

Internal Revenue Service

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CC:IT&A:2 – COR-117006-00

Date: October 31, 2000

Dear [REDACTED]:

Commissioner Rossotti has asked me to respond to your inquiry dated August 18, 2000, concerning the limitation on deductions for food and beverages in § 274(n) of the Internal Revenue Code. In particular, you are concerned that the limitation violates the equal protection provisions of the U.S. Constitution by singling out restaurant critics for unfair treatment, since deductions for business expenses in no other profession are thus limited. I hope the following information is helpful.

A taxpayer may not deduct personal, living, or family expenses, pursuant to § 262(a), unless otherwise expressly provided. Under § 162(a), a taxpayer may deduct all the ordinary and necessary expenses paid or incurred in carrying on a trade or business.

Section 274(n) generally provides, with a few limited exceptions, that a deduction for any expense for food or beverages is limited to 50 percent of the amount of the expense. This limitation reflects Congress' view that meal expenses inherently involve an element of personal living expenses:

Generally, some portion of business meal and entertainment expenses represent personal consumption (even if the expenses serve a legitimate business purpose). The committee believes that denial of some part of the deduction is appropriate as a proxy for income inclusion of the consumption element of the meal or entertainment.

H. Rep. No. 103-111, 1993-3 C.B. 221; see also S. Rep. No. 99-313, 1986-3 (Vol. 3) C.B. 68.

Generally a statutory disallowance of a deduction meets the equal protection provisions unless it does not bear a rational relation to a legitimate governmental purpose. Regan v. Taxation with Representation, 461 U.S. 540, 547 (1983). As set forth above, it appears that Congress established the limitation on food and beverages to separate the inherently personal elements of a meal expenditure from the business elements, and to appropriately disallow the deduction for the personal elements. If you do not believe the equal protection standards have been met with respect to restaurant critics, then your proper recourse would be through legislative channels.

[REDACTED]

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Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

By: _____
Robert A. Berkovsky
Chief, Branch 2