e).

(2) Food or beverage expenses. Food or beverage expenses mean the full cost of food or beverages, including any delivery fees, tips, and sales tax. In the case of employer-provided meals furnished at an eating facility on the employer's business premises, food or beverage expenses do not include expenses for the operation of the eating facility such as salaries of employees preparing and serving meals and other overhead costs.

(3) Business associate. Business associate means a person with whom the taxpayer could reasonably expect to engage or deal in the active conduct of the taxpayer's trade or business such as the taxpayer's customer, client, supplier, employee, agent, partner, or professional adviser, whether established or prospective.

(4) Independent contractor. For purposes of the reimbursement or other expense allowance arrangements described in paragraph (c)(2)(ii) of this section, independent contractor means a person who is not an employee of the payor.

(5) Client or customer. For purposes of the reimbursement or other expense allowance arrangements described in paragraph (c)(2)(ii) of this section, client or customer of an independent contractor means a person who receives services from an independent contractor and enters into a reimbursement or other expense allowance arrangement with the independent contractor.

(6) Payor. For purposes of the reimbursement or other expense allowance arrangements described in paragraph (c)(2)(ii) of this section, payor means a person that enters into a reimbursement or other expense allowance arrangement with an employee and may include an employer, its agent, or a third party.

(7) Reimbursement or other expense allowance arrangement. For purposes of the reimbursement or other expense allowance arrangements described in paragraph (c)(2)(ii) of this section, reimbursement or other expense allowance arrangement means-

(i) For purposes of paragraph (c)(2)(ii)(B) of this section, an arrangement under which an employee receives an advance, allowance, or reimbursement from a payor for expenses the employee pays or incurs; and

(ii) For purposes of paragraph (c)(2)(ii)(C) of this section, an arrangement under which an independent contractor receives an advance, allowance, or reimbursement from a client or customer for expenses the independent contractor pays or incurs if either-

(A) A written agreement between the parties expressly states that the client or customer will reimburse the independent contractor for expenses that are subject to the limitations on deductions described in paragraph (a) of this section; or

(B) A written agreement between the parties expressly identifies the party subject to the limitations.

(8)) Primarily consumed. For purposes of paragraph (c)(2)(iv) of this section, primarily consumed means greater than 50 percent of actual or reasonably estimated consumption.

(9)) General public. For purposes of paragraph (c)(2)(iv) of this section, the general public includes, but is not limited to, customers, clients, and visitors. The general public does not include employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), or independent contractors of the taxpayer. Also, the guests on an exclusive list of guests are not the general public.

((c)) Exceptions-

(1)) In general. The limitations on the deduction of food or beverage expenses in paragraph (a) of this section do not apply to any expense described in paragraph (c)(2) of this section. These expenses are deductible to the extent allowable under chapter 1 of the Code (chapter 1).

(2)) Exceptions-

(i)) Expenses treated as compensation-

(A)) Expenses includible in income of persons who are employees and are not specified individuals. In accordance with section 274(e)(2)(A), and except as provided in paragraph (c)(2)(i)(D) of this section, an expense paid or incurred by a taxpayer for food or beverages, if an employee who is not a specified individual is the recipient of the food or beverages, is not subject to the deduction limitations in paragraph (a) of this section to the extent that the taxpayer-

(1)) Properly treats the expense relating to the recipient of food or beverages as compensation to an employee under chapter 1 and as wages to the employee for purposes of chapter 24 of the Code (chapter 24). ; and

(2)) Treats the proper amount as compensation to the employee under § 1.61-21.

(B)) Expenses includible in income of persons who are not employees and are not specified individuals. In accordance with section 274(e)(9), and except as provided in paragraph (c)(2)(i)(D) of this section, an expense paid or incurred by a taxpayer for food or beverages is not subject to the deduction limitations in paragraph (a) of this section to the extent that the expenses are properly included in income as compensation for services rendered by, or as a prize or award under section 74 to, a recipient of the expense who is not an employee of the taxpayer and is not a specified individual. The preceding sentence does not apply to any amount paid or incurred by the taxpayer if the amount is required to be included, or would be so required except that the amount is less than \$600, in any information return filed by such taxpayer under part III of subchapter A of chapter 61 of the Code and is not so included.

(C)) Specified Individuals. In accordance with section 274(e)(2)(B), in the case of a specified individual (as defined in section 274(e)(2)(B)(ii)), the deduction limitations in paragraph (a) of this section do not apply to an expense for food or beverages of the specified individual to the extent that the amount of the expense does not exceed the sum of-

(1)) The amount treated as compensation to the specified individual under chapter 1 and as wages to the specified individual for purposes of chapter 24 (if the specified individual is an employee) or as compensation for services rendered by, or as a prize or award under section 74 to, a recipient of the expense (if the specified individual is not an employee); and

(2)) Any amount the specified individual reimburses the taxpayer.

(D)) Expenses for which an amount is excluded from income or is less than the proper amount. Notwithstanding paragraphs (c)(2)(i)(A) and (B) of this section, in the case of an expense paid or incurred by a taxpayer for food or beverages for which an amount is wholly or partially excluded from a recipients' income under any section of subtitle A of the Code (other

than because the amount is reimbursed by the recipient), or for which an amount included in compensation and wages to an employee (or as income to a nonemployee) is less than the amount required to be included under § 1.61-21, the deduction limitations in paragraph (a) of this section do not apply to the extent that the amount of the expense does not exceed the sum of-

(1)) The amount treated as compensation to the employee under chapter 1 (or as income to a nonemployee) and as wages to the employee for purposes of chapter 24; and

(2)) Any amount the recipient reimburses the taxpayer.

((E)) Examples. The following examples illustrate the application of paragraph (c)(2)(i) of this section. In each example, assume that the food or beverage expenses are ordinary and necessary expenses under section 162(a) that are paid or incurred during the taxable year in carrying on a trade or business.

(1)) Example 1. Employer G provides food and beverages to its non-specified individual employees without charge at a company cafeteria on its premises. The food and beverages do not meet the definition of a de minimis fringe under section 132(e). Thus, G treats the full fair market value of the food and beverage expenses as compensation and wages, and properly determines this amount under § 1.61-21. Under section 274(e)(2) and paragraph (c)(2)(i)(A) of this section, the expenses associated with the food and beverages provided to the employees are not subject to the 50 percent deduction limitation in paragraph (a) of this section. Thus, G may deduct 100 percent of the food and beverage expenses.

(2)) Example 2. The facts are the same as in paragraph (c)(2)(i)(E)(1) of this section (Example 1), except that each employee pays \$8 per day for the food and beverages. The fair market value of the food and beverages is \$10 per day, per employee. G incurs \$9 per day, per employee for the food and beverages. G treats the food and beverage expenses as compensation and wages, and properly determines the amount of the inclusion under § 1.61-21 to be \$2 per day, per employee (\$10 fair market value-\$8 reimbursed by the employee = \$2). Therefore, under paragraph (c)(2)(i)(A) of this section, G may deduct 100 percent of the food and beverage expenses, or \$9 per day, per employee.

(3)) Example 3. Employer H provides meals to its employees without charge. The meals are properly excluded from the employees' income under section 119 as meals provided for the convenience of the employer. Under § 1.61-21(b)(1), an employee must include in gross income the amount by which the fair market value of a fringe benefit exceeds the sum of the amount, if any, paid for the benefit by or on behalf of the recipient, and the amount, if any, specifically excluded from gross income by some other section of subtitle A of the Code. Because the entire value of the employees' meals is excluded from the employees' income under section 119, the fair market value of the fringe benefit does not exceed the amount excluded from gross income under subtitle A of the Code, so there is nothing to be included in the employees' income under § 1.61-21. Thus, the exception in section 274(e)(2) and paragraph (c)(2)(i) of this section does not apply and, assuming no other exceptions provided under section 274(n)(2) and paragraph (c)(2) of this section apply, H may deduct only 50 percent of the expenses for the food and beverages provided to employees. In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply because none of the exceptions in section 274(k)(2) and paragraph (c)(2) of this section apply.

((ii)) Reimbursed food or beverage expenses-

((A)) In general. In accordance with section 274(e)(3), in the case of expenses for food or beverages paid or incurred by one person in connection with the performance of services for another person, whether or not the other person is an employer, under a reimbursement or other

expense allowance arrangement, the deduction limitations in paragraph (a) of this section apply either to the person who makes the expenditure or to the person who actually bears the expense, but not to both. If an expense of a type described in paragraph (c)(2)(ii) of this section properly constitutes a dividend paid to a shareholder, unreasonable compensation paid to an employee, a personal expense, or other nondeductible expense, nothing in this exception prevents disallowance of the deduction to the taxpayer under other provisions of the Code.

(B) Reimbursement arrangements involving employees. In the case of expenses paid or incurred by an employee for food or beverages in performing services as an employee under a reimbursement or other expense allowance arrangement with a payor, the limitations on deductions in paragraph (a) of this section apply-

(1) To the employee to the extent the employer treats the reimbursement or other payment of the expense on the employer's income tax return as originally filed as compensation paid to the employee and as wages to the employee for purposes of withholding under chapter 24 relating to collection of income tax at source on wages; or

(2) To the payor to the extent the reimbursement or other payment of the expense is not treated as compensation and wages paid to the employee in the manner provided in paragraph (c)(2)(ii)(B)(1) of this section. However, see paragraph (c)(2)(ii)(C) of this section if the payor receives a payment from a third party that may be treated as a reimbursement arrangement under that paragraph.

(C) Reimbursement arrangements involving persons that are not employees. In the case of expenses for food or beverages paid or incurred by an independent contractor in connection with the performance of services for a client or customer under a reimbursement or other expense allowance arrangement with the independent contractor, the limitations on deductions in paragraph (a) of this section apply to the party expressly identified in an agreement between the parties as subject to the limitations. If an agreement between the parties does not expressly identify the party subject to the limitations, then the deduction limitations in paragraph (a) of this section apply-

(1) To the independent contractor (which may be a payor) to the extent the independent contractor does not account to the client or customer within the meaning of section 274(d); or

(2) To the client or customer if the independent contractor accounts to the client or customer within the meaning of section 274(d).

(D) Section 274(d) substantiation. If the reimbursement or other expense allowance arrangement involves persons who are not employees and the agreement between the parties does not expressly identify the party subject to the limitations on deductions in paragraph (a) of this section, the limitations on deductions in paragraph (a) of this section apply to the independent contractor unless the independent contractor accounts to the client or customer with substantiation that satisfies the requirements of section 274(d).

(E) Examples. The following examples illustrate the application of paragraph (c)(2)(ii) of this section.

(1) Example 1.

(i) Employee I performs services under an arrangement in which J, an employee leasing company, pays I a per diem allowance of \$10x for each day that I performs services for J's client, K, while traveling away from home. The per diem allowance is a reimbursement of travel expenses for food or beverages that I pays in performing services as an employee. J enters into a written agreement with K under which K agrees to reimburse J for any substantiated reimbursements for travel expenses, including meal expenses, that J pays to I. The agreement

does not expressly identify the party that is subject to the limitations on deductions in paragraph (a) of this section. I performs services for K while traveling away from home for 10 days and provides J with substantiation that satisfies the requirements of section 274(d) of \$100x of meal expenses incurred by I while traveling away from home. J pays I \$100x to reimburse those expenses pursuant to their arrangement. J delivers a copy of I's substantiation to K. K pays J \$300x, which includes \$200x compensation for services and \$100x as reimbursement of J's payment of I's travel expenses for meals. Neither J nor K treats the \$100x paid to I as compensation or wages.

(ii) Under paragraph (b)(7)(i) of this section, I and J have established a reimbursement or other expense allowance arrangement for purposes of paragraph (c)(2)(ii)(B) of this section. Because the reimbursement payment is not treated as compensation and wages paid to I, under section 274(e)(3)(A) and paragraph (c)(2)(ii)(B)(1) of this section, I is not subject to the limitations on deductions in paragraph (a) of this section. Instead, under paragraph (c)(2)(ii)(B)(2) of this section, J, the payor, is subject to limitations on deductions in paragraph (a) of this section unless J can meet the requirements of section 274(e)(3)(B) and paragraph (c)(2)(ii)(C) of this section.

(iii) Because the agreement between J and K expressly states that K will reimburse J for substantiated reimbursements for travel expenses that J pays to I, under paragraph (b)(7)(ii)(A) of this section, J and K have established a reimbursement or other expense allowance arrangement for purposes of paragraph (c)(2)(ii)(C) of this section. J accounts to K for K's reimbursement in the manner required by section 274(d) by delivering to K a copy of the substantiation J received from I. Therefore, under section 274(e)(3)(B) and paragraph (c)(2)(ii)(C)(2) of this section, K and not J is subject to the deduction limitations in paragraph (a) of this section.

(2) Example 2.

(i) The facts are the same as in paragraph (c)(2)(ii)(E)(1) of this section (Example 1) except that, under the arrangements between I and J and between J and K, I provides the substantiation of the expenses directly to K, and K pays the per diem directly to I.

(ii) Under paragraph (b)(7)(i) of this section, I and K have established a reimbursement or other expense allowance arrangement for purposes of paragraph (c)(2)(ii)(C) of this section. Because I substantiates directly to K and the reimbursement payment was not treated as compensation and wages paid to I, under section 274(e)(3)(A) and paragraph (c)(2)(ii)(C)(1) of this section, I is not subject to the limitations on deductions in paragraph (a) of this section. Under paragraph (c)(2)(ii)(C)(2) of this section, K, the payor, is subject to the limitations on deductions in paragraph (a) of this section.

(3) Example 3.

(i) The facts are the same as in paragraph (c)(2)(ii)(E)(1) of this section (Example 1), except that the written agreement between J and K expressly provides that the limitations of this section will apply to K.

(ii) Under paragraph (b)(7)(ii)(B) of this section, J and K have established a reimbursement or other expense allowance arrangement for purposes of paragraph (c)(2)(ii)(C) of this section. Because the agreement provides that the 274 deduction limitations apply to K, under section 274(e)(3)(B) and paragraph (c)(2)(ii)(C) of this section, K and not J is subject to the limitations on deductions in paragraph (a) of this section.

(4) Example 4.

(i) The facts are the same as in (c)(2)(ii)(E)(1) of this section (Example 1), except that the agreement between J and K does not provide that K will reimburse J for travel expenses.

(ii) The arrangement between J and K is not a reimbursement or other expense allowance arrangement within the meaning of section 274(e)(3)(B) and paragraph (b)(7)(ii) of this section. Therefore, even though J accounts to K for the expenses, J is subject to the limitations on deductions in paragraph (a) of this section.

(iii) Recreational expenses for employees-

(A) In general. In accordance with section 274(e)(4), any food or beverage expense paid or incurred by a taxpayer for a recreational, social, or similar activity, primarily for the benefit of a taxpayer's employees (other than employees who are highly compensated employees (within the meaning of section 414(q))) is not subject to the deduction limitations in paragraph (a) of this section. For purposes of this paragraph (c)(2)(iii), an employee owning less than a 10-percent interest in the taxpayer's trade or business is not considered a shareholder or other owner, and for such purposes an employee is treated as owning any interest owned by a member of the employee's family (within the meaning of section 267(c)(4)). Any expense for food or beverages that is made under circumstances which discriminate in favor of highly compensated employees is not considered to be made primarily for the benefit of employees generally. An expense for food or beverages is not to be considered outside of the exception of this paragraph (c)(2)(iii) merely because, due to the large number of employees involved, the provision of food or beverages is intended to benefit only a limited number of employees at one time, provided the provision of food or beverages does not discriminate in favor of highly compensated employees. This exception applies to expenses paid or incurred for events such as holiday parties, annual picnics, or summer outings. This exception does not apply to expenses for meals the value of which is excluded from employees' income under section 119 because the meals are provided for the convenience of the employer and are therefore not primarily for the benefit of the taxpayer's employees.

(B) Examples. The following examples illustrate the application of this paragraph (c)(2)(iii). In each example, assume that the food or beverage expenses are ordinary and necessary expenses under section 162(a) that are paid or incurred during the taxable year in carrying on a trade or business.

(1) Example 1. Employer L invites all employees to a holiday party in a hotel ballroom that includes a buffet dinner and an open bar. Under section 274(e)(4), this paragraph (c)(2)(iii), and § 1.274-11(c), the cost of the party, including food and beverage expenses, is not subject to the deduction limitations in paragraph (a) of this section because the holiday party is a recreational, social, or similar activity primarily for the benefit of non-highly compensated employees. Thus, L may deduct 100 percent of the cost of the party.

(2) Example 2. The facts are the same as in paragraph (c)(2)(iii)(B)(1) of this section (Example 1), except that Employer L invites only highly-compensated employees to the holiday party, and the invoice provided by the hotel lists the costs for food and beverages separately from the cost of the rental of the ballroom. The costs reflect the venue's usual selling price for food or beverages. The exception in this paragraph (c)(2)(iii) does not apply to the rental of the ballroom or the food and beverage expenses because L invited only highly-compensated employees to the holiday party. However, under § 1.274-11(b)(1)(ii), the food and beverage expenses are not treated as entertainment. Therefore, L is not subject to the full disallowance for its separately stated food and beverage expense under section 274(a)(1) and § 1.274-11(a). Unless another exception in section 274(n)(2) and paragraph (c)(2) of this section applies, L may deduct only 50 percent of the food and beverage costs under paragraph (a)(2) of this section. In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply because none of the exceptions in section 274(k)(2) and paragraph (c)(2) of this section apply.

(3) Example 3. Employer M provides free coffee, soda, bottled water, chips, donuts, and other snacks in a break room available to all employees. A break room is not a recreational, social, or similar activity primarily for the benefit of the employees, even if some socializing related to the food and beverages provided occurs. Thus, the exception in section 274(e)(4) and this paragraph (c)(2)(iii) does not apply and unless another exception in section 274(n)(2) and paragraph (c)(2) of this section applies, M may deduct only 50 percent of the expenses for food and beverages provided in the break room under paragraph (a)(2) of this section. In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply because none of the exceptions in section 274(k)(2) and paragraph (c)(2) of this section apply.

(4) Example 4. Employer N has a written policy that employees in a certain medical services-related position must be available for emergency calls due to the nature of the position that requires frequent emergency responses. Because these emergencies can and do occur during meal periods, N furnishes food and beverages to employees in this position without charge in a cafeteria on N's premises. N excludes food and beverage expenses from the employees' income as meals provided for the convenience of the employer excludable under section 119. Because these food and beverages are furnished for the employer's convenience, and therefore are not primarily for the benefit of the employees, the exception in section 274(e)(4) and this paragraph (c)(2)(iii) does not apply, even if some socializing related to the food and beverages provided occurs. Further, the exception in section 274(e)(2) and paragraph (c)(2)(i) of this section does not apply. Thus, unless another exception in section 274(n)(2) and paragraph (c)(2) of this section applies, N may deduct only 50 percent of the expenses for food and beverages provided to employees in the cafeteria under paragraph (a)(2) of this section. In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply because none of the exceptions in section 274(k)(2) and paragraph (c)(2) of this section apply.

(5) Example 5. Employer O invites an employee and a client to dinner at a restaurant. Because it is the birthday of the employee, O orders a special dessert in celebration. Because the meal is a business meal, and therefore not primarily for the benefit of the employee, the exception in section 274(e)(4) and this paragraph (c)(2)(iii) does not apply, even though an employee social activity in the form of a birthday celebration occurred during the meal. Thus, unless another exception in section 274(n)(2) and paragraph (c)(2) of this section applies, O may deduct only 50 percent of the meal expense. In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply because none of the exceptions in section 274(k)(2) and paragraph (c)(2) of this section apply.

((iv)) Items available to the public-

((A)) In general. In accordance with section 274(e)(7), any expense paid or incurred by a taxpayer for food or beverages to the extent the food or beverages are made available to the general public is not subject to the deduction limitations in paragraph (a) of this section. If a taxpayer provides food or beverages to employees, this exception applies to the entire amount of expenses for those food or beverages if the same type of food or beverages is provided to, and are primarily consumed by, the general public.

((B)) Examples. The following examples illustrate the application of this paragraph (c)(2)(iv). In each example, assume that the food and beverage expenses are ordinary and necessary expenses under section 162(a) that are paid or incurred during the taxable year in carrying on a trade or business.

(1) Example 1. Employer P is a real estate agent and provides refreshments at an open house for a home available for sale to the public. The refreshments are consumed by P's employees, potential buyers of the property, and other real estate agents. Under section

274(e)(7) and this paragraph (c)(2)(iv), the expenses associated with the refreshments are not subject to the deduction limitations in paragraph (a) of this section if P determines that over 50 percent of the food and beverages are actually or reasonably estimated to be consumed by potential buyers and other real estate agents. If more than 50 percent of the food and beverages are not actually or reasonably estimated to be consumed by the general public, only the costs attributable to the food and beverages provided to the general public are excepted under section 274(e)(7) and this paragraph (c)(2)(iv). In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply to the expenses associated with the refreshments that are not excepted under section 274(e)(7) and this paragraph (c)(2)(iv).

(2) Example 2. Employer Q is an automobile service center and provides refreshments in its waiting area. The refreshments are consumed by Q's employees and customers, and Q reasonably estimates that more than 50 percent of the refreshments are consumed by customers. Under section 274(e)(7) and this paragraph (c)(2)(iv), the expenses associated with the refreshments are not subject to the deduction limitations provided for in paragraph (a) of this section because the food and beverages are primarily consumed by customers. Thus, Q may deduct 100 percent of the food and beverage expenses.

(3) Example 3. Employer R operates a summer camp open to the general public for children and provides breakfast and lunch, as part of the fee to attend camp, both to camp counselors, who are employees, and to camp attendees, who are customers. There are 20 camp counselors and 100 camp attendees. The same type of meal is available to each counselor and attendee, and attendees consume more than 50 percent of the food and beverages. Under section 274(e)(7) and this paragraph (c)(2)(iv), the expenses associated with the food and beverages are not subject to the deduction limitations in paragraph (a) of this section, because over 50 percent of the food and beverages are consumed by camp attendees and the food and beverages are therefore primarily consumed by the general public. Thus, R may deduct 100 percent of the food and beverage expenses.

(4) Example 4. Employer S provides food and beverages to its employees without charge at a company cafeteria on its premises. Occasionally, customers or other visitors also eat without charge in the cafeteria. The occasional consumption of food and beverages at the company cafeteria by customers and visitors is less than 50 percent of the total amount of food and beverages consumed at the cafeteria. Therefore, the food and beverages are not primarily consumed by the general public, and only the costs attributable to the food and beverages provided to the general public are excepted under section 274(e)(7) and this paragraph (c)(2)(iv). In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply to the expenses associated with the food and beverages that are not excepted under section 274(e)(7) and this paragraph (c)(2)(iv).

(v) Goods or services sold to customers-

(A) In general. In accordance with section 274(e)(8), an expense 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 in money or money's worth, is not subject to the deduction limitations in paragraph (a) of this section. However, money or money's worth does not include payment through services provided. Under this paragraph (c)(2)(v), a restaurant or catering business may deduct 100 percent of its costs for food or beverage items, purchased in connection with preparing and providing meals to its paying customers, which are also consumed at the worksite by employees who work in the employer's restaurant or catering business. In addition, for purposes of this paragraph (c)(2)(v), the term customer includes anyone, including

an employee of the taxpayer, who is sold food or beverages in a bona fide transaction for an adequate and full consideration in money or money's worth.

((B)) Example. The following example illustrates the application of this paragraph (c)(2)(v):

() Example. Employer T operates a restaurant. T provides food and beverages to its food service employees before, during, and after their shifts for no consideration. Under section 274(e)(8) and this paragraph (c)(2)(v), the expenses associated with the food and beverages provided to the employees are not subject to the 50 percent deduction limitation in paragraph (a) of this section because the restaurant sells food and beverages to customers in a bona fide transaction for an adequate and full consideration in money or money's worth. Thus, T may deduct 100 percent of the food and beverage expenses.

((d)) Applicability date. This section applies for taxable years that begin on or after October 9, 2020.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 25, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).