

Greetings from Oklahoma-Horse country!!!--I read the information on the bill---
Pete, you are exactly correct--my intentions were to exempt all restaurant
employees meals period!!! There was never any thought of this being part of the
pay-check stub---If I can be of any further help, please feel free to call me ---You
do have my correct phone number (redacted) and Lynn's e-mail is (redacted)--
Good Luck!!- -It's great to hear from you-- Joel Hefley

--- On **Wed, 2/25/09, Pete Meersman** <redacted> wrote:

From: Pete Meersman <redacted>

Subject: CO Legislative Issue

To: [redacted]

Cc: [redacted]

Date: Wednesday, February 25, 2009, 11:51 AM

Hi Lynn - It's Pete Meersman from Colorado Restaurant Association. Not sure
you are still using this email address, but I thought I would try it.

I hope you and Joel are doing well and have successfully "re-habbed" from
legislative life.

I am trying to reach Joel about a CO legislative issue. He sponsored and passed
House Bill 1257 in 1978 to exempt employee meals from state sales taxes. I
attached the simple, straightforward language from the statutes.

Well..... now the CO DOR has decided that employee meals are only exempt if
the employer is adding the cost of the meals to the employee's paycheck. They
are using the language from the statute which states: "and which are considered
as part of their salary, wages, or income...." as justification for taxing the meals in
sales tax audits.

We have been telling our members that employee meals are sales tax exempt for
years, so they are rarely added to employee paycheck stubs. In addition, the IRS
considers the cost of the meals as "de minimus" and does not require their cost
to be reported on paychecks.

CO DOR is using their interpretation as an excuse to collect state sales taxes on
employee meals in audits of businesses. The result is that employers who have
been through an audit are no longer providing their employees with reduced cost
or free meals because it is a big pain to track and record this information.

We are hoping that Joel remembers this bill and that he would be willing to write
out a statement of his intent when he proposed and passed it.

So this is the question: did he intend meals provided by employers to their
employees free or at a reduced cost to be exempt from sales tax, or only exempt
from sales tax if they are included on the employee's pay stub and W-2?

Senator Al White has sponsored a bill to make it even clearer that employee meals are not subject to sales taxes by deleting the language that says "and which are considered as part of their salary, wages, or income" from the current statutes.

I also attached a copy of Senator White's SB 09-121 for reference.

Thanks to you both!

Celebrating 75 Years of providing leadership, advocacy and service to the Colorado hospitality industry.

Colorado restaurants generate over \$8 billion in sales and \$500 million in state and local taxes while employing over 230,000 workers in over 9,500 establishments.

Pete

Peter M. Meersman

President & CEO

Colorado Restaurant Association

430 East 7th Avenue

Denver, CO 80203

303/830-2972 Office, 303/830-2973 Fax, 800/522-2972 Toll Free,

www.coloradorerestaurant.com Website

email: meersman@coloradorerestaurant.com

Confidential:

This electronic message transmission contains information from the Colorado Restaurant Association which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please notify us by telephone at (1-800-522-2972) immediately.

Ch. 8

Ch. 8 FAIR LABOR STANDARDS

29 § 203

use,
nily.
dual
ch is
ern-

transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

paid
form

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

high
gen-

tical
may
bdi-
tate,
tate,
ent.

and
the
vest-
ding
ction
ring
y or
is an
ions,
mar-

other
are

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly

quip-
s or
lient
the
ther

han-
for
l to
ryee
ing,



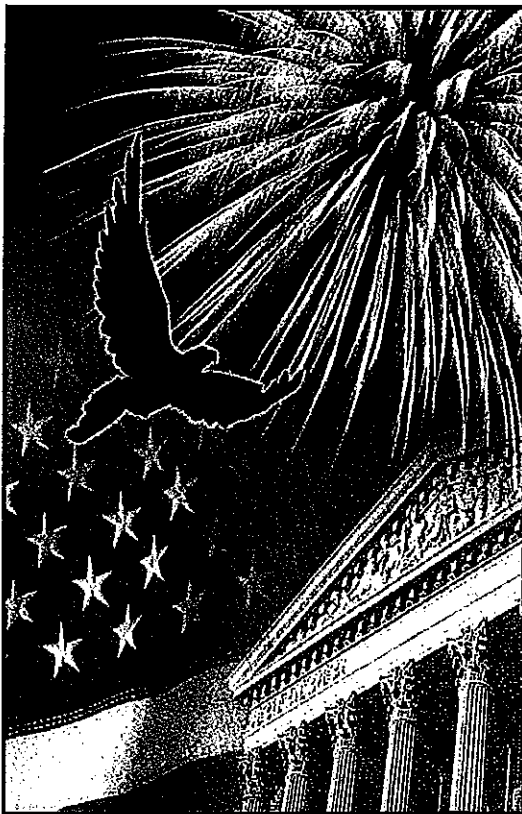
Department of the Treasury
Internal Revenue Service

Publication 15-B

Cat. No. 29744N

Employer's Tax Guide to Fringe Benefits

For use in **2009**



Get forms and other
information faster and
easier by:

Internet www.irs.gov

Contents

What's New	1
Reminders	2
Introduction	2
1. Fringe Benefit Overview	2
Are Fringe Benefits Taxable?	2
Cafeteria Plans	3
2. Fringe Benefit Exclusion Rules	4
Accident and Health Benefits	6
Achievement Awards	7
Adoption Assistance	7
Athletic Facilities	8
De Minimis (Minimal) Benefits	8
Dependent Care Assistance	8
Educational Assistance	9
Employee Discounts	10
Employee Stock Options	10
Group-Term Life Insurance Coverage	11
Health Savings Accounts	13
Lodging on Your Business Premises	14
Meals	15
Moving Expense Reimbursements	17
No-Additional-Cost Services	17
Retirement Planning Services	18
Transportation (Commuting) Benefits	18
Tuition Reduction	20
Volunteer Firefighter and Emergency Medical Responder Benefits	20
Working Condition Benefits	21
3. Fringe Benefit Valuation Rules	22
General Valuation Rule	23
Cents-Per-Mile Rule	23
Commuting Rule	24
Lease Value Rule	25
Unsafe Conditions Commuting Rule	27
4. Rules for Withholding, Depositing, and Reporting	28
How To Get Tax Help	29
Index	32

What's New

Cents-per-mile rule. The standard mileage rate you can use under the cents-per-mile rule to value the personal use of a vehicle you provide to an employee in 2009 is 55 cents per mile. See *Cents-Per-Mile Rule* in section 3.

On your business premises. For this exclusion, your business premises is generally your employee's place of work. (For special rules that apply to lodging furnished in a camp located in a foreign country, see section 119(c) of the Internal Revenue Code and its regulations.)

For your convenience. Whether or not you furnish lodging for your convenience as an employer depends on all the facts and circumstances. You furnish the lodging to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the lodging is furnished as pay. However, a written statement that the lodging is furnished for your convenience is not sufficient.

Condition of employment. Lodging meets this test if you require your employees to accept the lodging because they need to live on your business premises to be able to properly perform their duties. Examples include employees who must be available at all times and employees who could not perform their required duties without being furnished the lodging.

It does not matter whether you must furnish the lodging as pay under the terms of an employment contract or a law fixing the terms of employment.

Example. A hospital gives Joan, an employee of the hospital, the choice of living at the hospital free of charge or living elsewhere and receiving a cash allowance in addition to her regular salary. If Joan chooses to live at the hospital, the hospital cannot exclude the value of the lodging from her wages because she is not required to live at the hospital to properly perform the duties of her employment.

S corporation shareholders. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Meals

This section discusses the exclusion rules that apply to de minimis meals and meals on your business premises.

De Minimis Meals

You can exclude any meal or meal money you provide to an employee if it has so little value (taking into account how frequently you provide meals to your employees) that accounting for it would be unreasonable or administratively

impracticable. The exclusion applies, for example, to the following items.

- Coffee, doughnuts, or soft drinks.
- Occasional meals or meal money provided to enable an employee to work overtime. (However, the exclusion does not apply to meal money figured on the basis of hours worked.)
- Occasional parties or picnics for employees and their guests.

This exclusion also applies to meals you provide at an employer-operated eating facility for employees if the annual revenue from the facility equals or exceeds the direct costs of the facility. For this purpose, your revenue from providing a meal is considered equal to the facility's direct operating costs to provide that meal if its value can be excluded from an employee's wages as explained under *Meals on Your Business Premises* later.



If food or beverages you furnish to employees qualify as a de minimis benefit, you can deduct their full cost. The 50% limit on deductions for the cost of meals does not apply. The deduction limit on meals is discussed in chapter 2 of Publication 535.

Employee. For this exclusion, treat any recipient of a de minimis meal as an employee.

Employer-operated eating facility for employees. An employer-operated eating facility for employees is an eating facility that meets all the following conditions.

- You own or lease the facility.
- You operate the facility. (You are considered to operate the eating facility if you have a contract with another to operate it.)
- The facility is on or near your business premises.
- You provide meals (food, drinks, and related services) at the facility during, or immediately before or after, the employee's workday.

Exclusion from wages. You can generally exclude the value of de minimis meals you provide to an employee from the employee's wages.

Exception for highly compensated employees. You cannot exclude from the wages of a highly compensated employee the value of a meal provided at an employer-operated eating facility that is not available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

For this exclusion, a highly compensated employee for 2009 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$105,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Meals on Your Business Premises

You can exclude the value of meals you furnish to an employee from the employee's wages if they meet the following tests.

- They are furnished on your business premises.
- They are furnished for your convenience.

This exclusion does not apply if you allow your employee to choose to receive additional pay instead of meals.

On your business premises. Generally, for this exclusion, the employee's place of work is your business premises.

For your convenience. Whether you furnish meals for your convenience as an employer depends on all the facts and circumstances. You furnish the meals to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the meals are furnished as pay. However, a written statement that the meals are furnished for your convenience is not sufficient.

Meals excluded for all employees if excluded for more than half. If more than half of your employees who are furnished meals on your business premises are furnished the meals for your convenience, you can treat all meals you furnish to employees on your business premises as furnished for your convenience.

Food service employees. Meals you furnish to a restaurant or other food service employee during, or immediately before or after, the employee's working hours are furnished for your convenience. For example, if a waitress works through the breakfast and lunch periods, you can exclude from her wages the value of the breakfast and lunch you furnish in your restaurant for each day she works.

Example. You operate a restaurant business. You furnish your employee, Carol, who is a waitress working 7 a.m. to 4 p.m., two meals during each workday. You

encourage but do not require Carol to have her breakfast on the business premises before starting work. She must also have her lunch on the premises. Since Carol is a food service employee and works during the normal breakfast and lunch periods, you can exclude from her wages the value of her breakfast and lunch.

If you also allow Carol to have meals on your business premises without charge on her days off, you cannot exclude the value of those meals from her wages.

Employees available for emergency calls. Meals you furnish during working hours so an employee will be available for emergency calls during the meal period are furnished for your convenience. You must be able to show these emergency calls have occurred or can reasonably be expected to occur.

Example. A hospital maintains a cafeteria on its premises where all of its 230 employees may get meals at no charge during their working hours. The hospital must have 120 of its employees available for emergencies. Each of these 120 employees is, at times, called upon to perform services during the meal period. Although the hospital does not require these employees to remain on the premises, they rarely leave the hospital during their meal period. Since the hospital furnishes meals on its premises to its employees so that more than half of them are available for emergency calls during meal periods, the hospital can exclude the value of these meals from the wages of all of its employees.

Short meal periods. Meals you furnish during working hours are furnished for your convenience if the nature of your business restricts an employee to a short meal period (such as 30 or 45 minutes) and the employee cannot be expected to eat elsewhere in such a short time. For example, meals can qualify for this treatment if your peak work-load occurs during the normal lunch hour. However, they do not qualify if the reason for the short meal period is to allow the employee to leave earlier in the day.

Example. Frank is a bank teller who works from 9 a.m. to 5 p.m. The bank furnishes his lunch without charge in a cafeteria the bank maintains on its premises. The bank furnishes these meals to Frank to limit his lunch period to 30 minutes, since the bank's peak workload occurs during the normal lunch period. If Frank got his lunch elsewhere, it would take him much longer than 30 minutes and the bank strictly enforces the time limit. The bank can exclude the value of these meals from Frank's wages.

Proper meals not otherwise available. Meals you furnish during working hours are furnished for your convenience if the employee could not otherwise eat proper meals within a reasonable period of time. For example, meals can qualify for this treatment if there are insufficient eating facilities near the place of employment.

Meals after work hours. Meals you furnish to an employee immediately after working hours are furnished for your convenience if you would have furnished them during working hours for a substantial nonpay business reason but, because of the work duties, they were not eaten during working hours.

Meals you furnish to promote goodwill, boost morale, or attract prospective employees. Meals you furnish to promote goodwill, boost morale, or attract prospective employees are not considered furnished for your convenience. However, you may be able to exclude their value as discussed under *De Minimis Meals*, earlier.

Meals furnished on nonworkdays or with lodging. You generally cannot exclude from an employee's wages the value of meals you furnish on a day when the employee is not working. However, you can exclude these meals if they are furnished with lodging that is excluded from the employee's wages as discussed under *Lodging on Your Business Premises*, earlier.

Meals with a charge. The fact that you charge for the meals and that your employees may accept or decline the meals is not taken into account in determining whether or not meals are furnished for your convenience.

S corporation shareholder-employee. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Moving Expense Reimbursements

This exclusion applies to any amount you directly or indirectly give to an employee, (including services furnished in kind) as payment for, or reimbursement of, moving expenses. You must make the reimbursement under rules similar to those described in chapter 11 of Publication 535 for reimbursement of expenses for travel, meals, and entertainment under accountable plans.

The exclusion applies only to reimbursement of moving expenses that the employee could deduct if he or she had paid or incurred them without reimbursement. However, it does not apply if the employee actually deducted the expenses in a previous year.

Deductible moving expenses. Deductible moving expenses include only the reasonable expenses of:

- Moving household goods and personal effects from the former home to the new home, and

- Traveling (including lodging) from the former home to the new home.

Deductible moving expenses do not include any expenses for meals and must meet both the distance test and the time test. The distance test is met if the new job location is at least 50 miles farther from the employee's old home than the old job location was. The time test is met if the employee works at least 39 weeks during the first 12 months after arriving in the general area of the new job location.

For more information on deductible moving expenses, see Publication 521, Moving Expenses.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Exclusion from wages. Generally, you can exclude qualifying moving expense reimbursement you provide to an employee from the employee's wages. If you paid the reimbursement directly to the employee, report the amount in box 12 of Form W-2 with the code "P." Do not report payments to a third party for the employee's moving expenses or the value of moving services you provided in kind.

No-Additional-Cost Services

This exclusion applies to a service you provide to an employee if it does not cause you to incur any substantial additional costs. The service must be offered to customers in the ordinary course of the line of business in which the employee performs substantial services.

Generally, no-additional-cost services are excess capacity services, such as airline, bus, or train tickets; hotel rooms; or telephone services provided free or at a reduced price to employees working in those lines of business.

Substantial additional costs. To determine whether you incur substantial additional costs to provide a service to an employee, count any lost revenue as a cost. Do not reduce

1978

CHAPTER 116

TAXATION

SALES AND USE TAX

HOUSE BILL NO. 1257. BY REPRESENTATIVES Hefley, Schaefer, Burns, DeMoulin, Hamlin, Hilsmeier, Tancredo, Baca Barragan, Brinton, DeNier, Lloyd, Sears, Showalter, Strahle, Waldow, Witherspoon, Yost, and Zakheim; also SENATORS Hughes, Decker, Schieffelin, Soash, Woodard, Allshouse, Anderson, Comer, L. Fowler, Groff, Kogovsek, MacManus, McCormick, Meiklejohn, Phelps, Plock, P. Sandoval, and Wunsch.

AN ACT

EXEMPTING MEALS PROVIDED TO EMPLOYEES OF FOOD SERVICE ESTABLISHMENTS FROM STATE SALES AND USE TAXES.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 39-26-104 (1) (e), Colorado Revised Statutes 1973, is amended to read:

39-26-104. Property and services taxed. (1) (e) Upon the amount paid for all meals and cover charges, if any, furnished in any restaurant, eating house, hotel, drugstore, club, resort, or other such place at which meals or food are regularly sold to the public; EXCEPT THAT MEALS PROVIDED TO EMPLOYEES OF SUCH PLACES AT NO CHARGE OR AT A REDUCED CHARGE AND WHICH ARE CONSIDERED AS PART OF THEIR SALARY, WAGES, OR INCOME SHALL BE EXEMPT FROM TAXATION UNDER THE PROVISIONS OF THIS PART 1;

Section 2. 39-26-203 (1), Colorado Revised Statutes 1973, as amended, and as further amended by Session Laws of Colorado 1977, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

39-26-203. Exemptions. (1) (v) To the storage, use, or consumption of food or meals which are provided to employees of a restaurant, eating house, hotel, drugstore, club, resort, or other such place at which food or meals are regularly sold to the public if such are provided to such employees at no charge or at a reduced charge and are considered as part of their salary, wages, or income.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

Section 3. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 5, 1978

Mr. Tancredo,
Mr. Lakem; also
Mr. Kogovsek,

SERVICE

973, is

amount
aurant,
which
MEALS
ARGE
DERED
LL BE
THIS

73, as
977, is
d:

mption
eating
ood or
mploy-
of their

indicate