

**From the desk of
Peter S. Muffoletto, C.P.A.**

Tax reform law makes changes to Employee Achievement Award Rules

Last year's Tax Cuts and Jobs Act made changes to compensation, and gifts to employees.

This includes employee achievement awards, and gifts.

Here are some facts about these changes:

Under previous law:

- Employers could deduct the cost of certain employee achievement awards, and year-end bonuses, gifts, and other such compensation provided by an employer.
- Deductible awards were excludible from employee income.

Under the Tax Cuts and Jobs Act:

- The following are now taxable to the employee upon receipt:
 - Cash
 - gift cards
 - other non-tangible personal property as employee achievement awards
- The new law specifically enumerates cash, cash equivalents, gift cards, gift coupons, certain gift certificates, tickets to theater or sporting events, vacations, meals, lodging, stocks, bonds, securities, and other similar items as now being taxable to the employee upon receipt.

In general a de minimis benefit is one for which considering its value and the frequency with which it is provided is so small as to make accounting for it unreasonable or impractical.

De minimis benefits are excluded under Internal Revenue Code and include items which are not specifically excluded under other sections of the Code. These include such items as:

- Controlled, occasional employee use of photocopier
- Occasional snacks, coffee, doughnuts, etc.
- Occasional tickets for entertainment events
- Holiday gifts

- Occasional meal money or transportation expense for working overtime
- Group-term life insurance for employee spouse or dependent with face value not more than \$2,000
- Flowers, fruit, books, etc., provided under special circumstances
- Personal use of a cell phone provided by an employer primarily for business purposes

In determining whether a benefit is de minimis the frequency and its value are an important part of determining the taxability.

An essential element of a de minimis benefit is that it is occasional or unusual in frequency.

It also must not be a form of disguised compensation.

Whether an item or service is de minimis depends on all the facts and circumstances.

In addition if a benefit is too large to be considered de minimis the entire value of the benefit is taxable to the employee not just the excess over a designated de minimis amount.

The IRS has ruled previously in a particular case that items with a value exceeding \$100 could not be considered de minimis even under unusual circumstances.

Cash Benefits

Cash is generally intended as a wage, and usually provides no administrative burden to account for.

Cash therefore cannot be a de minimis fringe benefit.

An exception is provided for occasional meal or transportation money to enable an employee to work overtime.

The benefit must be provided so that employee can work an unusual extended schedule.

The benefit is not excludable for any regular scheduled hours even if they include overtime.

The employee must actually work the overtime.

Meal money calculated on the basis of number of hours worked is not de minimis and is taxable wages.

Gift certificates

Cash or cash equivalent items provided by the employer are never excludable from income.

An exception applies for occasional meal money or transportation fare to allow an employee to work beyond normal hours.

Gift certificates that are redeemable for general merchandise or have a cash equivalent value are not de minimis benefits and are taxable.

A certificate that allows an employee to receive a specific item of personal property that is minimal in value provided infrequently and is administratively impractical to account for may be excludable as a de minimis benefit depending on facts and circumstances.

Achievement awards

Special rules apply to allow exclusion from employee wages of certain employee achievement awards of tangible personal property given for length of service or safety. These awards

- Cannot be disguised wages
- Must be awarded as part of a meaningful presentation
- Cannot be cash, cash equivalent, vacation, meals, lodging, theater or sports tickets, or securities.

How are de minimis fringe benefits reported

If the benefits qualify for exclusion no reporting is necessary.

If the benefits paid are taxable those amounts should be included in wages on Form W-2 and subject to income tax withholding.

If the employee(s) are covered for social security and Medicare the value of the benefits are also subject to withholding for these taxes.

The Holiday Party!

The office party is still 100% deductible within reason which is never determined as to what is reasonable until the audit arrives.

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