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Fringe Benefits

Fall 2012 Agenda for Tax Update included current headlines; IRS exams; exempt status issues; UBTI; charitable contributions; IRS forms; severance pay; employee v independent contractor classification; case study
Fringe Benefits

Working Condition Fringe Benefit (§ 132(a)(3))

- Defined in § 132(d)
- Reference to § 162 - ordinary (usual and customary) and necessary (more than remotely or incidentally connected) business expense
- Special rules for traveling expenses under §162(a)(2), which includes lodging and meals: not lavish or extravagant / away from home
- Away from home nuances – temporarily away from home (1 year or less); travel requiring sleep or rest
- Business entertainment rules
- Relationship between §162 and §262 (personal)
Fringe Benefits

De Minimis Fringe Benefit (§ 132(a)(4))

- Defined in § 132(e)
- Value is small
- Accounting for it unreasonable
- Takes into account frequency
- Overtime issue
Fringe Benefits

No Additional Cost Service Fringe Benefit (§ 132(a)(1))

- Defined in § 132(b)
- Service offered for sale in ordinary course of line of business in which employee is performing services
- Employer incurs no substantial additional cost
- Takes into account opportunity cost (forgone revenue)
Fringe Benefits

Meals and Lodging Furnished for the Convenience of the Employer (§ 119)

- Meals furnished on the business premise of the employer
- Generally, meals furnished before or after working hours of employee are not eligible for this exclusion
- Regarding lodging, the value is only excluded if 1) the lodging must be furnished for the convenience of the employer; 2) the employee must be required to accept the lodging as a condition of employment; and 3) the lodging must be on the business premise of the employer
Fringe Benefits

Meals – What, then, about the following:

- Employee / Vendor meal
- Employee / Donor meal
- Employee / Employee meal
- Employee only meal while traveling to teach off campus class or attend off campus work related event in another city
- Employee only meal on Saturday
- Employee / Spouse meal
- Group employee meals

Lodging
Wrap up thoughts

- Always start with IRC §61
- Consider discrimination provisions for IRC §132(a)(1) and §132(a)(2)
- Remember IRC §132 doesn’t apply if another section is on point
- Expanded definition of “employee” for IRC sections 132(a)(1) and 132(a)(2)
Questions and Answers?

Thank you!

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