

Holiday Gifts, Holiday Tax?

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As we near the end of the holiday season, we wanted to remind employers who are in the giving spirit to be mindful of the tax implications of their generosity. The Internal Revenue Code (the “Code”), unfortunately, may view your gadget and gift card giveaways as taxable fringe benefits, and thus as compensation to your employees, unless the gifts or prizes fall into a narrow category of exclusions under the Code.

What Constitutes a “Fringe Benefit”?

Under Section 61 of the Code, gross income includes compensation for services, including, among other things, fringe benefits. Generally, any payments or benefits flowing from an employer to an employee are presumed to be compensatory. The same is true where an employer transfers something of value either to benefit or for the benefit of the employee.

Are Holiday Gifts and Prizes Taxable?

Under Section 132 of the Code, certain types of fringe benefits are excludable from employee gross income. Generally, holiday gifts and prizes will be excluded under Section 132(e).

Under Section 132(e), an employee will not recognize taxable income for a fringe benefit that constitutes a “*de minimis* fringe benefit.” Section 132(e) generally defines a *de minimis* fringe benefit as “any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer’s employees) so small as to make accounting for it unreasonable or administratively impracticable.” The Code provides no value limit for what constitutes a *de minimis* fringe benefit.

Examples of *De Minimis* Fringe

The below examples have been compiled from the Treasury Regulations, IRS guidance, and applicable case law. This list is meant to be instructive, but not exhaustive, as the determination of whether a fringe benefit is *de minimis*

is a fact-specific inquiry, which can make compliance with the rules challenging.

- **Fringe benefits that are “*de minimis*” and excludible from income**

- Occasional cocktail parties, group meals, or picnics for employees and their guests.
- Traditional birthday or holiday gifts of property (not cash) with a low fair market value.
- Occasional theater or sporting event tickets.
- Coffee, doughnuts, and soft drinks.
- Flowers, fruit, books, or similar property provided to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis).
- Office services such as occasional typing of personal letters by a company secretary, occasional personal use of an employer’s copying machine, and local telephone calls.
- Personal use of an employer-provided cell phone, provided primarily for noncompensatory business reasons.

- **Fringe benefits that are not “*de minimis*” and are includible in income**

- Season tickets to sporting or theatrical events.
- The commuting use of an employer-provided automobile or other vehicle more than one day a month.
- Membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility.
- Employer-provided group-term life insurance on the life of the spouse or child of an employee.
- Use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend.
- Vouchers permitting an employee to charge an amount to the company’s expense account, which are not business expenses.
- An employer-provided holiday gift coupon with a face value of \$35.00 or more that is redeemable at several local grocery stores.

Best Practices for Fringe Benefits

- Cash and cash equivalents (e.g., general use gift cards) are always taxable to the employee.
- If you can easily track or determine the value and recipient of a holiday gift or prize, the conservative approach would be to include the amount in employees’ income no matter how insignificant the value.
- There is no bright-line rule for what the value of a gift needs to be in order to be *de minimis*; however, previously, the IRS has ruled that \$100 and above is not *de minimis*.
- If you want to provide big ticket items, consider including a tax gross-up for employees and include this amount in the holiday gift budget as these will rarely, if ever, be *de minimis*.
- The value to an employee of a great holiday party or low-cost holiday gifts (e.g., turkey, chocolates) is widely regarded as *de minimis*, so long as the employer does not have a practice of providing similar gifts throughout the year.
- Consider offering non-holiday benefits of value that are excludible under the Code at the same time of year (e.g., employee achievement awards).

Takeaways

Given the fact-specific inquiry needed to determine whether a benefit is taxable to an employee and the dearth of detailed formal guidance, employers would do well to plan ahead and consider (i) the tax implications of employee holiday gifts and prizes; (ii) whether any tax gross-ups should be offered; and (iii) the administrative measures that should be implemented to track the value and recipients of gifts.

Happy Holidays!

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