



IPB Attorneys Comment on Proposed No-Additional-Cost Service and Employee Discount Regulations

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On November 4, 2025, IPB attorneys Spencer F. Walters and Harrison B. Richards submitted a comment letter to the U.S. Department of the Treasury and the Internal Revenue Service regarding proposed regulations

on the "Determination of Line of Business for No-Additional-Cost Service and Qualified Employee Discount Fringe Benefits" (REG-132805-17).

About Taxation of Employee Discounts

An employee ordinarily would be taxed on an employer-provided discount as if the discount were cash wages. Special rules in Internal Revenue Code section 132 allow these discounts to be provided on a non-taxable basis. Such discounts must meet certain rules including that the discount be offered to the employee on property or services that the employer sells in the line of business in which the employee performs services.

Proposed Regulations

The proposed regulations would replace the use of two-digit Enterprise Standard Industrial Classification (ESIC) codes with four-digit North American Industry Classification System (NAICS) codes to determine an employer's "line of business" for purposes of no-additional-cost services and qualified employee discounts under Internal Revenue Code section 132(b) and (c). Treasury stated that, under these proposed regulations, an employer's line of business would be determined at the establishment (physical work location), rather than at the enterprise (company), level. Treasury also proposed



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updating the aggregation rules for lines of business to accommodate the ubiquity of supercenters and warehouse stores in modern retailing.

IPB Comment Letter

In their letter, Walters and Richards expressed support for Treasury's replacement of ESIC with NAICS codes, which are more frequently updated, but recommend several changes to the proposed regulations, including determining an employer's line of business at the enterprise level and based on broader two- or three-digit NAICS codes. They also suggested incorporating a facts-and-circumstances aggregation test to provide flexibility for evolving business structures and industries and to reduce administrative complexity for employers.