

**Division of Accounting
Payroll Compliance Group**

Meal Provisions Bulletin

INTRODUCTION

The Division of Accounting (DOA) is responsible for working with State of Delaware (State) Organizations to ensure appropriate tax treatment of meal provisions offered to State employees.

This bulletin covers tax implications associated with non-cash fringe benefits to ensure that employers are tracking the benefit appropriately, and that the State complies with federal tax laws and regulations.

FACTS

Unless a specific Internal Revenue Service (IRS) exemption applies, all payments made from State funds or items of value given to employees are considered compensation and are subject to federal, state, and local (if applicable) income tax and associated other employment costs (OECs).

Please contact your Human Resources (HR) office for your Organizations' policy regarding meal reimbursements and allowances.

DEFINITIONS

Accountable Plan: Plan that meets the requirements as specified by the IRS.

- Reimbursed expenses paid in connection with the performance of services for the employer.
- The employee substantiates the reimbursed expense to the employer.
- The employee returns amounts paid by the employer that exceed substantiated expenses.

Nonaccountable Plan: Payment or reimbursement arrangement that does not meet requirements of an accountable plan; payments under such plans are wages and subject to withholding.

De Minimis Fringe Benefit: Property or service whose value is so small as to make accounting for it unreasonable or administratively impracticable.

De minimis fringe benefits are excluded from taxable income.

Federal and State regulations do not set a defined amount for the nominal value.

Items of little individual value are **not** *de minimis* if given frequently to the same person.

In-Kind: Payments made in goods, commodities, or services instead of cash.

FINDINGS

To determine if meal reimbursements are excludable from wages, employers must consider general fringe benefit rules as well as regulations included in several sections of the Internal Revenue Code (IRC).

REGULATORY REFERENCES

In rendering this opinion, DOA reviewed the applicable Code, Regulations, and laws as cited.

IRC § 119 – Meals or lodging furnished for the convenience of the employer

Reg. § 1.119-1 – Meals and lodging furnished for the convenience of the employer

IRC § 132 – Certain fringe benefits

IRS Publication 15-B – Employer’s Tax Guide to Fringe Benefits

IRS Publication 5137 – Fringe Benefit Guide

Employee meals are includible in the employee’s income unless an exclusion applies. IRC § 119 provides an exclusion for meals under certain circumstances. Meals must be furnished in-kind and are excludable from wages of the employee if they are provided (1) on the employer’s business premises and (2) for the employer’s convenience.

1. Meals on Business Premises
 - Meals must be provided at:
 - A place where the employee performs a significant portion of duties; or
 - The premises where the employer conducts a significant portion of business.
2. Meals for the Convenience of the Employer
 - Provided for a substantial “noncompensatory” reason.
 - Workers need to be on call for emergencies during the lunch period.
 - Must have evidence that emergencies occur.
 - Nature of business (not just a preference) requires short lunch period.
 - Eating facilities are not available in the area of work.
 - Meals furnished to cafeteria staff before, during, or after work hours.
 - If more than half of the employees are furnished meals for employer convenience, treat all meals furnished to employees on premises as furnished for your convenience.
 - Meals are furnished immediately after working hours because the employee’s duties prevented him or her from obtaining a meal during working hours.

Note:

- The intention of the meal must not be to provide additional pay for the employee.
- Neither contract or collective bargaining agreement language is considered.
- A written statement that meals are furnished for your convenience is not sufficient.

Federal law takes precedence over a state statute, or an employment or union contract, in determining the Federal tax liability for furnished meals. The actual facts and circumstances, and

the requirements of IRC § 119 determine the liability for Federal income, social security and Medicare taxes. (IRC § 119(b)(1))

If an employee has an option to receive additional compensation in place of actual meals, then the meal, if chosen, is taxable. (Reg. § 1.119-1(e))

Meals Furnished With a Charge

- If an employer charges an employee a fixed amount for a meal, regardless of whether the employee takes the meal, the employee's taxable wages are reduced by the amount of the charge.
- If *not* provided for the convenience of the employer, the Fair Market Value (FMV) of meal is then added to the wages. Generally, the FMV of the meal will be the amount charged to the employee for the meal, resulting in no net tax effect. (IRC § 119(b)(3))
- Meals provided with a charge may or may not be considered for the "convenience of the employer." If there is a mandatory charge or deduction from the employee's pay for meals, gross income to the employee is reduced by this amount.

Optional Meal for Purchase

An optional meal is generally not considered as "provided for the convenience of the employer." If an employer provides a meal that an employee may choose to purchase, the employee's taxable wages are *not* reduced by the amount the employee pays for the meal. If the meal is not for the convenience of the employer, the FMV of the meal, less any amount charged by the employer, is included in the employee's wages

De Minimis Meals

- Infrequent meals of minimal value may be excludable as a de minimis fringe benefit if accounting for them would be unreasonable or administratively impracticable. Examples:
 - Occasional coffee, doughnuts, or soft drinks.
 - Occasional meals that enable an employee to work overtime.
 - Occasional parties or picnics for employees and their guests.
- The provision of any cash or cash equivalent benefit is never excludable as a de minimis fringe because appropriate accounting of such expense is both reasonable and practicable.
- If meal reimbursements are provided as part of a company policy or union contract, they are not excludable as de minimis benefits because the benefit is required and is not occasional. The employer would normally have the opportunity to set up the administrative procedures for reporting the benefit, so accounting for it does not meet the "administratively impracticable" standard for de minimis benefits.
- In no event shall meal money calculated on the basis of the number of hours worked be considered a de minimis fringe benefit. (i.e., \$1.00 per hour for each hour over eight hours).

Substantiating Employee Meal Expense Reimbursements

- Meal expense reimbursements or allowances must meet the accountable plan rules in order to be excludable from wages.

DELAWARE CODE

- 29 Del. C. 51, § 5112 Employees not to be supplied with, nor reimbursed for, food consumed during working hours; exceptions.
 - (a) No full-time employee of the State whose salary is paid by the State shall receive any additional stipend for the purchase of food, be supplied with food or be reimbursed for food that was consumed during normal working hours within the State.
 - (b) Subsection (a) of this section shall not apply to:
 - (1) Employees of state agencies who regularly receive wages in-kind in addition to their salaries;
 - (2) Employees of the Division of Small Business;
 - (3) The expenditures of funds for food supplies as part of employee recognition activities established pursuant to § 5950 of this title;
 - (4) The expenditures of funds for food supplied as part of an agency training function, such as a retreat or workshop, held away from the agency's home location.
 - (5) State Police recruits during the period of their training; or
 - (6) Circumstances where approval has been granted by the Director of the Office of Management and Budget and the Controller General.

OTHER

- Refer to the Budget and Accounting Policy Manual, Chapter 11, Travel Policy, for the policy regarding meal expenses incurred during out-of-state travel.
<https://budget.delaware.gov/accounting-manual/documents/chapter11.pdf?ver=0919>

TAX ADVICE DISCLAIMER

Although the opinion provided here is presented in good faith and believed to be correct, it is general in nature and is not intended as tax advice. Furthermore, the facts and regulatory references applicable to this scenario may not be applicable to or suitable for other similar scenarios that may require consideration of other factors.

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