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Business Expenses

Bruins Case Sets Up Entertainment Industry for Deduction Wins

The Boston Bruins recent Tax Court victory may make it easier for singers, authors, actors, and even tax professionals to claim full meal expense deductions while on the road.

The U.S. Tax Court ruled in a June 26 division opinion that Jeremy M. Jacobs, the owner of the National Hockey League franchise, could deduct the full amount spent on meals for players and staff at hotels during away games (*Jacobs v. Commissioner*, 148 T.C. No. 24, T.C., No. 19009-15, 6/26/17).

''This court decision has broader implications than the Bruins and the pro sports teams,'' said Ed Sturm, a managing director at Deloitte Tax LLP who leads the tax practice's meals, travel, and entertainment service areas. Organizations, such as corporations and partnerships, ''of any size that have employees in similar situations, where meals are part of their work travel schedule, could qualify for greater deductibility under certain circumstances.''

Performers such as singers and actors who travel for their business—doing concert tours or new film promotions, for example—could benefit from the court's decision. Generally those performers do business in the form of a corporation or partnership, even though the audience only knows the performer by his or her stage name, Sturm told Bloomberg BNA in an email. ''It's important for these organizations to understand this often overlooked area of taxation, so that they are making business decisions around an accurate tax position.''

In its decision, the Tax Court said the Bruins meals qualified for the de minimis fringe exception to a 50 percent limitation on meal expense deductions under tax code Section 274(n). To qualify for the exception, a taxpayer must establish that the meals—among other things—were provided in a facility on or near the employer's business premises and are provided immediately before, after, or during the employees' workday.

The *Jacobs* case isn't the first time courts have grappled with the issue of taxpayers in the entertainment industry claiming meal deductions. The U.S. Court of Appeals for the Ninth Circuit ruled in a 1999 case, *Boyd Gaming Corp. v. Commissioner,* that the operator of a Las Vegas casino was entitled to fully deduct its employee meal expenses because the costs were associated with a substantial business purpose of keeping employees on premises.

According to practitioners, meal expenses in other entertainment industries should be deductible across the board, and the Internal Revenue Service loses the big picture when it focuses too much on technical details.

Greg Hammonds, leading partner at Whaley Hammonds Tomasello PC in Atlanta, told Bloomberg BNA these deductions are important because the meals are an integral part of what the performer or athlete is doing. ''We think the court case really supports that notion,'' he said. ''Hopefully it will be something that the IRS won't focus on in these types of industries due to this court case.''

The IRS declined to comment on the *Jacobs* case.

Beyond Entertainment Chaya Kundra, a tax attorney at Kundra & Associates PC, and former chair of the American Bar Association's Employment Tax Section, said the implications of the decision may extend even beyond the entertainment industry.

Other industries are going to look at the Bruins decision and ''wonder if it's something they can take advantage of,'' she said. For example, an employee may be required to travel to another state for work. If that person is staying at a hotel and eats a meal at the hotel restaurant, that's not going to be considered business premises, and the taxpayer can't take advantage of the de minimis fringe exception, she said.

''But if the concept is that I'm leasing the facility, well I'm leasing the hotel room so what happens to the meals I'm ordering to the room if the entire time I'm there, I'm working? Is that now going to be considered part of the facility that I'm leasing?'' Kundra said. ''I think it'll be a harder stretch for the non-entertainment industries, but I won't be surprised to see'' outside industries trying to use this decision, she said.

''This is a very well-reasoned decision by the Tax Court. It is likely to have implications beyond the world of sports. The entertainment industries, especially television and cinema,'' spend considerable amounts on catering aimed at ''keeping everyone near the set and available when needed,'' Jeffrey E. Nusinov, managing attorney at Nusinov Smith LLP, told Bloomberg BNA. ''This opinion may relieve some of the financial burdens of providing such perks.''

Businesses have typically deducted meals that are for the convenience of the employer and meet the de mimimis fringe benefit rules, Joseph Anthony, an enrolled agent and licensed tax consultant at Joseph Anthony & Associates Inc. in Portland, Ore., told Bloomberg BNA. ''Tax prep firms paying for dinners for all staff members working late hours during tax season is a classic example,'' he said.

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Anne G. Batter, a tax partner at Baker & McKenzie LLP, said the IRS focuses too much on the details in its regulations. ''The IRS gets very obsessed about what is their version of what an eating facility is or some other technical thing when they don't see the big picture,'' she said.

Ripe for Abuse? Most practitioners interviewed said the criteria for the de minimis fringe exception under Sections 274(n)(2)(B) and 132(e), the nature of the meals in question, and the specific facts in the judge's opinion would curtail abuse of the ruling.

''There's always potential for anything to get out of hand,'' said Sean Packard, tax director at the sports agency Octagon Financial Services. But when ''getting ready to go into an athletic competition, you're not going to be eating a 20-ounce T-bone,'' he said. The teams are ''going to be providing meals that will hopefully give players fuel to perform well and not fatten them up.''

On a first read, it doesn't appear that the facts and restrictions in the judge's ruling are a big deal, Kundra said. ''But they actually are.'' In the opinion, the judge noted that the NHL requires the Bruins to play half of their games away from their hometown arena. He also mentions that attendance at pregame breakfasts is mandatory for all players and they can be fined or benched if they are late or absent. Others will need to consider these facts and determine whether their employment contracts have similar requirements, Kundra said. ''These things are going to have a big implication in terms of who's really going to be able to take advantage of or access the de minimis deductions.''

Hammonds, whose clients primarily work in film and television series, said there might still be room for abuse. Elaborate post-production wrap parties might take allowable deductions too far, he said.

Richard Marks, an entertainment transactional attorney at The Point Media, said it would be hard to see a special circumstance that would allow the deductions to be abused. ''If a producer is spending the money for a celebration or to provide meals before a shoot, and related to the shoot, to me it seems they are valid deductions.''

Chance of Appeal Anthony said he wouldn't be surprised if the IRS appealed the decision. ''The case naturally raises the question of how far businesses may be able to go in terms of claiming a 100% deduction for employee meals that are provided for the benefit and convenience of the employer.''

Batter said the IRS would probably lose an appeal, and a circuit court opinion would only reinforce rulings like *Boyd Gaming*.

''The big picture here was the kind of situation where you should be able to provide a meal at the convenience of the employer,'' Batter said, adding that if individuals in other industries have a similar situation and want to make their case, they should hire lawyers and bring the facts to trial.

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