

Avoiding Mistletoe Mishaps, Part V: Are Holiday Gifts, Prizes, Or Parties Taxable Wages?

December 6, 2013

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- (1) [employers' chief concerns when hiring a seasonal workforce;](#)
- (2) [employers' health care obligations toward seasonal workers;](#)
- (3) [OSHA's fact sheet on how retailers can manage holiday shopping crowds; and](#)
- (4) [tips for throwing a litigation-free holiday party.](#)

Part five of our year-end holiday series reviews the employment tax implications of employers' holiday gift-giving.

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December traditionally is a month for giving—to friends, family, charities, and employees. Below are the tax rules employers should know if they are planning on thanking their employees with gifts, prizes, or a party this holiday season.

We are all aware of the general tax rule under Internal Revenue Code section 61 that all forms of compensation are subject to income tax unless specifically excluded by the tax code. This rule, however, is

occasionally forgotten when it comes to giving gifts or door prizes at company holiday parties. Sometimes employers do not view a gift or prize as compensation for past or future services. Other times the employer incorrectly assumes that the gift is excludable from gross income under code section 102(a), which excludes from gross income the value of property acquired by gift, bequest, devise, or inheritance. Code section 102(c), however, provides that the gift exclusion does not apply to “any amount transferred by or for an employer to, or for the benefit of, an employee.” Thus, when an employer gives an employee a gift, it is taxable under section 102(c) unless another exception applies.

The primary exception to the rule that holiday gifts, prizes, and parties should be included in income can be found in code section 132(a)(4), which excludes certain de minimis fringe benefits from taxable income.

Holiday Gifts, Prizes, and Parties

Section 132(a)(4) provides that gross income does not include any fringe benefit that qualifies as a de minimis fringe benefit. Section 132(e)(1) defines a de minimis fringe benefit as any property or service the value of which is so small as to make accounting for it unreasonably or administratively impracticable. The determination of whether an item is de minimis must also take into account the frequency with which similar fringe benefits are provided by the employer to employees.

[Section 1.132-6\(e\)\(1\) of the U.S. Department of the Treasury’s regulations](#) provides examples of de minimis fringe benefits that are excludable from an employee’s gross income (see below), and Section 1.132-6(e)(2) provides examples of fringe benefits that are not excludable as de minimis fringes (also see below). “Traditional birthday and holiday gifts of property (not cash) with a low fair market value” and “occasional cocktail parties, group meals or picnics for employees and their guests” are among the examples of de minimis fringe benefits in the regulations.

Examples of De Minimis Fringe Benefits

Examples of de minimis fringe benefits include the following:

- traditional birthday and holiday gifts of property (not cash) with a low fair market value;
- occasional cocktail parties, group meals, picnics for employees or their guests;
- occasional theater or sporting event tickets;
- coffee, doughnuts, and soft drinks;
- flowers, fruit, books or similar property provided to employees under special circumstances (for example, on account of illness, outstanding performance, or family crisis);
- occasional personal use of the employer’s copying machine; and
- local telephone calls

Examples of Fringe Benefits That Are Not Excludable

Examples of fringe benefits that are not excludable from gross income as de minimis fringes include the following:

- season tickets to sporting or theatrical events;
- the commuting use of an employer-provided vehicle for more than one day a month;
- membership in a private country club or athletic facility; and
- use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend.

The Gift of Cash, Gift Certificates, or Gift Cards

Cash is never a de minimis fringe benefit and always taxable, no matter how little (except in the limited cases of money paid for a meal required because of overtime work or for local transportation that is required for security concerns). This is because it is not unreasonable or administratively impracticable to account for cash since the value of the amount provided is readily apparent.

[Treasury regulations section 1.132-6\(c\)](#) similarly provides that a:

cash equivalent (such as a fringe benefit provided to an employee through the use of a gift certificate or charge or credit card) is generally not excludable as a de minimis fringe benefit even if the same property or service acquired would be excludable as a de minimis fringe benefit. For example, the provision of cash to an employee for a theater ticket that would itself be excludable as a de minimis fringe ... is not excludable as a de minimis fringe.

In [Technical Advice Memorandum \(TAM\) 200437030 \(April 30, 2004\)](#), the Internal Revenue Service (IRS) considered an employer's gift of a \$35 gift certificate, redeemable for groceries at specified local grocery stores, which was given in lieu of the ham, turkey, or gift basket that the employer had traditionally bestowed as holiday gifts in prior years. The IRS held that the gift certificate was not de minimis because it is not administratively impracticable to account for gift certificates. The guidance indicates that an employer's gift of holiday hams to employees qualifies as excludable de minimis fringe benefits; however, the amount of the gift certificates that an employer gives employees to purchase the hams themselves is taxable income. A possible exception might be found in the IRS's informal guidance, described below, according to which the gift certificates would be considered property because they specifically convey the right to receive a ham.

Specified-Item Gift Cards vs. General Merchandise Gift Cards

In its explanation of de minimis fringe benefits, the IRS distinguishes between gift certificates that are redeemable for general merchandise and gift certificates that allow an employee a specific item of personal property.

According to the IRS, gift certificates that are redeemable for general merchandise or have a cash equivalent value are not de minimis and are taxable, but a certificate that “allows an employee to receive a specific item of personal property that is minimal in value, provided infrequently, and is administratively impractical to account for, may be excludable as a de minimis benefit, depending on the facts and circumstances.”

Accordingly, a gift card or gift certificate that can only be redeemed for a specific, tangible item (for example, a ham, movie pass, or box of chocolates) may qualify as a de minimis fringe benefit under limited situations, but the IRS would view even a \$5 gift card to a general retailer as income to the employee.

Employers planning on giving gift cards this season should remember that the IRS regulations support treating all gift cards and gift certificates provided to an employee as taxable income. Although there may be limited situations when the value of a gift card or gift certificate could be excluded from an employee’s income, employers might want to take a conservative view and include the value of all gift cards and gift certificates in employee wages.

What Value Is Too Much to Qualify as De Minimis?

Unfortunately, there is no bright-line dollar amount as to what qualifies as de minimis. The tax code, Treasury regulations, and other IRS guidance do not provide a specific dollar limit for de minimis gifts. The value of the examples of de minimis fringes in the Treasury Regulations ranges from \$21 per month worth of transit passes (which amounts to \$252 per year) to theater or sporting event tickets, which today could cost well over \$100 apiece.

The IRS has advised that benefits of \$100 and \$109 do not qualify as de minimis. In [Chief Counsel Advice \(CCA\) Memorandum 200108042](#), which the IRS issued on December 20, 2000, the IRS said that non-monetary recognition awards having a fair market value of \$100 do not qualify as de minimis fringes. In [TAM 200030001](#), which the IRS issued on April 6, 2000, the IRS said that \$109 exceeds an amount that would reasonably be considered de minimis. Some employers use a \$25 or \$50 value for treating something as de minimis, but there is no support for excluding any specific dollar amount as de minimis.

Based on Treasury regulations, employers need not include the value in employee wages of throwing a holiday lunch, dinner, or party for their employees, or of giving a traditional holiday ham, turkey, fruit basket, flowers, or similar item of small value (provided that the employer doesn’t provide holiday gifts on a regular basis throughout the year). However, holiday gifts or prizes valued at large dollar amounts (tablets and flat screen televisions, for example) will never qualify as de minimis fringe benefits. When it comes to holiday gifts and prizes in between those ranges, employers must use their judgment in deciding whether the gift or prize is excludable from employee income as a de minimis fringe benefit. Given the uncertainty in this area, employers might want to take a conservative view.

Part six of our holiday series, “[Avoiding Mistletoe Mishaps, Part VI: When Religion And Work Collide—Responding To Requests For Religious Accommodations At Work](#)” considers employers’ accommodation

obligations for employees' religion-based requests.

TOPICS

Employee Benefits and Executive Compensation