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IRS Attempts to Tighten Rules for Business Meal Exclusions

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Internal Revenue Code Section 119 (Code Section 119) allows employees to exclude from income the value of any meals furnished by or on behalf of their employer if the meals are furnished on the employer's business premises for the convenience of the employer. Whether meals are furnished for the convenience of the employer is one of the facts to be determined by analysis of all the facts and circumstances in each case. Treasury Regulation 1.119-1 provides that meals furnished by an employer to the employee will be regarded as furnished for the convenience of the employer if such meals are furnished for a substantial non-compensatory business reason of the employer.

Many companies provide meals to their employees, but the rules for excluding this benefit from income are complex and have detailed administration requirements. The taxpayer bears the burden of proving entitlement to such an exclusion. An employer who is claiming exclusion from income and wages for meals furnished to employees for the convenience of the employer must provide substantiation if requested concerning the business reasons. A recent IRS Technical Advice Memorandum issued on February 15, 2019, ("TAM 201903017") underlines how difficult it can be to prove to the IRS administratively a substantial non-compensatory business reason and provides guidance for employers looking to claim the exclusion.

TAM 201903017 includes discussion of a taxpayer's employer-provided meals that weren't excludable from income under Code Section 119. The taxpayer specified goals for providing employee meals were (i) to provide a secure business environment for confidential business discussions, (ii) for innovation and collaboration among taxpayer employees, (iii) for employee protection due to unsafe conditions surrounding the business premises, (iv) for improvement of employee health, and (v) based on its shortened meal period policy. Each business reason, or the documentation of the policy and operational records, failed the IRS standard for a substantial non-compensatory business reason under Code Section 119 and thus the exclusion was disallowed.

However, to the extent that the taxpayer provided meals so that employees were available to handle emergency outages during their meal periods, such was a substantial non-compensatory business reason and the meals were excludable from income under Code Sec. 119 for those employees who could be shown to actually be on call during their meal periods. The IRS required documentation to show how many employees were on call during a typical lunch period, and specific policy documents and employee

declarations showing the existence of the policy.

With TAM 201903017, the IRS has made it clear that it seeks to enforce the requirements and interpretations of Code Section 119 rigorously, and employers should review their policies and operational documentation for any programs relying on income exclusion under Code Section 119 carefully. It is unclear whether the facts and analysis set forth in the TAM will be tested in the courtroom.

TAM 201903017 is posted on IRS.gov. For additional questions about TAM 201903017 and its impact on employee meal programs, please contact a member of Holland & Hart's Benefits Law Group.

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