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TAX REFORM SUSPENDS THE TAX DEDUCTION FOR EMPLOYEE BUSINESS EXPENSES

Article Highlights:

- Employee Business Expenses
- Miscellaneous Itemized Deductions Subject to the 2% AGI Floor
- Accountable Reimbursement Plan
- Occupations Impacted

Not all provisions of the Tax Cuts and Jobs Act are beneficial to taxpayers. One notable negative provision is the suspension of the deduction for employee business expenses. Under prior law, taxpayers who were employees were able to deduct expenses related to their employment as a miscellaneous itemized deduction, to the extent the expenses exceeded 2% of their adjusted gross income. Yet, under the tax reform, employee business expenses will not be allowed for tax years 2018 through 2025.

However, this new limitation does not apply to individuals who are self-employed. For this group of taxpayers, expenses such as business use of their personal vehicle, business-related travel, work-related education, and use of a qualified home office for business continue to be tax-deductible on their business schedules. Furthermore, tax reform actually provides them with more liberal expensing options and, for some, even a special deduction of 20% of qualified business income.

In addition, this limitation does not affect employees whose employers reimburse employee business expenses under an "accountable plan," a business-expense reimbursement plan under which the employer can reimburse employees tax-free for business expenses. On the other hand, some employers may reimburse expenses without having an "accountable plan," in which case the reimbursement is included in the employees' W-2 wages; since the expenses are not deductible under the new law, the reimbursement will end up being taxable.

The loss of employee business expenses as a deduction will impact certain types of employment more than others. Examples of some big losers, assuming the increased standard deduction does not make up for the loss of the deduction, will include:

Professionals such as employed physicians, professional engineers, CPAs, enrolled agents, and other professionals with substantial annual continuing education expenses.

Long-Haul Truckers who have to pay for their own meal and lodging expenses while on the road.

Firefighters – Many are required to pay firehouse dues, which for some have been deductible expenses, as well as uniform expenses.

Outside Sales Employees – Many work remotely away from the employer's business location and incur travel and home office expenses.

Entertainers, including actors, musicians, and the like who always have substantial costs for costumes, agent fees, and other employee business expenses.

Union Members, including those with sizeable union dues.

Educators, including teachers and other educators who work in elementary and secondary schools who have unreimbursed expenses for classroom supplies. Even though they are allowed a $250 above-the-line deduction, that doesn’t begin to cover most teachers’ expenses.

Tradespeople who are required to provide their own tools of the trade.

The only possible remedy for the loss of this deduction is for an employee to negotiate an “accountable plan” with the employer. To be an accountable plan, the following three conditions must be met: (1) the expenses covered under the plan must be business related; (2) employees must be required by the plan to substantiate the covered expenses; and (3) if employees receive advances, the plan must require them to return any amounts in excess of their substantiated expenses. Failing to return the excess advance amount will cause that amount to be taxable to the employee.