A Win for Boston Bruins: Tax Court Sides With Team in Clash Over De Minimis Fringe Benefits

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In a recent, decision, the United States Tax Court determined that the pregame meals provided to Boston Bruins players and personnel at away games qualify as a de minimis fringe benefit under Section 274(n)(2)(B) of the Internal Revenue Code. Therefore, the cost of these meals is not subject to the 50-percent deduction limitation of Section 274(n)(1).

In this case, Jacobs v. Commissioner, No. 19009-15 (June 26, 2017), at issue was whether the owners of the Boston Bruins hockey team could deduct the full amount of expenses incurred in providing meals to professional hockey players and team personnel at hotels in cities other than Boston or whether the deduction for meal expenses is limited to 50 percent under Section 274(n)(1).

The Bruins argued that, in cities where the team played its away games, hotel banquet rooms in which employees were provided free meals qualified as employer-operated eating facilities. The tax court agreed with this interpretation, even though the banquet rooms in which the meals were served were provided without charge.

Background

Section 162(a) of the Internal Revenue Code allows deductions on all “ordinary and necessary” business expenses paid or incurred in the normal course of business. Section 274(a) disallows such deductions entirely for “entertainment, amusement or recreation.” If an activity is not “entertainment, amusement or recreation,” Section 274(n)(1) imposes a 50-percent deduction limitation on meal expenses, unless an exception applies.

Section 274(n)(2) provides a de minimis fringe benefit exception to this 50-percent deduction limit. Meals that meet the criteria for this de minimis fringe benefit exception are fully deductible. Generally, in order for employee meals to qualify as a de minimis fringe benefit, the following requirements must be met:

1. The eating facility must be owned or leased by the employer.
2. The facility must be operated by the employer.
3. The facility must be on or near the business premises of the employer.
4. The meals furnished at the facility must be provided during, or immediately before or after, the employee’s workday.
5. The annual revenue derived from the facility must normally equal or exceed the direct operating costs of the facility (the revenue/operating cost test).

Additionally, the facility must be available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification that does not discriminate in favor of highly compensated employees.

The Tax Court’s Opinion
In Jacobs, the tax court analyzed each of the five prongs of the above-mentioned de minimis fringe benefit test individually.

1. **Owned or leased by employer**

   First, the tax court concluded that the meals served in the hotels where the Bruins hockey team stayed for away games met the criterion of being “owned or leased by the employer.” The court reasoned that the hotel contracts entered into between the Bruins and the away city hotels indicated that the Bruins were paying in exchange for the right to use and occupy the hotel meal rooms and that—coupled with the fact that the Bruins dictated the setup of the meal rooms, determined what types of food are served, and specified the dates and times of the meals and the number of attendees—the contracts were substantively leases.

   It did not matter to the tax court that the hotels provided the meal rooms without charge. On that point, the tax court noted that the meal rooms are “essential to the Bruins’ away city business operations, and the hotels agree to provide the meal rooms free of charge because the Bruins spend money for lodging and food.”

2. **Operated by employer**

   The tax court found that the hotel contracts also meant that the Bruins operated the facilities, because a facility is considered operated by an employer if the employer contracts with another to operate an eating facility for its employees, thus satisfying the second requirement.

3. **Business premises**

   Third, the tax court determined that the away city hotels were on the business premises of the employer because the Bruins’ employees performed a significant portion of duties there since the team had to participate in away games and substantial time was spent at the hotels to prepare for those games. The hotel space was used:

   - for lodging so the players could obtain adequate rest;
   - for meals (that met the players’ specific nutritional guidelines to ensure optimal performance);
   - as a forum to conduct team business (players met with coaches to strategize and review game film; the public relations staff prepared players for upcoming interviews; and coaches, trainers, and management met among themselves);
   - for physical training to help reduce the chance of injury and maximize athletic performance; and
   - for medical treatment, physical therapy, and massages.

4. **Meals furnished during, immediately before, or immediately after the workday**

   Because it was undisputed that the meals furnished at the facility were provided during, or immediately before or after, the workday, the court did not discuss the fourth requirement.

5. **Revenue vs. operating cost**

   Next, the tax court found that the revenue derived from the employer-operated eating facility equaled or exceeded the direct operating costs of the facility.

   In general, an employer-provided eating facility will satisfy the revenue/operating cost test if the employer can reasonably determine that the meals are excludable to recipient employees under Section 119 of the Internal Revenue Code—that is, if they are furnished for the convenience of the employer and on the employer’s business premises. Because the court already concluded that the meals were furnished on the business premises of the employer, in analyzing this requirement, it focused on the convenience prong.

   Meals furnished without charge will be considered for the convenience of the employer if the meals are furnished for a “substantial noncompensatory business reason of the employer.” Here, the court concluded that the Bruins had provided credible evidence establishing the business reasons for furnishing the pregame meals. Those business reasons included providing pregame meals to traveling hockey employees for “nutritional and performance reasons,” keeping the menus consistent to “avoid players’ experiencing unexpected gastric problems during games,” and accommodating the employees’ busy schedules and limited time to prepare for upcoming games. The court declined to second-guess this business judgment, citing the 9th U.S. Circuit Court of Appeals’ decision in Boyd Gaming v. Commissioner, 177 F.3d 1096 (9th Cir. 1999).

**No discrimination**

The tax court found that there was no discrimination in favor of highly compensated employees because the meals were made available to all traveling hockey employees (players, coaches, travel logistics managers, public relations personnel, and other employees) on substantially the same terms.
Implications

Ultimately, the decision in *Jacobs* expands what has traditionally been considered an employer-operated eating facility under Section 274(n)(2). While the tax court examined the unique nature of the Bruins’ business (professional hockey) closely, professional sports teams are not the only taxpayers that may benefit from this decision.

Hotels are not traditional business premises, yet the Bruins argued that the hotels were the team’s bases of operation. Could most employers—like the Bruins—argue that providing healthy meals to their employees increases productivity, improves health, and saves time, which allows employees to work more in today’s increasingly demanding, nonstop work environment?

It is unclear how the Internal Revenue Service (IRS) will respond to this case, and many commenters have suggested that the IRS may appeal and face off with the Bruins again. For now, it will be interesting to see how this decision is interpreted by other taxpayers that conduct significant business away from their typical business premises, as they may argue that they also have an interest in the nutrition and performance of their employees.


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