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Flowers, Fruit, Books: Tax-Free Fringe Benefits You Have to Like

Your work was outstanding! Give yourself a fruit basket.

Whoa. I'm the business owner; are you telling me that I can have my business give me a fruit basket (tax-free) and deduct the cost of the fruit basket as a business expense?

Yes, that's exactly what we are telling you.

In this article, we explain the rules of the road for flowers, fruit, books, and similar property including

- how many times a year you can provide this tax-free fringe benefit to yourself and/or your employees, and
- how much you can spend on these fringe benefits.

General Rule

The tax regulations specifically allow certain tax-free de minimis fringe benefits. Regulations say you can give flowers, fruit, books, and similar property to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis).¹

Value and Frequency

For your business to make this fringe benefit tax-free, it must meet two requirements—value and frequency. Here, the IRS has not been very helpful in defining either criterion.

Value. Tax law considers it de minimis when the value is so small that it makes accounting for it unreasonable and impractical.² So how small is this?



In a 2000 memo, Jerry E. Holmes of the IRS Office of Assistant Chief Counsel wrote a memo in which he stated that an item with a value of \$100 is not de minimis.³ This means that \$99 and below is de minimis, right? Not exactly.

In a 2008 information letter, Nancy J. Marks, division counsel/associate, explicitly stated that the IRS had established no dollar limit for de minimis fringe benefits.⁴

So where does this leave you? In murky waters, but you do know that at least one higher-up person in the IRS thought in December 2000 that the de minimis dollar limit was less than \$100 (with inflation, that's about \$140 today). We think you are safe buying a nice box of candy, bouquet of flowers, or fruit platter in, say, the \$50 to \$70 range.

Frequency. The IRS does not allow you to make the gifts too frequently.⁵ How often is too frequent?

The IRS doesn't say, but adds some common sense to the regulation with this guidance as to when this fringe benefit is appropriate: "Examples of de minimis fringe benefits are ... flowers, fruit, books, or similar property provided to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis)."⁶

Good News for Your Choice of Business Entity

Do you operate as an S corporation? A C corporation? A partnership? Or maybe as a proprietorship? Here's good news: It doesn't matter. You face no special rules because of your business entity.

The rules for the flowers, fruit, books, or similar property are the same no matter what type of entity you operate.

Benefits for You, Your Employees, and More

As you learned earlier, it's not just employees who may reap the tax-free fringe benefits of the flowers, fruit, books, or similar property. If you operate as a sole proprietor or single-member LLC taxed as a sole proprietorship, you qualify for the same treatment as any employee of yours.⁷

Picture this. You operate as a proprietorship. It's your birthday. You order yourself a terrific fruit basket—tax-free to you and deductible to your proprietorship.

Others. You or your business, depending on the type of entity, can deduct the cost of the tax-free candy, flowers, and fruit given to corporate directors, independent contractors, and partners in a partnership.⁸



Pick and Choose

Another advantage to this fringe benefit is that you can pick and choose whom you give it to. Unlike benefits for which you may not favor certain groups, such as highly compensated employees, that's not an issue with flowers, fruit, books, and similar property.⁹

Be Wary of the Gift-Card Trap

Let's say you want your employees to pick out the flowers or candy they want. You buy a coupon or gift card that's redeemable at the candy or flower shop.

That's a no-no. As the saying on the farm goes, you stepped in it. You destroyed the tax-free treatment because the IRS considers the coupon or gift card a cash equivalent, and that disqualifies tax-free fringe benefit treatment.¹⁰ If you did this with an employee, you have to add the cash value to the employee's W-2.

The IRS considers the coupon or gift card taxable no matter how small the amount and even if that small amount is used solely to buy the flowers or fruit.¹¹

Takeaways

It's about as good as it gets when you see the words "tax-free" in the tax law.

Under the de minimis fringe benefit rules, your business deducts the cost of giving you or your employees flowers, fruit, books, or similar property under special circumstances (e.g., on account of illness, outstanding performance, or family crisis).

The recipients—you or your employees—receive the de minimis fringe benefits tax-free. Think of this: if you operate as a proprietorship or S corporation, you get both (1) the benefit tax-free and (2) a tax deduction for the cost.

You can provide de minimis fringe benefits to corporate directors, independent contractors, and partners in a partnership. Make sure to review the value and frequency rules that create the tax-free treatment.

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- 1 Reg. Section 1.132-6(e).
 - 2 Reg. Section 1.132-6(a).
 - 3 CCA 200108042.
 - 4 INFO 2008-0023.
 - 5 Reg. Section 1.132-6(e).
 - 6 Reg. Section 1.132-6(e)(1).
 - 7 IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits (2017), p. 9. "For this exclusion, treat any recipient of a de minimis benefit as an employee."
 - 8 Reg. Section 1.132-1(b)(2).
 - 9 Reg. Section 1.132-6(f).
 - 10 Reg. Section 1.132-6(c).
 - 11 Ibid.; TAM 200437030.
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