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NHL Scores Goal in Business Premise Ruling

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by Cathy Perkins, Compensation and Benefits*

The Tax Court expanded the "convenience of the employer" exclusion for meal deductions in a recent opinion involving a professional hockey team. As this article explains, the much-anticipated opinion confirms that the "business premises of the employer" can include an off-premises facility leased by the employer when employees are traveling on company business.

Background Facts

The National Hockey League ("NHL") season lasts approximately nine months, with each team playing 82 regular season games (in addition to any pre- and post-season games). Half the regular season games are mandated to be played at arenas in various cities, away from the team's home arena. League rules mandate travel prior to an away game, requiring the team to arrive at the away location up to the day before game day.

The teams contract with away-city hotels as soon as the season schedule is announced. The selected hotel provides sleeping accommodations and conference room space along with pre-game meals that meet the players' specific nutritional guidelines. The meals are made available to all "traveling hockey players," a term that includes players, coaches, trainers, managers, public relations, communications, and other essential employees. This room is not disclosed to the public and is only accessible by the traveling hockey players.

Attendance at breakfast on game days is mandatory. The employees will be fined or benched if they miss or are late. Team business and game strategy are discussed during the meal. Afterward, the team

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* Cathy Perkins is a director with the Compensation and Benefits practice of KPMG LLP.

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generally either travels to the away arena for practice or continues to review game film and discuss strategy. Lunch is also a mandatory event, including one-on-one coaching meetings and sessions with public relations staff for media events. The team rests until game time and may eat a snack if desired.

In addition to the meal room, the team uses hotel space for medical treatment, physical therapy, strength and conditioning training, all of which are essential components of the team's business.

Tax Court Opinion

Section 62[1] allows an employer to deduct all ordinary and necessary business expenses. With the inherently personal nature of dining, the deduction for meals is generally limited to 50 percent of the actual expense (section 274(n)). Certain de minimis benefits are an exception to the reduced deduction rule and may permit a 100 percent tax deduction. Occasional group meals qualify for the special treatment but meals while employees travel away from home on company business usually do not.

An employer-operated eating facility, however, may be treated as a de minimis fringe benefit if the revenue derived from it exceeds its direct operating cost. The employer-operated eating facility must be located on employer business premises and provide meals before, during, or immediately after the employee's workday.

Free meals cannot usually generate revenue, but there is a special interplay between sections 132 and 119. Section 132(e)(2)(B) deems the employee to have paid the meal's direct cost if the value of the meal is excluded from the employee's income by section 119 and the meals are available in a nondiscriminatory manner.

Also under section 119(b)(4), if more than 50 percent of the employees are furnished meals for the convenience of the employer, *all* employees are treated as having their meals so provided. Taken together, if more than half of the available employees receive meals for the convenience of the employer at an employer-operated eating facility, the employer may treat the facility as providing a de minimis fringe benefit and deduct the full cost of providing the meals.

The Tax Court held in *Jacobs v Commissioner*[2] that that away city hotels for NHL team the Boston Bruins were part of the Bruins' business premises. Section 1.132-7(a)(2)(i) of the regulations requires that the facility be "owned or leased by the employer." A "lease" is not defined under the regulations, but the Tax Court in *Jacobs* drew on common law to find it includes a contract for the right to use and occupy property in exchange for consideration. The Tax Court noted that under the *Mabley* case,[3] a company that leased a hotel meeting room for meetings was considered an employer premises for section 119. Other case law expands the determination of an employer's business premises as a place

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1 Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended (the "Code") or the applicable regulations promulgated pursuant to the Code (the "regulations").

2 148 T.C. No. 24 (June 26, 2017).

3 Mabley v. Commissioner, T.C. Memo. 1965-323.

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where employees perform a significant portion of duties or where the employer conducts a significant portion of business.[4]

Observations

The fact pattern for the Bruins (described above) is championship-worthy. The Tax Court reviewed the requirements for the eating facility, including whether the hotel met the requirements to be considered the "business premises of the employer." The team's required traveling schedule, the conduct of essential team business at the hotel, and the exacting needs of the professional athletes meant the hotels, specifically the rooms set aside for meals and meetings, constituted the "business premises of the employer." The court further noted that the detailed contracts with the hotels provided location and service requirements in order to conduct operations that were essential to the Bruins' away-city business, thus qualifying as the team's business premise.

The court's decision is clearly a win for professional sports teams that play away games. While professional entertainers are examining the case for parallels to their traveling performance schedules, the decision may have interesting ramifications for all employers who bring together far flung employees for mandatory business meetings. A lack of regulatory guidance has made meal deduction rules confusing. Cases such as *Jacobs* assist in giving employers additional flexibility while still taking a 100 percent deduction when possible. Comparing a company's facts and circumstances involved in determining the meal's deduction treatment, however, remain complex. Prudent taxpayers should discuss their situations with knowledgeable tax professionals.

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[4] Romer v. Commissioner, T.C. Memo 2001-68, 1-2; Lindeman v. Commissioner, 60 T.C. 609 (1973), *acq.*, 1973-2 C.B. 2; Rev. Rul. 54-147.

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