

Part IV - Items of General Interest

This document announces a settlement initiative allowing hospitality industry taxpayers to resolve issues relating to the provision of employee meals.

Announcement 98-78

The Internal Revenue Service announces today a settlement initiative under which hospitality industry taxpayers may resolve certain income and employment tax issues covering periods through December 31, 1998, relating to employee meals provided in an employer-operated, on-premises eating facility. The hospitality industry includes casinos, hotels, resorts, and other similar establishments.

Taxpayers who accept the terms of the settlement initiative will resolve these issues quickly and will eliminate the need for further potentially costly controversies for the periods covered by the settlement initiative.

The IRS has decided to offer the settlement initiative as a result of the recent Tax Court decisions in Boyd Gaming Corp. v. Commissioner, 106 T.C. No. 19 (1996), and Boyd Gaming Corp. v. Commissioner, 72 T.C.M. (RIA) 2912 (September 30, 1997), *appeal pending* (9th Cir.). Even though the Tax Court opinions addressed some of the issues related to employee meals, other important issues may remain unresolved and thus create uncertainty for taxpayers. The settlement offer is intended to help taxpayers

remove that uncertainty for periods through December 31, 1998. The IRS also issued draft training materials relating to employee meals (see Announcement 98-77).

For some taxpayers, a recent statutory change may also resolve uncertainty that has arisen in the wake of the Boyd Gaming decisions. Section 5002 of the Internal Revenue Service Restructuring and Reform Act of 1998, P.L. 105-206, added section 119(b)(4) to the Internal Revenue Code. Section 119(b)(4) provides that all meals furnished on the business premises of an employer to an employer's employees are treated as furnished for the convenience of the employer -- and therefore are excludable from the employee's income -- if more than half of the employees to whom the meals are furnished on the premises are furnished the meals for the convenience of the employer.

The Service recognizes that new section 119(b)(4) may resolve these issues for some hospitality industry taxpayers; however, industry taxpayers whose issues are not resolved by the amendment to section 119 may wish to take advantage of the settlement initiative.

The settlement initiative resolves the following issues:

- (1) for the taxpayer, the deductibility of expenses for employee meals provided in an employer-operated, on-premises eating facility;
- (2) for the taxpayer, any employment tax liability relating to the provision of employee meals in an employer-operated, on-premises eating facility; and

- (3) for the employee, any income tax or employment tax liability relating to the receipt of employee meals in an employer-operated, on-premises eating facility.

If a taxpayer accepts the offer to resolve these issues through this settlement initiative, the following terms will apply with respect to meals provided on or before December 31, 1998:

- I. For taxable years beginning before January 1, 1995, the limitation set forth in I.R.C. section 274(n)(1), as in effect for each year at issue, shall apply, without exception, to the expense of providing meals to taxpayer's employees.
- II. For taxable years beginning on or after January 1, 1995 and on or before January 1, 1998, the taxpayer may deduct 70% of the otherwise allowable expense (prior to the application of section 274(n)(1)) of providing meals to taxpayer's employees.
- III. For taxable years beginning after January 1, 1998 and before December 31, 1998, the taxpayer may deduct 70% of the otherwise allowable expense (prior to the application of section 274(n)(1)) of providing meals to taxpayer's employees for meals provided during the months in such tax year that precede January, 1999. For example, a taxpayer with a tax year beginning October 1, 1998, may deduct 70% of the expense of such meals provided during three months (October 1998 through

December 1998).

- IV. The taxpayer will not be liable for income tax withholding, FICA taxes, or FUTA taxes on meals provided to taxpayer's employees in the taxpayer's employer-operated, on-premises, eating facility for any tax period ending on or before December 31, 1998.

The settlement initiative is available only to taxpayers in the hospitality industry who have (1) provided free or reduced charge meals to employees on their business premises on a regular basis for more than a mere compensatory purpose, and (2) indicated in writing their interest in accepting the offer no later than 30 days after the draft training materials are finalized. The training materials are expected to be finalized by October 31, 1998.

An eligible taxpayer, whether or not currently under examination or in litigation, indicates in writing its interest in accepting the offer under this settlement initiative by mailing the following information to the Southwest District Office, Employee Meals Settlement Agent:

"Taxpayer's Name _____

Taxpayer's Address _____

Employer Identification Number _____

On behalf of the above-named taxpayer, I am interested in accepting the settlement offer described in Announcement 98-78, I.R.B. 1998-34 (August 24, 1998), relating to the provision of employee meals in an employer-operated, on-premises eating facility. Please send me the appropriate materials.

By _____ Date _____

Title _____"

Mail the above completed request to the following address no later than 30 days after the finalization of the training materials:

Employee Meals Settlement Agent
Internal Revenue Service
4750 West Oakey Blvd.
Las Vegas, NV 89102

The above completed request can also be faxed to (702) 455-1175. For additional information, contact the Southwest District Office by calling the Employee Meals Settlement Agent at (702) 455-1403.

Upon indication of interest, a taxpayer will receive a letter of instructions regarding how to accept the settlement offer. Each taxpayer who accepts the offer will execute a

closing agreement (Form 906) to document the resolution of these issues. Employees of a taxpayer who executes a closing agreement will not be liable for income taxes or FICA taxes on the fair market value of meals received in the taxpayer's employer-operated, on-premises, eating facility for any tax period ending on or before December 31, 1998. No agreements other than that with the taxpayer are necessary in order for the employee of such taxpayer to receive the benefit of the settlement initiative.

Taxpayers, including those currently under examination or in litigation, will not be required to accept the terms of the settlement initiative. If a taxpayer does not believe that the offer is appropriate for its case, the taxpayer may decline to participate in the settlement initiative, and the case will be handled under normal procedures. If participation is declined, the final result in a case could be either more or less favorable than the settlement offer, depending on the merits of the taxpayer's position.

The principal author of this announcement is Thomas Burger, Director, Office of Employment Tax Administration and Compliance (OETAC). For further information regarding this announcement contact Bob Patrick at (702) 455-1403 (not a toll-free call).