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Reforming the Business Meal Deduction: Matching Statutory Limitations With General Tax Policy

Wendy Gerzog Shaller*

For more than two decades, taxpayers have decried the deduction allowed for business meals.¹ The public largely perceives that a few rich persons² are getting a tax benefit for their extravagant³ and personally enjoyable⁴ dining. Some more sophisticated critics have complained that not only does the taxpayer receive a tax deduction for his expenses, but he also escapes taxation on the benefit or income in kind that he receives.⁵ To the government, the problem with the business meal deduction is not really a question

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3. 1984 Treasury Plan, supra note 2, at 83; Carter Message, supra note 2, at 10.

4. 1984 Treasury Plan, supra note 2, at 82-83 ("has a strong, if not predominant element of personal consumption."); Carter Message, supra note 2, at 11; 1978 Treas. Descriptions and Analyses, supra note 2, at 195.

5. Carter Message, supra note 2, at 11. See Halperin, That's Entertainment, 7 TAX NOTES 299 (Sept. 11, 1978). Cf. I.R.C. §§ 274 (e)(3) and (e)(10) under which the exceptions for disallowance of deductions for entertainment expenses when these amount are includible in the recipient's income.
of lost revenue; rather, it is an example of abuse which most taxpayers can readily understand and which therefore undermines the integrity of a tax system that relies on public confidence. Yet, at the same time, most of the public agree that it is a common custom and thus often a practical necessity to attract and retain business by taking customers or clients out to a restaurant. And, most concur, it costs more to dine out than to "brown bag it" at noon or to eat supper at home with one's family. Since business expenses help create additional taxable income, some deduction for business meals may be justified.

Theoretically, at least, the public should be comfortable with a deduction that mirrors these views. For example, because the first few dollars of a business meal expense are equivalent to what it would have cost the payor for his own meal had he eaten at home, that amount should be nondeductible. An additional amount equivalent to the "eating out" factor (i.e., the amount attributable to the restaurant's profit on the food, cost of preparation, overhead, as well as taxes, and tips) should be deductible if the expense was indeed motivated by business. Finally, all amounts which exceed a reasonable "eating out" amount and which are therefore extravagant should be nondeductible. Thus, assuming a valid business purpose, the breakdown of a $20 per person breakfast, using the Treasury's estimate of that meal's cost, should be

6. 1984 Treasury Plan, supra note 2, at 84. If it is true, however, that under Reagan's plan (where an estimate of only 15 percent of all business meals would be affected) between .3 and 1 billion dollars per year over the next five years would be raised, then perhaps eliminating the deduction (and thereby affecting all business meals) would create at least a moderate new source of revenue. See The President's Tax Proposals to Congress for Fairness, Growth, and Simplicity 77, 453 (Appendix C) [hereinafter cited as Reagan's Tax Proposals].

7. 1984 Treasury Plan, supra note 2, at 83-84; Carter Message, supra note 2, at 11.


9. See Bowe, 10 Ways to Save $1,000 in the Next Year, Woman's Day 32, 36 (Aug. 13, 1985) [hereinafter cited as 10 Ways].


11. Certainly a particular taxpayer may eat in expensive restaurants daily for purely personal reasons so that the first two cost factors described here would actually overlap. Rather than adopting a subjective test, which would vary according to each taxpayer's lifestyle and which would create an administrative nightmare for the Service, this article uses an estimate of the average cost of a homemade meal which most taxpayers, assuming they are eating and "brown bagging it," would have to pay. See, e.g., 10 Ways, supra note 9 (using a $2 estimate).

12. See 1984 Treasury Plan, supra note 2, at 83.
a $5 nondeductible personal expense (the equivalent of eating breakfast at home), a $5 deductible business expense ("eating-out factor") and a $10 nondeductible "extravagance". If that taxpayer, who for business reasons took a client to breakfast, was entitled to only a $5 deduction for each of their meals, it is likely the payor would limit both the amount of his expense (since he would now be paying the $15 per person expense without government assistance) and the nature of the occasion to one clearly business related.

I. THE LAW TODAY

Ironically, the above illustration is in some sense descriptive of the current state of the law. The statutory requirements for deductibility are first, that the business meal expense be an ordinary and necessary expense attributable to the carrying on of a trade or business14 and, second, that the food and beverages be furnished in surroundings conducive to a business discussion.15 Whether an expense is incurred in relation to one's business is determined by "the origin and the nature" of the expense.16 If the expense is motivated by personal reasons, the taxpayer is not entitled to a deduction since it must be "directly connected with or pertaining to the taxpayer's trade or business."17 Under Sutter v. Commissioner,18 amounts which are not different from or which do not exceed those amounts which would have been spent on one's personal meals are nondeductible. It has also been established that whether an expense is ordinary rather than extraordinary depends upon the custom of the trade of business in which the taxpayer is engaged.19 Like travel expenses,20 meals consumed while not traveling away from home are restricted to amounts which are not "lavish or extravagant".21

However, because the Internal Revenue Service ("the Service")

13. Again, while a homemade meal's cost obviously varies, the Service could affix an amount estimating that expense. Here, for illustrative purposes, assume the validity of the $5 amount. Cf. 10 Ways, supra note 9 (using a $2 estimate).
15. Id. § 274 (e)(1).
18. 21 T.C. 170 (1953).
19. Friedman v. Delaney, 171 F.2d 269 (1st Cir. 1948).
rarely applies Sutter and the "extravagant" restrictions, the full $20 per person for this hypothetical business meal is probably deductible. Moreover, some courts have fashioned their own versions of the business connection requirement.

A. Sutter and The Personal Part of the Meal Expense

The statute and regulation are clear: except as otherwise expressly provided, there is no deduction "for personal, living, or family expenses." The cost of the taxpayer's meals not incurred in traveling away from home are personal expenses. This statute of disallowance preempts the one allowing a deduction for business expenses.

Sutter involved a physician who specialized in industrial medicine. Among numerous other deductions he claimed a deduction for the cost of his own meals at luncheons sponsored by the local Chamber of Commerce and the hospital council. In disallowing the deduction, the Tax Court stated that, "There is no evidence that these costs were any greater than expenditures which petitioner would have been required to make in any event for his own personal purposes."

In 1963, the Service, while acknowledging case holdings that a taxpayer may not deduct that part of the cost of a meal he would normally spend on himself, announced that the Service would only consider Sutter applicable to situations in which a taxpayer had tried to masquerade a substantial amount of personal expenses as deductible business expenses. Similarly, most courts have restricted the application of Sutter to cases in which a taxpayer has tried to deduct a large number of his own meals as business expenses. The reason for the reluctance to use Sutter is generally

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23. I say "probably" since the expense could be attacked on the basis of any of the legal principles - particularly under Sutter - aforementioned.


29. See, e.g., Moss, 758 F.2d at 213; La Forge v. Commissioner, 434 F.2d 370 (2d Cir.)
seen as being attributable to the administrative difficulties that would result from attempting to measure the personal cost of a meal with any consistency.\textsuperscript{30}

Thus, at present, the personal element of a business meal, what it would cost the average taxpayer to feed himself, is as deductible as the extra amount he must spend in taking a client out to dinner.

**B. The Extravagant Part**

Although an expense must be reasonable and not extravagant or lavish to be deductible,\textsuperscript{31} and although such items as champagne and caviar were intended to be nondeductible excesses,\textsuperscript{32} the Service rarely attacks the "lavish" element of the cost unless the taxpayer falls within a Sutter abuse situation.\textsuperscript{33} In answer to a question about whether lavishness would be identified with a specific dollar amount or with deluxe restaurants, the Service ruled that such \textit{per se} disallowances would not be made; rather a "facts and circumstances" test of reasonableness would be applied.\textsuperscript{34} Indeed, because of the great amount of subjective and inconsistent application of the law,\textsuperscript{35} the current state of the law encourages a business meal to be lavish\textsuperscript{36} and fully deductible.

**C. "Circumstances Conducive to A Business Discussion": A Loose Business Connection**

The law, while requiring that a business meal qualify as an ordi-
nary and necessary business expense, also excepts business meals from the stricter tests of being “directly related to” or “associated with” the active conduct of the taxpayer’s trade or business which are applied to other business entertainment. It merely conditions deductibility of the food and beverage expenses on their being supplied under circumstances which (taking into account the surroundings in which furnished, the taxpayer’s trade, business, or income-producing activity and the relationship of 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.

Under the regulations, those circumstances “conducive to a busi-

38. The term “directly related” is defined in the regulations as generally requiring (1) a contemporaneous, expectation of deriving income; and (2) an active business discussion unless prevented by unforeseeable circumstances. In addition, the principal character of the entertainment must be consistent with the active conduct of the taxpayer’s trade or business, and the expenses must be allocable to the taxpayer and the one(s) with whom he conducts his business. Treas. Reg. § 1.274-2(c)(3). Alternatively, an expense is “directly related” if, applying objective criteria, the expenses were made “for entertainment occurring in a clear business setting directly in furtherance of the taxpayer's trade or business”; the expense was in the nature of compensation or an award, or the expense related to club dues used for providing business meals (as long as the meals qualified as deductible business meals). Treas. Regs. §§ 1.274-2(c)(4), (5) and (6).
39. “Associated” entertainment is defined as that for which the taxpayer has a clear business purpose. Treas. Reg. § 1.274-2(d)(2). Where a taxpayer is relying on this test, there is an additional requirement that the entertainment precede or follow a “substantial and bona fide business discussion” (as determined under a facts and circumstances test) I.R.C. § 274(a)(1)(A); Treas. Regs. §§ 1.274-2(d)(1) and (3)(a).

The term “associated with” includes the creation of goodwill. 1962 S Rep. supra note 8, at 28, reprinted in 1962-3 C.B. at 732. However, there must be more than a vague expectation of business for an expense to be deductible. 1962 S. Rep. supra note 8, at 28, reprinted in 1962-3 C.B. at 734. Cf. Roush v. Commissioner, 37 T.C.M. (CCH)518 (1978) (deductions for dentist's parties to promote goodwill were denied because the parties only indirectly benefited his practice; moreover, expenses for a birthday party and for his daughters' friends were clearly unrelated); Leon v. Commissioner, T.C.M. (CCH) 1514 (1978) (chemical firm salesman was denied a deduction for home parties for customers). But cf. Klutz v. Commissioner, T.C.M. (CCH) 724 (1979) (a deduction was allowed for a pilot's $100 contribution to a Christmas party given by his occasional employer).

Expenses which are incurred when a taxpayer already has more business than he can handle are not business expenses. 1962 S. Rep. supra note 8, at 28, reprinted in 1962-3 C.B. at 734. See Schulz v. Commissioner, 16 T.C. 401 (1951).

The House had voted to allow deductions only for “directly related” entertainment. The Senate, however, added the “associated with” test to accommodate entertainment for the promotion and maintenance of goodwill. See H. R. Rep. No. 2508, 87th Cong. 2d Sess. 15, 16, reprinted in 1962-3 C.B. 1129, 1144 [hereinafter cited as 1962 H.R. Rep.].
41. Id. § 274 (e)(1).
ness discussion” do not require that an actual discussion occur.42

The surroundings in which the meals are furnished must not contain distractions, such as a floor show, 43 but can be a bar or the taxpayer’s home. 44 The deduction is generally not available for food consumed “at night clubs, sporting events, large cocktail parties, [or] sizeable social gatherings.”45 Deductible business meals also include luncheons which are part of a business program and banquets of business or professional associations. 46 Courts have ruled that the “19th hole,” the “gin rummy table,” 47 and a “Las Vegas night” at the country club 48 are not circumstances conducive to a business discussion. Yet, these restrictions regarding a business meal’s surroundings are certainly minimal.

The taxpayer’s trade or business and the relationship of the persons furnished with food and beverages must reasonably reflect that the purpose of such entertainment was business and not social or personal. 49 The Regulations offer the following as examples satisfying this requirement: 1) the salesman who meets for lunch during an average business day with the purchasing agent of a prospective client, and 2) the life insurance agent who during a normal business day meets and eats lunch with a client.50 The legislative history of the statute regulating business meals cites as an example

44. Treas. Reg. § 1.274-2(f)(2)(i)(b). However, in the case of meals at home, the Service has ruled that the taxpayer has the burden of showing that the expense was motivated by commercial, and not social, objectives. Rev. Rul. 63-144, 1963-2 C.B. 129, 132 (Answer to Question 17). It is not clear whether this emphasis in the ruling has independent significance since it merely restates the taxpayer’s burden of proof regarding any deduction he claims. Welch v. Helvering, 290 U.S. 111 (1933).
of a personal or social nondeductible expenditure the "reciprocity luncheon group" where businessmen often take turns paying for meals eaten together.\footnote{See 1962 S. Rep., supra note 8, at 36, reprinted in 1962-3 C.B. at 742; 1961 Hearings, supra note 1, at 157 (statement of Mr. Stanley S. Surrey, Ass't Sec'y Designate).}

There is obviously a great difference between a businessman trying to negotiate a deal to produce additional income\footnote{What constitutes an expense to generate additional income is sometimes a bit quixotic. See Miller v. Commissioner, 10 T.C.M. (CCH) 33 (1951) (a deduction was allowed for a Christmas party for children given by a tavern-owner since it was a form of advertising and increased goodwill).} and a group of friends congregating at a restaurant, each effectively paying for his own meal. Yet, the business meal deduction is not limited to dining with those who have adversarial interests (like seller/buyer) who might need a full stomach and relaxed mind to be convinced.\footnote{I.R.C. § 274(e)(1). When a meal is taken with an "outsider," however, it may be easier to show a business purpose. See Moss, 758 F.2d at 213.} Indeed, the Regulations define a "business associate" as:

a person with whom the taxpayer could reasonably expect to engage or deal in the active conduct of the taxpayer's trade or business such as the taxpayer's customer, client, supplier, employee, agent, partner, or professional adviser whether established or prospective.\footnote{Treas. Reg. § 1.274-2 (b)(2)(iii). See Moss v. Commissioner, 80 T.C. 1073 (1983) (Sterrett J., concurring), aff'd, 758 F.2d 211 (7th Cir.), cert. denied, 106 S. Ct. 382 (1985).}

\textbf{D. Frequency and the Business Associate}

While there is no limitation in the statute on the number of business meals that are deductible, when a business meal—either one in which business operations are actually discussed or which functions to promote "camaraderie" and "morale"—is taken with a business associate, the courts have introduced a requirement that the meal occur no more often than monthly.\footnote{See also Teeling v. Commissioner, 42 T.C. 671, 685 (1964) (applying pre-section 274 law to a taxpayer salesman entertaining representatives of his principals). Cf. Lennon v. Commissioner, 37 T.C.M. (CCH)751 (1978) (attorney allowed to deduct cost of "club" lunches with partners where business was discussed; no mention was made of frequency as a criterion).} According to the Seventh Circuit in \textit{Moss v. Commissioner},\footnote{758 F.2d 211 (7th Cir.), cert. denied, 106 S. Ct. 382 (1985).} in which an attorney's deductions for the cost of daily lunches at a local restaurant with the other five or six attorneys in his firm to discuss firm business was disallowed, co-workers "don't need the social lubrication that a
meal with an outsider provides—at least don’t need it daily." Similarly, the Tax Court in both its opinion in Moss and in its subsequent memorandum decision Hankenson v. Commissioner has indicated that frequent meals with associates are nondeductible expenses because they are "routine" and not "for a specific business purpose."

Despite the courts’ requirement that frequent meals with business associates show "a real business necessity," the "business meal exception" doesn’t incorporate this language. Indeed, as enacted, the business meal exception, relating to all trades and businesses including teaching, law, and medicine, was intended to retain the deductions allowed for most restaurant and hotel business dining. While law is a "trade" in which a practitioner might have clients to entertain, and medicine is a "trade" where referrals from other physicians might necessitate "business meals," a teacher’s business entertaining is almost always of associates and for morale purposes (e.g., taking secretaries, advisees, team members or guest lecturers to lunch).

If by limiting the frequency of business meals with associates the courts are questioning the believability of a true business connection, their findings seem to contradict that skepticism. In Moss, as well as in other cases, the Tax Court found that the attorneys were forced for business reasons to hold their meetings at noon, that the restaurant was convenient in relation to the courthouse and the firm's office, and that "[i]n a very real sense, these meet-

57. Id. at 213.
58. 80 T.C. 1073 (1983).
60. Id. at 1569. Hankenson suggests that the taxpayer must prove a "clear nexus exists between the luncheon expenses and the production of income." Id. But see Wells, 36 T.C.M. (CCH) 1698 (1977) in which the court held that infrequent meals with business associates which merely aided morale and loyalty were deductible.
61. Moss, 758 F.2d at 213.
63. See, e.g. LaForge v. Commissioner, 434 F.2d 370, 371 (2d Cir. 1970), (the Commissioner conceded that the taxpayer, a surgeon, who regularly paid for the lunches of certain residents and interns met the substantive requirements of I.R.C. §§ 162 and 274; Hankenson, 47 T.C.M. (CCH) at 1569 ("no doubt . . . luncheon meetings were held at the most convenient time and that general business was discussed . . ."); Fenstermaker, 37 T.C.M. (CCH) at 909 ("We have found that during lunch petitioners actually conducted business, discussing various company's problems with each other and outside consultants."). In fact, while most cases have denied a deduction for the taxpayer's own meals, the cost of his associates' meals have been held to be deductible. See LaForge, 434 F.2d at 372; Fenstermaker, 37 T.C.M. (CCH) 899. But see Hankenson, 47 T.C.M. (CCH) at 1569.
ings contributed to the success of the partnership."\(^{64}\) If, on the other hand, the courts attack frequent business meals with associates as converting too many personal expenses into business deductions, as in a Sutter abuse situation, the fact that the meals are taken with associates should be immaterial. If a salesman takes customers to lunch daily, he too is altering a substantial number of personal meals into business occasions. While the salesman could also fall under a Sutter attack,\(^{65}\) under the court's test, since he is treating "an outsider" to a meal, in order to deduct the cost, he need only show that the circumstances surrounding the meal were conducive to a business discussion\(^{66}\)—ironically the test for all business meals. While frequency may well undermine credibility, it should not affect the nature, and hence the deductibility, of business meals under the current statute.

The courts, however, fear a wholesale conversion of all personal meals into deductible business ones; in the opinion of the Moss court, for example, "to allow a deduction for all business-related meals would confer a windfall on people who can arrange their work schedules so they do some of their work at lunch."\(^{67}\) Yet, this artifice would belie a finding of a business connection (although admittedly, it would create a nightmare for the Service to distinguish the real business meal).\(^{68}\) The courts compare frequent meals with business associates to commuting with business associates, affirming that even where co-riders talk business on the way to work,

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64. Moss, 80 T.C. at 1080.
65. See Russo v. Commissioner, 43 T.C.M. (CCH) 1308 (1982) (wherein an owner of a bowling alley was denied a deduction for the cost of his own meals while entertaining social directors of companies sponsoring bowling for employees). Generally, however, Sutter has been applied to disallow a taxpayer's deductions for his own meals at business or professional association luncheons. See e.g., Caldwell v. Commissioner, 43 T.C.M. (CCH) 1294 (1982) (wherein the cost of bar association luncheon meetings were held nondeductible for the association's treasurer). It has also been applied to disallow deductions for business meals with subordinates. See, e.g., LaForge, 434 F.2d at 372-73, in which a surgeon was allowed to deduct the cost of regular business luncheons with residents and interns but not an amount equal to the cost of his own meals. But see Hankenson, 47 T.C.M. (CCH) 1567, in which a physician was denied deduction for his nurses' and residents' meals as well as his own.
67. Moss, 758 F.2d at 212.
68. This nightmare in enforcement was one of the motivations behind the enactment of section 274. See 1961 Hearings, supra note 1, at 43 (statement of Hon. C. Douglas Dillon, Sec'y of the Treas.). Yet, the statute only aided the Service in its creation of substantiation rules. See I.R.C. § 274 (d). The substantiation rules, moreover, although helpful in preventing some abuse, do not provide the tougher guarantees proposed by President Kennedy in 1961. See The Tax Bill and Three Little Words, 60 Newsweek 75 (September 10, 1962).
their inherently personal commuting expense remains nondeductible.\textsuperscript{69} In making this analogy, however, the courts are in error. There is no “business commuting” deduction statute; all commuting expenses are nondeductible personal expenses.\textsuperscript{70} By contrast there is a “business meal” deduction provision and it does not distinguish between “outsiders” and “co-workers” nor between frequent and infrequent consumption.

E. Personal Enjoyment

Unlike work clothing which, to be deductible, must be required as a condition of employment and must be nonadaptable to and not worn as ordinary street wear,\textsuperscript{71} “business meals” are not required to be “distasteful” to be deductible (despite one court’s \textit{dicta} that this factor might make deductible even frequent meals with associates).\textsuperscript{72} Despite some commentators’ suggestion that because business meals may be personally enjoyable they should be nondeductible,\textsuperscript{73} currently the taxpayer’s gastronomical satisfaction is immaterial to whether a business meal is deductible.

II. Some Reform Proposals: A Historical Perspective

A. The Kennedy Plan

In his 1961 message to Congress, President Kennedy launched his attack on entertainment deductions. “The time has come when our tax laws should cease their encouragement of luxury spending as a charge on the Federal treasury. The slogan—'it's deducti-

\begin{itemize}
  \item 69. Moss, 80 T.C. at 1080-81.
  \item 70. I.R.C. § 262.
  \item 71. Donnelly v. Commissioner, 262 F.2d 411, 412 (2d Cir. 1959). An Yves St. Laurent boutique manager was denied a deduction for designer clothes which she was required to wear at work because, under an objective test, these clothes were quite suitable apparel. Pevsner v. Commissioner, 628 F.2d 467 (5th Cir. 1980). By contrast, despite the recent fashion of surgical garb, amounts paid for nurses’, surgeons’, and railway trainmen’s uniforms are deductible as ordinary and necessary business expenses. I.T. 3988, 1950-1 C.B.28.
  \item 72. Moss, 758 F.2d at 214. In so saying, the court compared eating at an “agreeable restaurant” to being forced to contribute to a fireman’s mess fund, a situation in which the Ninth Circuit found the expenses excludible under section 119 (relating to meals furnished employees on business premises for the convenience of his employer) as well as deductible under section 162 as an ordinary and necessary business expense. Sibla v. Commissioner, 611 F.2d 1260 (9th Cir. 1980). Yet, it was the involuntary nature of this expense which seemed to lead to its deductibility as a business expense. See Duggan v. Commissioner, 77 T.C. 911 (1981), in which the court did not consider the deductibility of the fireman’s expense as a “business meal expense” under I.R.C. § 274 (e)(1).
\end{itemize}
ble'—should pass from our scene."74 While agreeing that entertainment sometimes promotes business, President Kennedy criticized its "substantial tax-free personal benefits" and complained about the administrative difficulty of discerning true business entertainment expenses.75

President Kennedy's 1961 proposal76 regarding the business meal deduction placed a $4-$777 per-person-per-day78 limitation on the amount of deductible food or beverages and required that such refreshments be "furnished during or as a part of business meetings, discussions or similar activities which are directly related to the operation of the taxpayer's business and which are not furnished for the principal purpose of creating goodwill."79 Acceptable under this proposal were such entertaining as a restaurant meal which provides a direct opportunity for conducting business, or eatables furnished at the demonstration of a seller's products; unacceptable was the cocktail party which functions to create a general feeling of good will among the participants.80

The purpose behind the dollar-per-day limitation was to acknowledge the legitimate needs of business but, at the same time, to prevent extravagant (and personally enjoyable) expenses from being subsidized by the Treasury.81 It was thus both a rough estimate of what a restaurant meal would cost in 1961, and a ceiling on the total benefit each individual could receive from such en-

74. *Kennedy Message*, supra note 1, at 299.
75. *Id.* The Treasury Department bemoaned the fact that even though, under then current law, most entertainment deductions were allowed, approximately half of the returns had to be adjusted by agents, effecting 28.3 million dollars in disallowance of such expenses. *1961 Hearings*, supra note 1, at 20, 43 (statement of Hon. C. Douglas Dillon, Secretary of the Treasury). Moreover, about 33 percent of the items (45 percent of the total dollar amount) disallowed in a 1960 Audit Report constituted claimed food and beverage business entertainment deductions. Treas. Dep't, Study on Entertainment Expenses, Part I (I.R.S. 1960 Audit Report on Entertainment, Travel, and Similar Expenses), in *1961 Hearings*, supra note 1, 133, 140.
76. These proposals were intended to apply to years beginning after December 31, 1961. *Detailed Explanation of the President's Recommendations Contained in His Message on Taxation*, in *1961 Hearings*, supra note 1, at 253, 301 [hereinafter cited as *Treas. 1961 Detailed Explanation*].
77. The exact *per diem* figure had not yet been determined, but it was estimated to fall within the 4 to 7 dollar range. *Treas. 1961 Detailed Explanation*, supra note 76, at 283.
78. That this figure represented a "per day" rather than a "per meal" limitation may be contrasted with various other dollar limitation proposals. See *infra* notes 106-10 and accompanying text.
80. *Id.*
81. *1961 Hearings*, supra note 1, at 44 (statement of Hon. C. Douglas Dillon, Sec'y of the Treas.).
Business Meal Deductions

The dollar figure was not intended to implement a disallowance of the first, personal, part of a business meal expense (a la Sutter), but it did translate the "lavish or extravagant" prohibition into an objective criterion which could be more easily administered. Moreover, a per diem limitation, it was proposed, would help to restore public confidence in the tax system as well as to add $250 million dollars annually to the treasury.82

Because the Kennedy proposal required a direct connection between the business meal and the taxpayer's trade or business, the greater abuse potential attached to goodwill entertainment would be minimized. Yet, while this direct relationship prerequisite ensured a greater business need for the refreshments, there was no specific requirement that the participants be in an adversarial position to one another, thus allowing a Moss situation deduction where a court found the luncheon meetings provided an opportunity to conduct firm business and contributed directly to increase the firm's revenue. Likewise, the Kennedy plan dealt only indirectly with the question of frequency; since there was to be a $4-$7 limitation per day on the amount each person could deduct, it is likely that only one meal per day would be deductible. However, under the proposal, there was no limit on the number of days or meals for which one could receive a deduction, so long as each meal had a direct relationship with the production of income in the taxpayer's trade or business.

As might be expected, Kennedy's 1961 proposals were overwhelmingly opposed by businessmen83 and the restaurant industry;84 they were not enacted. In 1962, Congress passed a bill,85 which, for the most part, reflected the current status of the law regarding the business meal deduction.86 As enacted, there was no

82. Id.
84. See 1961 Hearings, supra note 1, at 1610, 1616 (statement of Thomas W. Power, Washington Counsel, Nat'l Restaurant Ass'n); Id. at 1616 (statement of Vincent Sardi, Jr.). Ridiculing the plan, Mr. Sardi suggested that under this proposal, President Kennedy would be restricted to a $4-$7 per day deduction when feeding a foreign dignitary and only if business was indeed transacted. Id. at 1618. Under the Kennedy plan, there was no exception for banquets.
86. Although the business meal exception to the "directly related" and "associated with" tests ascribed to most entertainment activities and facilities has remained the same since the enactment of the 1962 legislation, changes in the recordkeeping requirements of
dollar limitation; all entertainment, including meals, could be for the purpose of generating goodwill; and although the meal had to be partaken under circumstances conducive to a business discussion, no business need actually have been discussed. Thus, the cost of food and beverages at most business meetings and banquets as well as at most restaurants and hotels was made fully deductible.

B. The Carter Plan

In 1978, President Carter proposed to eliminate all entertainment deductions except those for business meals where half the cost would be deductible and the other half disallowed. It was thought that because business meals often involve actual business discussion, they may have less personal value to the recipients and, therefore, should not be totally nondeductible like other entertainment expenses.

The curtailment of the business meal deduction was explained as taking into account the personal element of the cost which would be incurred regardless of the business reason for the meal. Because the recipient was not taxed on the benefit of eating a free meal the plan also was intended to provide a theoretical equivalent of allowing the payor a full deduction and then taxing the recipients on half of the meal's cost. According to President Carter, the 50 percent figure "represent[ed] a reasonable and fair approach to compensate for the untaxed personal benefit." The estimated effects of the limitation on business meals were: 1) an increase in revenue, 2) a slight increase in bookkeeping requirements, and


90. Carter Message, supra note 2, at 11.
91. 1978 Treas. Descriptions and Analyses, supra note 2, at 201.
92. Carter Message, supra note 2, at 11.
93. Tax Reduction and Reform Proposals No. 5: Business Expense Deductions, prepared for Use by the Comm. on Ways and Means by the Staff of the Joint Comm. on Taxation, 13 (April 18, 1978) [hereinafter cited as Comm. Print].
94. Carter Message, supra note 2, at 11.
95. Revenue raised by the measure was expected to be $1.2 billion in 1979 and to reach $1.7 billion in 1983. 1978 Treas. Descriptions and Analyses, supra note 2, at 201-02.
96. A business would have to separate meals incurred while traveling away from home (fully deductible) and other business meals (half deductible). Comm. Print, supra
3) a minimal impact on unemployment in the restaurant industry.\textsuperscript{97}

While perhaps a solution to the problem of the taxpayer's attempt to deduct the cost of his own personal expense to feed himself, the Carter proposal did not adequately address the problems of demanding a direct business connection or of defining "lavish or extravagant". Although critical of the fact that no business discussion was necessary for a deduction under the statute,\textsuperscript{98} the Carter proposal did not provide for such a limitation. Similarly, while attacking the then current law as having a vague standard of "reasonableness in amount" which was difficult to apply\textsuperscript{99} the Carter plan did not impose an upper limit on expenditures. Thus, while under this proposal a $1,000 lunch would be deductible \textit{only} to the extent of $500, that $500 deduction would be an outrageous tax subsidy.\textsuperscript{100} Finally, although it cited as examples of abuse a salesman who scheduled three meals a day, five days a week, with customers or agents before or after a business discussion,\textsuperscript{101} and an individual who deducted business lunches 338 days a year,\textsuperscript{102} the Carter plan did not directly address the question of frequency.\textsuperscript{103}

The Carter plan, like the Kennedy plan, was unpopular\textsuperscript{104} and did not pass.\textsuperscript{105}

\footnotesize note 93, at 13.
\footnotesize 97. Employment was estimated to be reduced by not more than 2 percent in the restaurant industry. Comm. Print, supra note 93, at 13-14; 1978 Treas. Descriptions and Analyses, supra note 2, at 201-02.
\footnotesize 98. 1978 Treas. Descriptions and Analyses, supra note 2, at 344.
\footnotesize 99. Id at 195, 341, and 354. See also the example of the insurance agency owner who deducted $31,000 in one year and $32,000 in another year for business motivated meals. Id. at 200.
\footnotesize 100. Using the 1984 Treasury Department's estimates of lunch costs, anything over $15 is "extravagant" and should be nondeductible. See 1984 Treasury Plan, supra note 2, at 83. See generally, Flanagan, Writing off a $350 Meal, 91 Esquire 91-92 (May 22, 1979).
\footnotesize 101. 1978 Treas. Descriptions and Analyses, supra note 2, at 197, 354.
\footnotesize 102. Id. at 197, 356; Carter Message, supra note 2, at 11.
\footnotesize 103. However, frequency is not really a \textit{per se} abuse of the business meal deduction. Frequency merely aggravates the amount of, and hence the emotional response to, the personal part of the expense which at last theoretically is nondeductible. Otherwise, frequency is used to question the true business connection of so many meals. Yet, if every meal taken has a direct business connection, frequency should be irrelevant. Cf. Moss v. Commissioner, 758 F.2d 211 (7th Cir.), cert. denied, 106 S. Ct. 382 (1985).
\footnotesize 104. Carter's Tax Fiasco, 92 Newsweek 20-21 (Aug. 7, 1978); See e.g., If Congress Taxes Those Business Perks-, 84 U.S. News & World Rep. 55-56 (Feb. 27, 1978) (wherein representatives of small business, professionals, and restaurant industry employees claimed they would be particularly adversely affected by the Carter plan).
\footnotesize 105. President Carter was, however, more successful in curbing other entertainment expense abuses. Expenses associated with most entertainment facilities were made nondeductible. See Revenue Act of 1978, Pub. L. No. 95-600, § 361, 92 Stat. 2763 (codified at

Recently, there have been several attempts to modify the business meal deduction: the 1984 Treasury Plan, Reagan's 1985 Proposal and H.R. 3838. Each is aimed at reducing the amount of the deduction and tightening the business connection requirement for deductibility.

Because current standards for determining the deduction of the business meal expense are subjective (allowing for uneven application and encouraging abuse),\textsuperscript{106} the Treasury Department proposed\textsuperscript{107} that the following limitations be placed on deductions for ordinary and necessary business meals: 1) they must be furnished in a "clear business setting"\textsuperscript{108}; and 2) amounts may not exceed $10 for breakfast, $15 for lunch, and $25 for dinner.\textsuperscript{109} By attaching these ceilings on deductibility, the Treasury proposal intended to place, what they viewed to be, "quite generous"\textsuperscript{110} objective restrictions on the maximum tax benefit a business person could receive. Expenses beyond these amounts were characterized as "personal".\textsuperscript{111} The impact of these provisions on the restaurant indus-


\textsuperscript{107} In 1982, the Senate passed a provision identical to the Carter proposal, but, in conference, it was eliminated. See S. Rep. No. 97-760, 97th Cong., 2d Sess. 556 (1982).

\textsuperscript{108} 1984 Treasury Plan, supra note 2, at 83.

\textsuperscript{109} The Treasury Department proposed that for pre-1987 business meals a further deduction of 50 percent of the excess expended beyond these amounts would be allowed. Id.

\textsuperscript{110} The Treasury proposal uses this term as defined in the regulations. Id. The regulations use "in a clear business setting" as satisfying the "directly related" test. They provide that "entertainment shall not be considered to have occurred in a clear business setting unless the taxpayer clearly establishes that any recipient of the entertainment would have reasonably known that the taxpayer had no significant motive, in incurring the expenditure, other than directly furthering his trade or business." Treas. Reg. § 1.274-2(c)(4). Examples of settings and situations that would qualify include convention hospitality rooms, entertaining business representatives and civic leaders at a hotel opening in order to obtain business publicity, and a hotel owner's provision of occasional free meals at the hotel for a patron of the hotel. Id.

\textsuperscript{109} 1984 Treasury Plan, supra note 2, at 83. These ceilings would include amounts expended for tax and tips. Id. These figures were calculated based on restaurant industry testimony that most meals cost between $6.50 and $10 and that only 2.5 percent of all meals had an average cost of more than $17 (the Treasury used census data from 1977 and adjusted the figures for inflation). Id. at 84.

\textsuperscript{110} Id. at 84.

\textsuperscript{111} Id. While these excess amounts are considered "personal," they might more appropriately be classified as "lavish" or "extravagant." "Personal" generally refers to the initial expense which one would in any event incur. See supra notes 23-29 and accompanying text.
try was expected to be minimal.\footnote{112}

Like the Kennedy plan, the 1984 proposal attempted to strengthen the business connection for the meal and, by imposing dollar limitations,\footnote{113} defined and prohibited a lavish or extravagant\footnote{114} meal\footnote{115}. However, it too avoided dealing with the initial personal part of the meal, and it totally ignored the issue of frequency of the expense of meals with business associates.\footnote{116}

After allowing six months for public criticism of the Treasury's proposals to surface,\footnote{117} President Reagan announced his own tax proposals, including one relating to the business meal deduction.\footnote{118} The Reagan plan combined some elements of the Treasury plan as well as various elements of the 1978 Carter proposal.\footnote{119} An allowa-

\begin{flushleft}
\footnote{112} \textit{1984 Treasury Plan, supra} note 2, at 84 (estimated to affect not more than five percent of the restaurants, i.e., the very expensive ones).

\footnote{113} Under Kennedy's proposal, however, there was a per diem and not a per meal allowance. \textit{See supra} notes 75-79 and accompanying text.

\footnote{114} \textit{See supra} note 110 and accompanying text.

\footnote{115} The Joint Committee on Taxation has criticized the Reagan proposal as not clearly defining what constitutes a meal. Single courses may be consumed at different restaurants or cocktails alone may be ordered. The Committee asks which "meal" would be subject to the dollar limitations? \textit{See Joint Committee on Taxation, Tax Reform Proposals: Rate Structure and other Individual Income Tax Issues, reprinted in Daily Tax Rep. (BNA) No. 157, J-1, J-57 (Aug. 14, 1985) [hereinafter cited as \textit{Joint Comm. Pamphlet}]. This problem, however, could be alleviated by regulations which define a meal in terms of the usual three meals a day during customary time periods. It might also require the combination of various parts of a meal consumed within the same few hours. Since no inquiry is made into the nutritional aspects of a meal, if one consumes only liquor during a business meal, that too could be defined as constituting a "meal."

The Joint Committee also expressed concern about allocating costs between "meals" and "entertainment" at such mixed events as dinner theatres since under the Reagan plan the latter expenses would be nondeductible. \textit{(see infra} note 120.) As a modification, the Committee proposed the addition of rules "clarifying or eliminating the distinction between meal and entertainment deductions . . . ."

\textit{See Joint Comm. Pamphlet, supra, at} J-57. Pragmatically, since the burden for the allocation would be on the taxpayer, that burden would effectively be undertaken by the establishment providing such mixed meals/entertainment.

\footnote{116} By comparison, the \textit{per diem} limitation of the Kennedy Plan effectively limited frequency to one meal a day; yet, there was no explicit requirement that the taxpayer was thus restricted. \textit{See supra} notes 75-79 and accompanying text.


\footnote{118} \textit{See Reagan's Tax Proposals, supra} note 6, at 74, 76-77. The plan supported by President Reagan is often referred to as "Treasury II." It was proposed by Secretary of the Treasury Baker and is contrasted to the 1984 Treasury plan which is colloquially referred to as "Treasury I."

\footnote{119} The Joint Committee has suggested that instead of a dollar limitation, there be a percentage limitation (like that in the Carter proposal). Although acknowledging that a dollar limit would mollify public criticism about abusive entertainment deductions and that a percentage formula would allow for lavish meal deductions, the Committee asserted that a
ble deduction would be one occurring in a clear business setting\(^{120}\) and to the extent of $25 per person per meal plus an additional 50 percent of expenses in excess of that amount.\(^{121}\) That is, if one had a $65 meal, the first $25 would be fully deductible plus half of the remaining $40 (or $20) - providing the taxpayer with a total deduction of $45 for a $65 meal. President Reagan estimated that fewer than 15 percent of all business meals currently deductible would be affected by his proposal.\(^{122}\)

With his modification to the 1984 Treasury proposal, President Reagan offered only a minor reform of the current tax treatment of business meals.\(^{123}\) Aside from requiring a direct business relationship for the meal, he established no figure constituting the personal cost of a meal, placed no real cap on the amount of an allowable deduction and, as he projected,\(^{124}\) only minimally affected the percentage limitation would expand the applicability of the proposal to all business meals and would reflect the mixed personal/business benefit of all such meals. See Joint Comm. Pamphlet, supra note 115, at J-57-J-58. But see infra notes 142-43 and accompanying text for an alternative proposal incorporating these suggestions.

120. Again, as defined in Treas. Reg. § 1.274-2 (c)(4); Reagan's Tax Proposals, supra note 6, at 76.

121. Reagan's Tax Proposals, supra note 7, at 76-77. The Reagan plan applies the dollar limitation on an average basis (i.e., by dividing the total bill by the number of persons present) in order to minimize the administrative burden to restaurants of providing separate checks for each customer. While attaining ease, the rule allows for the abuse of inviting additional noneaters or persons consuming only dessert and coffee in order to cover the more extravagant appetites of the other members of the party. See Joint Comm. Pamphlet, supra note 115, at J-57. If there is also a stricter business connection required of the participants, the problem might be lessened. However, some abuse is certainly unavoidable (some participants may be dieters or otherwise abstemious while others, Baccanalian). If indeed the resultant abuse is significant, despite the additional burden, the law could be modified to require separate accounting.

Moreover, according to the Joint Committee, the Service could encounter auditing difficulties where there is cost splitting among the taxpayers of different segments of a meal. Id. While this criticism is valid, it should not be a significant obstacle to instituting reform. This problem is also inherent in other areas of tax law (e.g. partnerships).


123. Although the proposal introduces only minor changes in the business meal deduction, business persons are still against the reform. For a lighthearted discussion of their dilemma, see A $25 Challenge: How to Lunch and Dine Within Reagan Limits, Wall St. J., July 15, 1985, at 1, col. 4. President Reagan, however, also proposed the total elimination of deductions for all other business entertainment activities, for cruise conventions, for travel as a form of educational expense as well as other numerous deductions and exclusions. See Reagan's Tax Proposals, supra note 6, at 76, 79 and 81. Moreover, within the context of Reagan's comprehensive strategy to make all deductions less attractive by lowering the tax brackets to a top bracket of 35 percent, perhaps some of the perception of abuse with respect to the business meal deduction will be somewhat assuaged under the Reagan plan. See Reagan's Tax Proposals, supra note 6, at 1.

124. Reagan's Tax Proposals, supra note 6, at 77.
present treatment of business meals. Frequency was again not raised as an issue, and an adversarial relationship of the parties was not required.\textsuperscript{125}

Finally, H.R. 3838\textsuperscript{126} attempts to amend the business meal deduction to require that business meals (1) have "a clear business purpose" which must be "presently related to the active conduct of a trade or business"; (2) not be "lavish or extravagant under the circumstances"; and (3) entail the presence of the taxpayer (or its employee). The bill also limits the deduction to eighty percent of the cost of the meal.

While H.R. 3838 requires a close business connection for deductibility, and, by making an 80/20 allocation,\textsuperscript{127} removes the need for Sutter disallowances, it will do little to alleviate the public's perception of abuse because of the absence of a cap together with the vague and suggestively ineffective phrase "not lavish or extravagant under the circumstances". Moreover, the issues of frequency and of meals with co-workers are, as with the other new proposals, not addressed by the bill.

III. ELIMINATE THE DEDUCTIONS?

Because of the public perception of abuse with respect to the business meal deduction\textsuperscript{128} and because of the subjective aspects of the problem,\textsuperscript{129} scholars\textsuperscript{130} and legislators\textsuperscript{131} have supported a repeal of the business meal deduction. Indeed, the elimination of the deduction for business meals would parallel the proposed repeal of

\textsuperscript{125} Although a court could construe the "clear business setting" to require an outsider relationship, since the definition of "business associate" found in the regulations is not altered (See Treas. Reg. § 1.274-2 (b)(2)(iii)), and since the proposal nowhere suggests this change, it is unlikely that a court would infer this requirement. See Moss v. Commissioner, 80 T.C. 1073 (1983) (Sterrett, J., concurring), aff'd, 758 F.2d 211 (7th Cir.), cert. denied 106 S. Ct. 382 (1985).

\textsuperscript{126} H.R. 3838, § 142 (a), 99th Cong., 1st Sess. (1985). The bill was passed by the House of Representatives on December 18, 1985. It is currently under markup in the Senate.

\textsuperscript{127} The twenty percent disallowance was intended to reflect the personal part of the deduction (see Ways and Means Comm. Highlights of Tax Reform Bill, 29 Tax Notes 1051, 1052 (Dec. 9, 1985)). Yet, the allocation is obviously not consistently equal to the taxpayer's cost of eating at home (e.g. a $20 cost to "brown bag it" in the instance of a $100 meal). If it is intended to reflect the extravagant portion of a meal, it also falls short of an equivalence.

\textsuperscript{128} See supra notes 2-7 and accompanying text.

\textsuperscript{129} That which constitutes the personal part of the expense and that which equals an extravagant expense involve questions of subjectivity. See supra notes 11, 13 & 32.

\textsuperscript{130} See e.g., Halperin, supra note 73.

a deduction for all other entertainment expenses and would resemble the current tax treatment of such mixed personal/business use items as commuting costs. Yet, besides the unpopularity of such repeal among business persons and the restaurant industry, perhaps business meals are different enough from other types of entertainment and so ingrained in our society as a way of promoting additional income, that some deduction of their cost may be justified.

Congress has been slowly chipping away at other entertainment expense deductions. In 1962, new recordkeeping requirements were introduced to overrule Cohan v. Commissioner, which had allowed courts to approximate the amount of a deduction, and the "directly related" and "associated" tests were attached to most entertainment activities. In 1978, deductions for entertainment facilities (other than clubs), such as for yachts and ski lodges, were eliminated. Both the 1984 Treasury Plan and the

132. Entertainment facilities, with the exception of clubs, are nondeductible. See Revenue Act of 1978, Pub. L. No. 95-600, § 361, 92 Stat. 2763 (codified at I.R.C. §§ 274(a)(1)(B) and 274(a)(2)(C)). President Reagan recommended that with the exception of business meals, all entertainment expenses for activities and clubs be nondeductible. Reagan's Tax Proposals, supra note 6 at 76.

133. "The taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses." Treas. Reg. § 1.262-1 (b)(5).

134. Deductions for travel, entertainment, and business gift expenses will be denied: 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. . . . I.R.C. § 274(d). The Tax Reform Act of 1984 amended the recordkeeping requirements to require adequate "contemporaneous" records. See Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984), Pub. L. No. 98-369, § 179, 98 Stat. 877. The "contemporaneous" restriction, as well as the penalties imposed on tax return preparers and on taxpayers who are unable to provide substantiation, however, was retroactively repealed. Pub. L. No. 99-44, § 1, 99 Stat. 77.


136. 39 F.2d 540 (2d Cir. 1930).

137. See supra notes 37-39 and accompanying text.

138. Business meals are excepted from these requirements.

139. At first, the exception was stated as "country club" (See Revenue Act of 1978, Pub. L. No. 95-600, § 361, 92 Stat. 2763 (codified at I.R.C. § 274(a)(2)(C))), but was corrected to read "clubs" to include all types of social, athletic, and sporting clubs. See Technical Corrections Act of 1979, Pub. L. No. 96-222, § 103(a)(10), 94 Stat. 194 (1980) (amending I.R.C. § 274(a)(2)(C)).

1985 Reagan plan have proposed the elimination of all other entertainment activities and facilities.\textsuperscript{141} The obvious personal benefit and potential for abuse which is apparent in other business entertainment may be equally evident for the business meal. Following the direction of other entertainment deductions, perhaps the business meal deduction should also be disallowed.

Similarly, commuting expenses which combine the personal choice of the geographical location of one’s home with the necessity to get to one’s job from that location are nondeductible.\textsuperscript{142} The rationale for the disallowance of such mixed personal/business expenses is that one cannot separate or allocate the business element of the expense from the personal aspect.\textsuperscript{143} Likewise, it is difficult to estimate the extent of one’s personal enjoyment in a meal or even the cost one would inevitably incur and subtract that amount from the cost of the purely business motivated part of a meal.\textsuperscript{144} Again, therefore, perhaps the business meal deduction should be eliminated.

\section*{IV. Another Proposal}

Assuming however that a business meal deduction may be justified on the bases of its customary usage in the business community and of its ability to generate additional taxable income, the deduction for such meals should be restricted in amount, to a close business connection, and to meals with “outsiders.” The amount restriction, estimated annually by the Treasury, should equal the cost of most restaurant meals (like the figures set by the 1984 Treasury Plan)\textsuperscript{145} less the cost of the same meal eaten at home.\textsuperscript{146}

\begin{itemize}
\item 274(a)(1)(B), effective for years after December 31, 1978.
\item 141. \textit{1984 Treasury Plan, supra} note 2, at 83; \textit{Reagan's Tax Proposals, supra} note 6, at 76.
\item 142. Treas. Regs. §§ 1.262-1(b)(5) and 1.162-2(e).
\item 144. The analogy between commuting and business meal expenses, however, may be distinguished on the policy grounds that since almost every taxpayer commutes, allowing such a deduction would have a great revenue impact (unlike the business meal deduction). \textit{See supra} note 6. Moreover, a deduction for commuting expenses would especially reward those taxpayers who choose to live a great distance from their work, although such a decision would be, essentially, personally motivated. By contrast, a deduction for business meals is allowed because it is hoped that the expense will generate additional business revenue. \textit{See supra} notes 8-10 and accompanying text.
\item 145. \textit{See supra} note 109 and accompanying text.
\item 146. This computation would reflect the allocation required of travel expenses which are undertaken for both business and personal reasons. \textit{See Treas. Regs. §§ 1.162-2(b);}
The business connection restriction would require a direct relationship between the incurring of the expense and the production of income; securing goodwill would be insufficient. Finally, the definition of "business associate" would include only non-co-workers who are likely to have separate interests from the taxpayers such as clients, customers, suppliers or prospective employees—i.e. those who might need social lubrication as an incentive to add to the taxpayer's business. A statute encompassing these guidelines would allow for a deduction and, at the same time, help to remove the public's perception of abuse in this area.

Alternatively or additionally, a more liberal statute could provide for a limited deduction for meals taken to increase morale among employees or other subordinates. This statute should not only be limited in amount, but in frequency to, for example, twice a year. Such a deduction would correspond to the treatment of de minimis fringe benefits which are excludible from the recipient's income.

While the elimination of any deduction for business meals would provide for simplicity and reduce opportunity for abuse, a limited deduction would deny a deduction for the personal and extravagant parts of the expense, would insure a stronger business motivation, and ultimately aid in restoring public confidence in the tax system. While politically unpopular with the restaurant industry and wealthy business persons, a restricted deduction would be more palatable to the average taxpayer.

1.162-5(e)(1) and (2).
A proposal which would eliminate subtracting the personal part of the expense would be acceptable as long as the Service rejected the issues of frequency of the business meal and the conversion of too many personal expenses into business ones. Moreover, there is justification for allowing the full amount to be deductible; with regard to most business expenses, there is no allocation required between mixed personal/business parts of a single expense.

147. The "clear business setting" requirement of Treas. Reg. §1.274-2(c)(4) (as suggested by both the 1984 Treasury Plan and the 1985 Reagan Proposal, see supra notes 108 and 120 and accompanying text) would provide a sufficient business nexus.