

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 en-

tertainment 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.

[T.D. 9925, 85 FR 64033, Oct. 9, 2020]

§ 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

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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).

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(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 reimburse-

ment 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*.

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(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 includable 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 includable 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 de-

fined 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

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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 ac-

tivity, 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

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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 ex-

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ceptions 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).

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(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.

[T.D. 9925, 85 FR 64035, Oct. 9, 2020]

§ 1.274-13 Disallowance of deductions for certain qualified transportation fringe expenditures.

(a) *In general.* Except as provided in this section, no deduction otherwise allowable under chapter 1 of the Internal

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Revenue Code (Code) is allowed for any expense of any qualified transportation fringe as defined in paragraph (b)(1) of this section.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Qualified transportation fringe.* The term *qualified transportation fringe* means any of the following provided by an employer to an employee:

(i) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment (as described in sections 132(f)(1)(A) and 132(f)(5)(B));

(ii) Any transit pass (as described in sections 132(f)(1)(B) and 132(f)(5)(A)); or

(iii) Qualified parking (as described in sections 132(f)(1)(C) and 132(f)(5)(C)).

(2) *Employee.* The term *employee* means a common law employee or other statutory employee, such as an officer of a corporation, who is currently employed by the taxpayer. See §1.132-9 Q/A-5. Partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), sole proprietors, and independent contractors are not employees of the taxpayer for purposes of this section. See §1.132-9 Q/A-24.

(3) *General public.* (i) *In general.* The term *general public* includes, but is not limited to, customers, clients, visitors, individuals delivering goods or services to the taxpayer, students of an educational institution, and patients of a health care facility. The term *general public* does not include individuals that are employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), sole proprietors, or independent contractors of the taxpayer. Also, an exclusive list of guests of a taxpayer is not the *general public*. Parking spaces that are available to the *general public* but empty are treated as provided to the *general public*. Parking spaces that are used to park vehicles owned by the *general public* while the vehicles await repair or service by the taxpayer are also treated as provided to the *general public*.

(ii) *Multi-tenant building.* If a taxpayer owns or leases space in a multi-tenant building, the term *general public* includes employees, partners, 2-percent