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## IRS Taxing Tax Day Freebies?

The list of [Tax Day Freebies](#) and discounts grows every year. Tax Day can be painful, so collecting fun perks that also help businesses seems like a win-win. But could they *themselves* be taxed? It's not a silly question.

If a merchant gives you a free burger on Tax Day, the merchant treats it as a promotional expense. Selling two for the price of one? Same. Usually, the IRS can't impute income when you get something discounted or for free, but sometimes it can.

More important, sales tax authorities commonly treat freebies as taxable sales. Often, the retailer is treated as the consumer. That way the state gets the tax. Many items given away are really sold, just for less.

When a store pays your sales tax for you, it actually reduces the price of the item. What if your employer grosses-up your year-end bonus to cover your taxes? That gross-up is additional wages, a tax issue that's circular, so you need a formula to solve it.

**ARBY'S 4TH  
ANNUAL TAX DAY  
CURLY FRY GIVEAWAY**  
FREE SNACK-SIZED CURLY FRY ON APRIL 15



For the 4th year in a row, Arby's is giving away coupons for free snack-sized curly fries on Tax Day.

If you receive \$100 but must give half to a family member, partner or colleague, you might assume you're only taxed on \$50. Not always. You might be stuck with \$100 of income even though you gave \$50 away. Find a diamond ring? Its fair market value is taxable even if you don't sell it. See [Who Pays Tax On Hef's Engagement Ring Sale?](#)

In short, many bargains are taxed. Sure, most Tax Day freebies are small-scale. But if one customer wins a free trip to Paris or a free car? You guessed it, it's taxed. If you pay \$5 for a \$20 meal on Tax Day for yourself, there should be no tax effect. But if an employer gives Tax Day freebies to employees?

Depending on the employer's line of business, it may be taxable as compensation, perhaps at the full \$20 value, not just \$5. If you get a Tax Day freebie and share the wealth with family and friends, there could be gift tax, although these gifts should fall within the \$14,000 annual gift tax exclusion!

Still, get used to thinking that taxes apply everywhere. If you win the lottery, win cash in a game show, or hit it big at the casino, you pay tax. If you win goods instead of cash, their value is income. When Pontiac gave away cars on Oprah, the recipients were on the hook for [taxes](#) even though they didn't receive cash.

You name it, it's taxed. In employment, your employer must withhold extra taxes from your cash pay to make up for any property you get in kind. Can't you claim it was a gift? Many people try this, including John Edwards with his "[it was a gift, not a campaign contribution](#)" defense. See [Surprising Tax Lessons From John Edwards's Indictment](#).

How to distinguish between income and gifts? Gifts involve "detached and disinterested generosity." A briefcase or a country club membership from your boss is meant to reward you for a job well done and help secure additional services in the future. There is an [exception for small holiday gifts to employees](#). The IRS says you can hand out turkeys or holiday baskets to employees provided the gifts don't exceed \$100 in value.

Suppose an employee puts in unpaid overtime and you reward her with tickets to the Super Bowl? They are wages. You're supposed to increase the withholding on her cash wages to cover the value of the tickets. But that works only if you pay with a combination of cash and goods. If a buddy who isn't a regular employee helps out at your business occasionally and you thank him with tickets? The IRS says to report them as pay on [Form 1099](#); they're not a tax-free gift.

Back to Tax Day? Seems like every day....

*You can reach me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*