DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: June 15, 2015

MEMORANDUM FOR FEDERAL, STATE AND LOCAL GOVERNMENT EMPLOYEES

FROM: Paul A. Marmolejo */s/ Paul A. Marmolejo*
Director, Federal State & Local Governments

SUBJECT: Tax Treatment of Uniforms Issued to Government Employees by Fire and Police Departments

This memo issues guidance to field groups on the tax treatment of casual items of clothing issued as uniforms to police officers and firefighters.

Scope:

This directive applies only to state and local police and fire departments that may issue distinctively marked casual items of clothing as uniforms to police officers and firefighters for wear while in on-duty status.

Background/Source(s) of Authority:

Under I.R.C. § 132(a), gross income does not include any fringe benefit that qualifies as a working condition fringe. A working condition fringe includes any property provided to an employee which, if paid for by the employee, would be allowable as a deduction under § 162. See I.R.C. § 132(d). I.R.C. § 162(a) allows a deduction for all ordinary and necessary expenses incurred in carrying on a trade or business.

Rev. Rul. 70-474, 1970-2 C.B. 34, applies § 162 to uniforms issued to police officers and firefighters. The Revenue Ruling concludes that these employees may take deductions for uniforms if they are: 1) specifically required as a condition of employment; and 2) not suitable for ordinary wear. The second prong of the test, whether clothing is suitable for ordinary wear, is based on the facts of and circumstances of the particular situation. Case law from a Federal Court of Appeals sets forth an objective test, stating "adaptability for personal or general use depends upon what is generally accepted for ordinary street wear." Pevsner v. Commissioner, 628 F.2d 467, 470 (5th Cir. 1980).

Otherwise non-distinctive clothing that an employer restricts an employee from wearing while off-duty is not suitable for ordinary street wear. See A.O.D. (Dec. 10, 1974) In Re: Fryer v. Comm'r, T.C. Memo. 1974-26, 1974 WL 36335; Rev. Rul. 67-115, 1967-1 C.B. 30. For example, members of the armed services may deduct expenses for uniforms that they are permitted to wear only while on-duty. In contrast, they may not deduct the costs of military uniforms that may be worn during civilian activity. See Treas. Reg. § 1.262-1(b)(8). Also, employer rules against

wearing uniforms while off-duty "should be given substantial weight for tax purposes only when there is an employer interest to be protected by such prohibition and when the regulations are reasonably capable of being enforced." A.O.D. (Dec. 10, 1974).

State and local police and fire departments may distribute polo shirts, or similar casual clothing items, such as baseball caps, to their employees to wear as uniforms while on-duty. These clothes bear the insignias of the issuing departments, but otherwise are ordinary items of clothing.

Police and fire departments have important governmental and public safety interests in ensuring that members of the public are able to readily identify police officers and firefighters who are on-duty. Conversely, police and fire departments have an important governmental and public safety interest in minimizing the confusion that may result when it is difficult to readily identify police officers and firefighters who are on-duty and in discouraging the impersonation of bona fide police officers and firefighters. As a result, a policy prohibiting off-duty police officers and firefighters from wearing their designated uniforms as casual wear protects important governmental and public safety interests. If the police or fire department prohibits off-duty wear, then the clothes are not suitable for ordinary wear, and the second prong of Rev. Rul. 70-474 will be met.

Procedural Change:

To determine whether the costs of casual yet distinctively marked clothing issued to state and local police officers and firefighters are includable in wages, an FSLG employee should ascertain if the governmental employer:

(i) requires the police officers and firefighters to wear the clothing as a condition of their employment; and

(ii) restricts the police officers and firefighters from wearing the clothing while off-duty (even if it is casual, as in the case of a polo shirt bearing official insignia).

If (i) and (ii) are met, the FLSG employee shall treat the costs of the clothing issued to the police officers and firefighters as excluded from wages.

Effective Date: This memo is effective when issued.

Contact: If you have any questions, please contact Kathleen Rodegeb, CPM Manager, at (925) 974-3827.

This directive is not an official pronouncement of law, and cannot be used, cited, or relied on as such. In addition, nothing in this directive should be construed as affecting the operation of any provision of the Internal Revenue Code (I.R.C.), Treasury Regulations, or related guidance thereunder.

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