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From:

Sent: Thursday, January 12, 2012 8:50 PM

To:

Cc:

Subject: Target Population & Statistical Sample

Greetings, folks. Our conversation today was helpful. Thanks for your patience.

We discussed whether meals purchased by an employee (with cash or with a credit card for which the employee is personally liable) and reimbursed by the employer pursuant to an accountable plan under § 62(c) should be included in or excluded from the target population and statistical sample. My reading of Revenue Procedure 2004-29 indicates that the meals and reimbursements should be excluded from both the target population and the sample. For purposes of Revenue Procedure 2004-29 the meals and reimbursements aren't eligible for de minimis fringe benefit treatment. Therefore, including the meals and reimbursements only complicates and potentially distorts the value/frequency determination.

In determining value/frequency we look to the frequency with which similar fringes were provided to the employees. If meals reimbursed under an accountable plan are included in the target population and sample, the meals would affect the frequency determination, i.e., they would be treated as similar fringes and would increase the number of meals each employee received. This could cause otherwise de minimis meals to fail the frequency test. As the revenue procedure says, the target population and statistical sample should be aggregated with "similar fringes included in employees' gross income and similar fringes previously excluded from employees' gross income as de minimis fringe benefits." Reimbursements under an accountable plan and meals purchased with those reimbursements aren't similar fringes and don't belong in the target population or statistical sample.

I welcome your views and would be happy to discuss this analysis with you.

Attachment: Rev Proc 2004-29