

TITLE 26 - INTERNAL REVENUE CODE

Subtitle A - Income Taxes

CHAPTER 1 - NORMAL TAXES AND SURTAXES

Subchapter B - Computation of Taxable Income

PART IX - ITEMS NOT DEDUCTIBLE

§ 274. Disallowance of certain entertainment, etc., expenses

(a) Entertainment, amusement, or recreation

(1) In general

No deduction otherwise allowable under this chapter shall be allowed for any item—

(A) Activity

With respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, unless the taxpayer establishes that the item was directly related to, or, in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that such item was associated with, the active conduct of the taxpayer's trade or business, or

(B) Facility

With respect to a facility used in connection with an activity referred to in subparagraph (A). In the case of an item described in subparagraph (A), the deduction shall in no event exceed the portion of such item which meets the requirements of subparagraph (A).

(2) Special rules

For purposes of applying paragraph (1)—

(A) Dues or fees to any social, athletic, or sporting club or organization shall be treated as items with respect to facilities.

(B) An activity described in section 212 shall be treated as a trade or business.

(C) In the case of a club, paragraph (1)(B) shall apply unless the taxpayer establishes that the facility was used primarily for the furtherance of the taxpayer's trade or business and that the item was directly related to the active conduct of such trade or business.

(3) Denial of deduction for club dues

Notwithstanding the preceding provisions of this subsection, no deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.

(b) Gifts

(1) Limitation

No deduction shall be allowed under section 162 or section 212 for any expense for gifts made directly or indirectly to any individual to the extent that such expense, when added to prior expenses of the taxpayer for gifts made to such individual during the same taxable year, exceeds \$25. For purposes of this section, the term "gift" means any item excludable from gross income of the recipient under section 102 which is not excludable from his gross income under any other provision of this chapter, but such term does not include—

(A) an item having a cost to the taxpayer not in excess of \$4.00 on which the name of the taxpayer is clearly and permanently imprinted and which is one of a number of identical items distributed generally by the taxpayer, or

(B) a sign, display rack, or other promotional material to be used on the business premises of the recipient.

(2) Special rules

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

(A) In the case of a gift by a partnership, the limitation contained in paragraph (1) shall apply to the partnership as well as to each member thereof.

(B) For purposes of paragraph (1), a husband and wife shall be treated as one taxpayer.

(c) Certain foreign travel

(1) In general

In the case of any individual who travels outside the United States away from home in pursuit of a trade or business or in pursuit of an activity described in section 212, no deduction shall be allowed under section 162, or section 212 for that portion of the expenses of such travel otherwise allowable under such section which, under regulations prescribed by the Secretary, is not allocable to such trade or business or to such activity.

(2) Exception

Paragraph (1) shall not apply to the expenses of any travel outside the United States away from home if—

(A) such travel does not exceed one week, or

(B) the portion of the time of travel outside the United States away from home which is not attributable to the pursuit of the taxpayer's trade or business or an activity described in section 212 is less than 25 percent of the total time on such travel.

(3) Domestic travel excluded

For purposes of this subsection, travel outside the United States does not include any travel from one point in the United States to another point in the United States.

(d) Substantiation required

No deduction or credit shall be allowed—

(1) under section 162 or 212 for any traveling expense (including meals and lodging while away from home),

(2) for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity,

(3) for any expense for gifts, or

(4) with respect to any listed property (as defined in section 280F (d)(4)),

unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement

(A) the amount of such expense or other item,

(B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift,

(C) the business purpose of the expense or other item, and

(D) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift. The Secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense which does not exceed an amount prescribed pursuant to such regulations. This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i)).

(e) Specific exceptions to application of subsection (a)

Subsection (a) shall not apply to—

(1) Food and beverages for employees

Expenses for food and beverages (and facilities used in connection therewith) furnished on the business premises of the taxpayer primarily for his employees.

(2) Expenses treated as compensation

(A) In general

Except as provided in subparagraph (B), expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).

(B) Specified individuals**(i) In general**

In the case of a recipient who is a specified individual, subparagraph (A) and paragraph (9) shall each be applied by substituting "to the extent that the expenses do not exceed the amount of the expenses which" for "to the extent that the expenses".

(ii) Specified individual

For purposes of clause (i), the term "specified individual" means any individual who—

(I) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to the taxpayer or a related party to the taxpayer, or

(II) would be subject to such requirements if the taxpayer (or such related party) were an issuer of equity securities referred to in such section.

For purposes of this clause, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267 (b) or 707 (b).

(3) Reimbursed expenses

Expenses paid or incurred by the taxpayer, in connection with the performance by him of services for another person (whether or not such other person is his employer), under a reimbursement or other expense allowance arrangement with such other person, but this paragraph shall apply—

(A) where the services are performed for an employer, only if the employer has not treated such expenses in the manner provided in paragraph (2), or

(B) where the services are performed for a person other than an employer, only if the taxpayer accounts (to the extent provided by subsection (d)) to such person.

(4) Recreational, etc., expenses for employees

Expenses for recreational, social, or similar activities (including facilities therefor) primarily for the benefit of employees (other than employees who are highly compensated employees (within the meaning of section 414 (q))). For purposes of this paragraph, an individual owning less than a 10-percent interest in the taxpayer's trade or business shall not be considered a shareholder or other owner, and for such purposes an individual shall be treated as owning any interest owned by a member of his family (within the meaning of section 267 (c)(4)). This paragraph shall not apply for purposes of subsection (a)(3).

(5) Employees, stockholder, etc., business meetings

Expenses incurred by a taxpayer which are directly related to business meetings of his employees, stockholders, agents, or directors.

(6) Meetings of business leagues, etc.

Expenses directly related and necessary to attendance at a business meeting or convention of any organization described in section 501 (c)(6) (relating to business leagues, chambers of commerce, real estate boards, and boards of trade) and exempt from taxation under section 501 (a).

(7) Items available to public

Expenses for goods, services, and facilities made available by the taxpayer to the general public.

(8) Entertainment sold to customers

Expenses for goods or services (including the use of facilities) which are sold by the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth.

(9) Expenses includible in income of persons who are not employees

Expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less than \$600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included.

For purposes of this subsection, any item referred to in subsection (a) shall be treated as an expense.

(f) Interest, taxes, casualty losses, etc.

This section shall not apply to any deduction allowable to the taxpayer without regard to its connection with his trade or business (or with his income-producing activity). In the case of a taxpayer which is not an individual, the preceding sentence shall be applied as if it were an individual.

(g) Treatment of entertainment, etc., type facility

For purposes of this chapter, if deductions are disallowed under subsection (a) with respect to any portion of a facility, such portion shall be treated as an asset which is used for personal, living, and family purposes (and not as an asset used in the trade or business).

(h) Attendance at conventions, etc.**(1) In general**

In the case of any individual who attends a convention, seminar, or similar meeting which is held outside the North American area, no deduction shall be allowed under section 162 for expenses allocable to such meeting unless the taxpayer establishes that the meeting is directly related to the active conduct of his trade or business and that, after taking into account in the manner provided by regulations prescribed by the Secretary—

- (A) the purpose of such meeting and the activities taking place at such meeting,
- (B) the purposes and activities of the sponsoring organizations or groups,
- (C) the residences of the active members of the sponsoring organization and the places at which other meetings of the sponsoring organization or groups have been held or will be held, and
- (D) such other relevant factors as the taxpayer may present,

it is as reasonable for the meeting to be held outside the North American area as within the North American area.

(2) Conventions on cruise ships

In the case of any individual who attends a convention, seminar, or other meeting which is held on any cruise ship, no deduction shall be allowed under section 162 for expenses allocable to such meeting, unless the taxpayer meets the requirements of paragraph (5) and establishes that the meeting is directly related to the active conduct of his trade or business and that—

- (A) the cruise ship is a vessel registered in the United States; and
- (B) all ports of call of such cruise ship are located in the United States or in possessions of the United States.

With respect to cruises beginning in any calendar year, not more than \$2,000 of the expenses attributable to an individual attending one or more meetings may be taken into account under section 162 by reason of the preceding sentence.

(3) Definitions

For purposes of this subsection—

(A) North American area

The term “North American area” means the United States, its possessions, and the Trust Territory of the Pacific Islands, and Canada and Mexico.

(B) Cruise ship

The term “cruise ship” means any vessel sailing within or without the territorial waters of the United States.

(4) Subsection to apply to employer as well as to traveler

(A) Except as provided in subparagraph (B), this subsection shall apply to deductions otherwise allowable under section 162 to any person, whether or not such person is the individual attending the convention, seminar, or similar meeting.

(B) This subsection shall not deny a deduction to any person other than the individual attending the convention, seminar, or similar meeting with respect to any amount paid by such person to or on behalf of such individual if includible in the gross income of such individual. The preceding sentence shall not apply if the amount is required to be included in any information return filed by such person under part III of subchapter A of chapter 61 and is not so included.

(5) Reporting requirements

No deduction shall be allowed under section 162 for expenses allocable to attendance at a convention, seminar, or similar meeting on any cruise ship unless the taxpayer claiming the deduction attaches to the return of tax on which the deduction is claimed—

(A) a written statement signed by the individual attending the meeting which includes—

- (i)** information with respect to the total days of the trip, excluding the days of transportation to and from the cruise ship port, and the number of hours of each day of the trip which such individual devoted to scheduled business activities,
- (ii)** a program of the scheduled business activities of the meeting, and
- (iii)** such other information as may be required in regulations prescribed by the Secretary; and

(B) a written statement signed by an officer of the organization or group sponsoring the meeting which includes—

- (i)** a schedule of the business activities of each day of the meeting,
- (ii)** the number of hours which the individual attending the meeting attended such scheduled business activities, and
- (iii)** such other information as may be required in regulations prescribed by the Secretary.

(6) Treatment of conventions in certain Caribbean countries

(A) In general

For purposes of this subsection, the term “North American area” includes, with respect to any convention, seminar, or similar meeting, any beneficiary country if (as of the time such meeting begins)—

- (i)** there is in effect a bilateral or multilateral agreement described in subparagraph (C) between such country and the United States providing for the exchange of information between the United States and such country, and
- (ii)** there is not in effect a finding by the Secretary that the tax laws of such country discriminate against conventions held in the United States.

(B) Beneficiary country

For purposes of this paragraph, the term “beneficiary country” has the meaning given to such term by section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act; except that such term shall include Bermuda.

(C) Authority to conclude exchange of information agreements

(i) In general

The Secretary is authorized to negotiate and conclude an agreement for the exchange of information with any beneficiary country. Except as provided in clause (ii), an exchange of information agreement shall provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares. The exchange of information agreement shall be terminable by either country on reasonable notice and shall provide that information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration or oversight of, or in the determination of appeals in respect of, taxes of the United States or the beneficiary country and will be used by such persons or authorities only for such purposes.

(ii) Nondisclosure of qualified confidential information sought for civil tax purposes

An exchange of information agreement need not provide for the exchange of qualified confidential information which is sought only for civil tax purposes if—

(I) the Secretary of the Treasury, after making all reasonable efforts to negotiate an agreement which includes the exchange of such information, determines that such an agreement cannot be negotiated but that the agreement which was negotiated will significantly assist in the administration and enforcement of the tax laws of the United States, and

(II) the President determines that the agreement as negotiated is in the national security interest of the United States.

(iii) Qualified confidential information defined

For purposes of this subparagraph, the term “qualified confidential information” means information which is subject to the nondisclosure provisions of any local law of the beneficiary country regarding bank secrecy or ownership of bearer shares.

(iv) Civil tax purposes

For purposes of this subparagraph, the determination of whether information is sought only for civil tax purposes shall be made by the requesting party.

(D) Coordination with other provisions

Any exchange of information agreement negotiated under subparagraph (C) shall be treated as an income tax convention for purposes of section 6103 (k)(4). The Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligation of the United States under an agreement referred to in subparagraph (C).

(E) Determinations published in the Federal Register

The following shall be published in the Federal Register—

(i) any determination by the President under subparagraph (C)(ii) (including the reasons for such determination),

(ii) any determination by the Secretary under subparagraph (C)(ii) (including the reasons for such determination), and

(iii) any finding by the Secretary under subparagraph (A)(ii) (and any termination thereof).

(7) Seminars, etc. for section 212 purposes

No deduction shall be allowed under section 212 for expenses allocable to a convention, seminar, or similar meeting.

(i) Qualified nonpersonal use vehicle

For purposes of subsection (d), the term “qualified nonpersonal use vehicle” means any vehicle which, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes.

(j) Employee achievement awards

(1) General rule

No deduction shall be allowed under section 162 or section 212 for the cost of an employee achievement award except to the extent that such cost does not exceed the deduction limitations of paragraph (2).

(2) Deduction limitations

The deduction for the cost of an employee achievement award made by an employer to an employee—

(A) which is not a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year which are not qualified plan awards, shall not exceed \$400, and

(B) which is a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year (including employee achievement awards which are not qualified plan awards), shall not exceed \$1,600.

(3) Definitions

For purposes of this subsection—

(A) Employee achievement award

The term “employee achievement award” means an item of tangible personal property which is—

(i) transferred by an employer to an employee for length of service achievement or safety achievement,

(ii) awarded as part of a meaningful presentation, and

(iii) awarded under conditions and circumstances that do not create a significant likelihood of the payment of disguised compensation.

(B) Qualified plan award

(i) In general

The term “qualified plan award” means an employee achievement award awarded as part of an established written plan or program of the taxpayer which does not discriminate in favor of highly compensated employees (within the meaning of section 414 (q)) as to eligibility or benefits.

(ii) Limitation

An employee achievement award shall not be treated as a qualified plan award for any taxable year if the average cost of all employee achievement awards which are provided by the employer during the year, and which would be qualified plan awards but for this subparagraph, exceeds \$400. For purposes of the preceding sentence, average cost shall be determined by including the entire cost of qualified plan awards, without taking into account employee achievement awards of nominal value.

(4) Special rules

For purposes of this subsection—

(A) Partnerships

In the case of an employee achievement award made by a partnership, the deduction limitations contained in paragraph (2) shall apply to the partnership as well as to each member thereof.

(B) Length of service awards

An item shall not be treated as having been provided for length of service achievement if the item is received during the recipient's 1st 5 years of employment or if the recipient received a length of service achievement award (other than an award excludable under section 132 (e)(1)) during that year or any of the prior 4 years.

(C) Safety achievement awards

An item provided by an employer to an employee shall not be treated as having been provided for safety achievement if—

- (i) during the taxable year, employee achievement awards (other than awards excludable under section 132 (e)(1)) for safety achievement have previously been awarded by the employer to more than 10 percent of the employees of the employer (excluding employees described in clause (ii)), or
- (ii) such item is awarded to a manager, administrator, clerical employee, or other professional employee.

(k) Business meals**(1) In general**

No deduction shall be allowed under this chapter for the expense of any food or beverages unless—

- (A) such expense is not lavish or extravagant under the circumstances, and
- (B) the taxpayer (or an employee of the taxpayer) is present at the furnishing of such food or beverages.

(2) Exceptions

Paragraph (1) shall not apply to—

- (A) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e), and
- (B) any other expense to the extent provided in regulations.

(l) Additional limitations on entertainment tickets**(1) Entertainment tickets****(A) In general**

In determining the amount allowable as a deduction under this chapter for any ticket for any activity or facility described in subsection (d)(2), the amount taken into account shall not exceed the face value of such ticket.

(B) Exception for certain charitable sports events

Subparagraph (A) shall not apply to any ticket for any sports event—

- (i) which is organized for the primary purpose of benefiting an organization which is described in section 501 (c)(3) and exempt from tax under section 501 (a),
- (ii) all of the net proceeds of which are contributed to such organization, and
- (iii) which utilizes volunteers for substantially all of the work performed in carrying out such event.

(2) Skyboxes, etc.

In the case of a skybox or other private luxury box leased for more than 1 event, the amount allowable as a deduction under this chapter with respect to such events shall not exceed the sum of the face value of non-luxury box seat tickets for the seats in such box covered by the lease. For purposes of the preceding sentence, 2 or more related leases shall be treated as 1 lease.

(m) Additional limitations on travel expenses

(1) Luxury water transportation

(A) In general

No deduction shall be allowed under this chapter for expenses incurred for transportation by water to the extent such expenses exceed twice the aggregate per diem amounts for days of such transportation. For purposes of the preceding sentence, the term “per diem amounts” means the highest amount generally allowable with respect to a day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States.

(B) Exceptions

Subparagraph (A) shall not apply to—

- (i) any expense allocable to a convention, seminar, or other meeting which is held on any cruise ship, and
- (ii) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).

(2) Travel as form of education

No deduction shall be allowed under this chapter for expenses for travel as a form of education.

(3) Travel expenses of spouse, dependent, or others

No deduction shall be allowed under this chapter (other than section 217) for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless—

- (A) the spouse, dependent, or other individual is an employee of the taxpayer,
- (B) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and
- (C) such expenses would otherwise be deductible by the spouse, dependent, or other individual.

(n) Only 50 percent of meal and entertainment expenses allowed as deduction

(1) In general

The amount allowable as a deduction under this chapter for—

- (A) any expense for food or beverages, and
- (B) any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such activity,

shall not exceed 50 percent of the amount of such expense or item which would (but for this paragraph) be allowable as a deduction under this chapter.

(2) Exceptions

Paragraph (1) shall not apply to any expense if—

- (A) such expense is described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),
- (B) in the case of an expense for food or beverages, such expense is excludable from the gross income of the recipient under section 132 by reason of subsection (e) thereof (relating to de minimis fringes),
- (C) such expense is covered by a package involving a ticket described in subsection (l)(1)(B),

- (D) in the case of an employer who pays or reimburses moving expenses of an employee, such expenses are includible in the income of the employee under section 82, or
- (E) such expense is for food or beverages—
 - (i) required by any Federal law to be provided to crew members of a commercial vessel,
 - (ii) provided to crew members of a commercial vessel—
 - (I) which is operating on the Great Lakes, the Saint Lawrence Seaway, or any inland waterway of the United States, and
 - (II) which is of a kind which would be required by Federal law to provide food and beverages to crew members if it were operated at sea,
 - (iii) provided on an oil or gas platform or drilling rig if the platform or rig is located offshore, or
 - (iv) provided on an oil or gas platform or drilling rig, or at a support camp which is in proximity and integral to such platform or rig, if the platform or rig is located in the United States north of 54 degrees north latitude.

Clauses (i) and (ii) of subparagraph (E) shall not apply to vessels primarily engaged in providing luxury water transportation (determined under the principles of subsection (m)). In the case of the employee, the exception of subparagraph (A) shall not apply to expenses described in subparagraph (D).

(3) Special rule for individuals subject to Federal hours of service

(A) In general

In the case of any expenses for food or beverages consumed while away from home (within the meaning of section 162 (a)(2)) by an individual during, or incident to, the period of duty subject to the hours of service limitations of the Department of Transportation, paragraph (1) shall be applied by substituting “the applicable percentage” for “50 percent”.

(B) Applicable percentage

For purposes of this paragraph, the term “applicable percentage” means the percentage determined under the following table:

For taxable years beginning The applicable
in calendar year— percentage is—

1998 or 1999	55
2000 or 2001	60
2002 or 2003	65
2004 or 2005	70
2006 or 2007	75
2008 or thereafter	80.

(o) Regulatory authority

The Secretary shall prescribe such regulations as he may deem necessary to carry out the purposes of this section, including regulations prescribing whether subsection (a) or subsection (b) applies in cases where both such subsections would otherwise apply.

(Added Pub. L. 87–834, § 4(a)(1), Oct. 16, 1962, 76 Stat. 974; amended Pub. L. 88–272, title II, § 217(a), Feb. 26, 1964, 78 Stat. 56; Pub. L. 94–455, title VI, § 602(a), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1572, 1834; Pub. L. 95–600, title III, § 361(a), (b), title VII, § 701(g)(1)–(3), Nov. 6, 1978, 92 Stat. 2847, 2903, 2904; Pub. L. 96–222, title I, § 103(a)(10)(A), (B) Apr. 1, 1980, 94 Stat. 212; Pub. L. 96–598, § 5(a), Dec. 24, 1980, 94 Stat. 3488; Pub. L. 96–605, title I, § 108(a), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 96–608, § 4(a), Dec. 28, 1980, 94 Stat. 3552; Pub. L. 97–34, title II, § 265(a), (b), Aug. 13, 1981, 95 Stat. 265; Pub. L. 97–248, title III, §§ 307(a)(1), 308 (a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 97–424, title V, § 543(a), Jan. 6, 1983, 96 Stat. 2195; Pub. L. 98–67, title I, § 102(a), title II, § 222(a), Aug. 5, 1983, 97 Stat. 369, 395; Pub. L. 98–369, div. A, title I, § 179(b)(1), title VIII, § 801(c), July 18, 1984, 98 Stat. 718, 995; Pub. L. 99–44, §§ 1(a), 2, 6 (b), May 24, 1985, 99 Stat. 77, 79; Pub. L. 99–514, title I, §§ 122(c), (d), 142 (a)–(c), title XI, § 1114(b)(6), Oct. 22, 1986, 100 Stat. 2110, 2117–2120, 2451; Pub. L. 100–647, title I, §§ 1001(g)(1)–(4)(A), (5), 1018(u)(2), title VI, § 6003(a), Nov. 10, 1988, 102 Stat. 3351, 3352, 3590, 3684; Pub. L. 101–239, title VII, §§ 7816(a), 7841 (d)(18), Dec. 19, 1989, 103 Stat. 2420, 2429; Pub. L. 101–508, title XI, § 11802(b), Nov. 5, 1990, 104 Stat. 1388–529; Pub. L. 103–66, title XIII, §§ 13209(a), (b), 13210 (a), (b), 13272 (a), Aug. 10, 1993, 107 Stat. 469, 542; Pub. L. 105–34, title IX, § 969(a), Aug. 5, 1997, 111 Stat. 896; Pub. L. 108–357, title VIII, § 907(a), Oct. 22, 2004, 118 Stat. 1654; Pub. L. 109–135, title IV, § 403(mm), Dec. 21, 2005, 119 Stat. 2632.)

References in Text

Section 16 of the Securities Exchange Act of 1934, referred to in subsec. (e)(2)(B)(ii), is classified to section 78p of Title 15, Commerce and Trade.

Section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, referred to in subsec. (h)(6)(B), is classified to section 2702 (a)(1)(A) of Title 19, Customs Duties.

Amendments

2005—Subsec. (e)(2)(B)(ii). Pub. L. 109–135, § 403(mm)(1), (2), inserted “or a related party to the taxpayer” after “with respect to the taxpayer” in subcl. (I), “(or such related party)” after “the taxpayer” in subcl. (II), and “For purposes of this clause, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267 (b) or 707 (b).” at end.

2004—Subsec. (e)(2). Pub. L. 108–357 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer’s return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).”

1997—Subsec. (n)(3). Pub. L. 105–34 added par. (3).

1993—Subsec. (a)(3). Pub. L. 103–66, § 13210(a), added par. (3).

Subsec. (e)(4). Pub. L. 103–66, § 13210(b), inserted at end “This paragraph shall not apply for purposes of subsection (a)(3).”

Subsec. (m)(3). Pub. L. 103–66, § 13272(a), added par. (3).

Subsec. (n). Pub. L. 103–66, § 13209(a), (b), substituted “50” for “80” in heading and in concluding provisions of par. (1).

1990—Subsec. (l)(2). Pub. L. 101–508, § 11802(b)(1), in amending par. (2) generally, struck out “(A) In general” and subpar. (B) which provided for phase-in deductions of skybox tickets in the 1987 and 1988 taxable years.

Subsec. (n)(2). Pub. L. 101–508, § 11802(b)(2)(A)(ii), (iii), substituted “described in subparagraph (D)” for “described in subparagraph (E)” and “of subparagraph (E)” for “of subparagraph (F)” in concluding provisions.

Subsec. (n)(2)(D) to (F). Pub. L. 101–508, § 11802(b)(2)(A)(i), redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: “in the case of an expense for food or beverages before January 1, 1989, such expense is an integral part of a qualified meeting.”

Subsec. (n)(3). Pub. L. 101–508, § 11802(b)(2)(B), struck out par. (3) “Qualified meeting” which read as follows: “For purposes of paragraph (2)(D), the term ‘qualified meeting’ means any convention, seminar, annual meeting, or similar business program with respect to which—

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“(A) an expense for food or beverages is not separately stated,

“(B) more than 50 percent of the participants are away from home,

“(C) at least 40 individuals attend, and

“(D) such food and beverages are part of a program which includes a speaker.”

1989—Subsec. (n)(2). Pub. L. 101–239, § 7816(a), added a new subpar. (E), substantially identical to former subpar. (E), and moved sentence formerly appearing between subpars. (E) and (F) to end of concluding provisions after subpar. (F).

Subsec. (n)(2)(F)(i). Pub. L. 101–239, § 7841(d)(18), inserted “any” before “Federal law”.

1988—Subsec. (b)(1). Pub. L. 100–647, § 1018(u)(2), related to execution of amendment by Pub. L. 99–514, § 122(c)(2), see 1986 Amendment note below.

Subsec. (h)(1), (2). Pub. L. 100–647, § 1001(g)(5), substituted “trade or business and that” for “trade or business that”.

Subsec. (k)(2). Pub. L. 100–647, § 1001(g)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Paragraph (1) shall not apply to any expense if subsection (a) does not apply to such expense by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).”

Subsec. (m)(1)(B)(ii). Pub. L. 100–647, § 1001(g)(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “any expense to which subsection (a) does not apply by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).”

Subsec. (n)(2). Pub. L. 100–647, § 6003(a), struck out “or” at end of subpar. (D), substituted “, or” for the period at end of subpar. (E), and added subpar. (F) and flush sentence at end.

Pub. L. 100–647, § 1001(g)(4)(A), struck out “or” at end of subpar. (C), substituted “, or” for the period at end of subpar. (D), and added subpar. (E) and flush sentence at end.

Pub. L. 100–647, § 1001(g)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “subsection (a) does not apply to such expense by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).”

1986—Subsec. (b)(1). Pub. L. 99–514, § 122(c)(1)–(3), and Pub. L. 100–647, § 1018(u)(2), made conforming amendments to subpars. (A) and (B) and struck out subpar. (C) which read as follows: “an item of tangible personal property which is awarded to an employee by reason of length of service, productivity, or safety achievement, but only to the extent that—

“(i) the cost of such item to the taxpayer does not exceed \$400, or

“(ii) such item is a qualified plan award.”

Subsec. (b)(3). Pub. L. 99–514, § 122(c)(4), struck out par. (3) relating to qualified plan award, defining such term in subpar. (A), and providing for average amount of awards in subpar. (B) and maximum amount per item in subpar. (C).

Subsec. (e)(1). Pub. L. 99–514, § 142(a)(2)(A), redesignated par. (2) as (1) and struck out former par. (1), business meals, which read as follows: “Expenses for food and beverages furnished to any individual under circumstances which (taking into account the surroundings in which furnished, the taxpayer’s trade, business, or income-producing activity and the relationship to such trade, business, or activity of the persons to whom the food and beverages are furnished) are of a type generally considered to be conducive to a business discussion.”

Subsec. (e)(2). Pub. L. 99–514, § 142(a)(2)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (e)(3). Pub. L. 99–514, § 142(a)(2), redesignated par. (4) as (3) and substituted “paragraph (2)” for “paragraph (3)” in subpar. (A). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 99–514, § 1114(b)(6), which directed the substitution of “highly compensated employees (within the meaning of section 414 (q))” for “officers, shareholders or other owners, or highly compensated employees” in par. (5) was executed to par. (4) to reflect the probable intent of Congress, in view of the redesignation of par. (5) as (4) by section 142(a)(2)(A) of Pub. L. 99–514.

Pub. L. 99–514, § 142(a)(2)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5) to (10). Pub. L. 99–514, § 142(a)(2)(A), redesignated pars. (5) to (10) as pars. (4) to (9), respectively.

Subsec. (h). Pub. L. 99–514, § 142(c), struck out “or 212” after “section 162” in introductory provisions of pars. (1), (2), and (5), in closing provisions of par. (2), and in par. (4)(A), struck out “or to an activity described in section 212 and” after “active conduct of his trade or business” in introductory provisions of pars. (1) and (2), and added par. (7).

Subsec. (j). Pub. L. 99–514, § 122(d), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 99–514, § 142(a)(1), added subsec. (k). Former subsec. (k) redesignated (o).

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Subsecs. (l) to (n). Pub. L. 99-514, § 142(b), added subsecs. (l) to (n).

Subsec. (o). Pub. L. 99-514, § 142(a)(1), redesignated former subsec. (k) as (o).

1985—Subsec. (d). Pub. L. 99-44, § 2(a), inserted at end “This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i)).”

Pub. L. 99-44, § 1(a), substituted “adequate records or by sufficient evidence corroborating the taxpayer’s own statement” for “adequate contemporaneous records”, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied as if “contemporaneous” had not been added to subsec. (d). See Effective Date of 1985 Amendment note below.

Subsecs. (i), (j). Pub. L. 99-44, § 2(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1984—Subsec. (d). Pub. L. 98-369, § 179(b), substituted, in introductory provisions, “No deduction or credit” for “No deduction” and, in provisions following par. (4), “adequate contemporaneous records” for “adequate records or by sufficient evidence corroborating his own statement” and “the facility or property” for “the facility” in two places, and added par. (4).

Subsec. (h)(6)(D). Pub. L. 98-369, § 801(c), substituted in heading “with other provisions” for “with section 6103” and in text inserted provision that the Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligations of the United States under an agreement referred to in subpar. (C).

1983—Subsec. (e)(3). Pub. L. 98-67, § 102(a), repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Subsec. (h)(2). Pub. L. 97-424, § 543(a)(1), inserted provisions relating to requirements of par. (5) and the description in section 212, and inserted the \$2,000 limit relating to section 162 or 212.

Subsec. (h)(5). Pub. L. 97-424, § 543(a)(2), added par. (5).

Subsec. (h)(6). Pub. L. 98-67, § 227(a), added par. (6).

1982—Subsec. (e)(3). Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (3) is amended by inserting “subchapter A of” before “chapter 24”. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Subsec. (b)(1)(C). Pub. L. 97-34, § 265(a), excluded from term “gift” an award for productivity, designated existing provisions as cl. (i), and as so designated, increased the limitation to \$400 from \$100, and added cl. (ii).

Subsec. (b)(3). Pub. L. 97-34, § 265(b), added par. (3).

1980—Subsec. (a)(2)(C). Pub. L. 96-222, § 103(a)(10)(A), struck out “country” after “the case of a”.

Subsec. (e)(10). Pub. L. 96-605 and Pub. L. 96-598 made identical amendments by adding par. (10).

Subsec. (h) Pub. L. 96-608 substituted provision disallowing any deductions for expenses allocable to a convention, seminar, or other similar meeting outside the North American area unless, taking certain factors into account, it is as reasonable for the meeting to be held outside the North American area as within it, disallowing any deductions for a convention, seminar, or similar meeting held on any cruise ship, and defining North American area and cruise ship, for provision allowing deductions with respect to not more than 2 foreign conventions per year, limiting deductible transportation cost to not to exceed the cost of coach or economy air fare, permitting transportation costs to be fully deductible only if at least one-half of the days are devoted to business related activities, disallowing deductions for subsistence expenses unless the individual attends two-thirds of the business activities, limiting deductible subsistence costs to not to exceed the per diem rate for United States civil servants, defining foreign convention and subsistence expenses, providing that if transportation expenses or subsistence expenses are not separately stated or do not reflect the proper allocation all amounts paid be treated as subsistence expenses, and prescribing special reporting and substantiation requirements.

1978—Subsec. (a)(1). Pub. L. 95-600, § 361(a), substituted provisions allowing no deduction for expenses paid or incurred with respect to a facility which is used in conjunction with an activity which is of a type generally considered to constitute entertainment, amusement, or recreation for provisions allowing a deduction for expenses paid or incurred with respect to a facility if the facility used is primarily for the furtherance of the taxpayer’s business, and the expense is “directly related” to the active conduct of taxpayer’s business.

Subsec. (a)(2)(C). Pub. L. 95-600, § 361(b), as amended by Pub. L. 96-222, § 103(a)(10)(B), added subpar. (C).

Subsec. (h)(3). Pub. L. 95-600, § 701(g)(3), substituted “at least one-half” for “more than one-half” in first sentence.

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Subsec. (h)(6)(D). Pub. L. 95–600, § 701(g)(1), designated existing provisions as cl. (i), inserted introductory phrase “Except as provided in clause (ii)” and substituted “For the purposes” for “For purpose”, and added cl. (ii).

Subsec. (h)(6)(E). Pub. L. 95–600, § 701(g)(2), added subpar. (E).

1976—Subsecs. (c)(1), (d). Pub. L. 94–455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (h). Pub. L. 94–455, § 602(a), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 94–455, §§ 602(a), 1906 (b)(13)(A), redesignated former subsec. (h) as (i) and struck out “or his delegate” after “Secretary”.

1964—Subsec. (c). Pub. L. 88–272 limited subsec. (c) to individuals traveling outside the United States.

Effective Date of 2005 Amendment

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Effective Date of 2004 Amendment

Pub. L. 108–357, title VIII, § 907(b), Oct. 22, 2004, 118 Stat. 1655, provided that: “The amendment made by this section [amending this section] shall apply to expenses incurred after the date of the enactment of this Act [Oct. 22, 2004].”

Effective Date of 1997 Amendment

Section 969(b) of Pub. L. 105–34 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.”

Effective Date of 1993 Amendment

Section 13209(c) of Pub. L. 103–66 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.”

Section 13210(c) of Pub. L. 103–66 provided that: “The amendments made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1993.”

Section 13272(b) of Pub. L. 103–66 provided that: “The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1993.”

Effective Date of 1989 Amendment

Amendment by section 7816(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Effective Date of 1988 Amendment

Amendment by section 1001 (g)(1)–(4)(A), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6003(b) of Pub. L. 100–647 provided that:

“(1) Clauses (i) and (ii) of section 274(n)(2)(F) of the 1986 Code, as added by subsection (a), shall apply to taxable years beginning after December 31, 1988.

“(2) Clauses (iii) and (iv) of section 274(n)(2)(F) of the 1986 Code, as added by subsection (a), shall apply to taxable years beginning after December 31, 1987.”

Effective Date of 1986 Amendment

Amendment by section 122(c), (d) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 142 (a)–(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(6) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

Effective Date of 1985 Amendment

Section 6 (a)–(c) of Pub. L. 99–44, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) Repeals.—The amendment and repeals made by subsections (a) and (b) of section 1 [amending this section and repealing section 179(b)(2), (3) of Pub. L. 98–369 which had amended sections 6653 and 6695 of this title] shall take effect as if included in the amendments made by section 179(b) of the Tax Reform Act of 1984 [Pub. L. 98–369].

“(b) Restoration of Prior Law for 1985.—For taxable years beginning in 1985, section 274(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply as it read before the amendments made by section 179(b)(1) of the Tax Reform Act of 1984 [Pub. L. 98–369, see 1984 Amendments note above].

“(c) Exception From Substantiation Requirements for Qualified Nonpersonal Use Vehicles.—The amendments made by section 2 [amending this section] shall apply to taxable years beginning after December 31, 1985.”

Effective Date of 1984 Amendment

Amendment by section 179(b)(1) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 179(d)(2) of Pub. L. 98–369, set out as an Effective Date note under section 280F of this title.

Amendment by section 801(c) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

Effective Date of 1983 Amendments

Section 222(b) of Pub. L. 98–67 provided that: “The amendment made by subsection (a) [amending this section] shall apply to conventions, seminars, or other meetings which begin after June 30, 1983.”

Section 543(b) of Pub. L. 97–424 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1982.”

Effective Date of 1981 Amendment

Section 265(c) of Pub. L. 97–34 provided that: “The amendments made by this section [amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Aug. 13, 1981].”

Effective Date of 1980 Amendments

Section 4(b) of Pub. L. 96–608, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) of this section [amending this section] shall apply to conventions, seminars, and meetings beginning after December 31, 1980, except that in the case of any convention, seminar, or meeting beginning after such date which was scheduled on or before such date, a person, in such manner as the Secretary of the Treasury or his delegate may prescribe, may elect to have the provisions of section 274(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] be applied to such convention seminar or meeting without regard to such amendment.”

Section 5(b) of Pub. L. 96–598 and section 108(b) of Pub. L. 96–605 provided that: “The amendment made by this section [amending this section] shall apply to any expenses paid or incurred after December 31, 1980, in taxable years ending after such date.”

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

Effective Date of 1978 Amendment

Section 361(c) of Pub. L. 95–600 provided that: “The amendments made by this section [amending this section] shall apply to items paid or incurred after December 31, 1978, in taxable years ending after such date.”

Section 701(g)(4) of Pub. L. 95–600 provided that: “The amendments made by this subsection [amending this section] shall apply to conventions beginning after December 31, 1976.”

Effective Date of 1976 Amendment

Section 602(b) of Pub. L. 94–455 provided that: “The amendments made by this section [amending this section] shall apply to conventions beginning after December 31, 1976.”

Effective Date of 1964 Amendment

Section 217(b) of Pub. L. 88–272 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date.”

Effective Date

Section applicable with respect to taxable years ending after Dec. 31, 1962, but only in respect of periods after such date, see section 4(c) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 162 of this title.

Regulations

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 5 of Pub. L. 99–44 provided that: “Not later than October 1, 1985, the Secretary of the Treasury or his delegate shall prescribe regulations to carry out the provisions of this Act [amending sections 274, 280F, 3402, 6653, and 6695 of this title, and enacting provisions set out as notes under sections 274, 280F, 3402, and 6653 of this title] which shall fully reflect such provisions.”

Section 1(c) of Pub. L. 99–44 provided that: “Regulations issued before the date of the enactment of this Act [May 24, 1985] to carry out the amendments made by paragraphs (1)(C), (2), and (3) of section 179(b) of the Tax Reform Act of 1984 [Pub. L. 98–369, amending sections 274, 6653, and 6695 of this title] shall have no force and effect.”

Savings Provision

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

Certain Recordkeeping Requirements

For treatment of use of automobile by I.R.S. special agent for purposes of this section and section 132 of this title, see section 1567 of Pub. L. 99–514, set out as a note under section 132 of this title.

Substantiation by Adequate Contemporaneous Records

Section 1(a) of Pub. L. 99–44, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided in part that: “the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if the word ‘contemporaneous’ had not been added [by Pub. L. 98–369] to such subsection (d) [subsec. (d) of this section].”

Use of Facilities in Case of Independent Contractors, Etc.

Section 103(a)(10)(C) of Pub. L. 96–222, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(i) In general.—Subsection (a) of section 274 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to disallowance of certain entertainment, etc., expenses) shall not apply to expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74 of such Code.

“(ii) Information return requirement.—Clause (i) shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included in any information return filed by such taxpayer under part III of subchapter A of chapter 61 of such Code [section 6031 et seq. of this title] and is not so included.

“(iii) Application of subparagraph.—This subparagraph shall only apply with respect to expenses paid or incurred during 1979 or 1980.”