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# Is this Deductible?

## My barber seems to think so!

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National Association of Enrolled Agents



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# Urban Legends

- My barber told me...
  - meal costs
  - haircuts
  - wages while working in foreign waters
- ...are all tax-advantaged





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# Deductions—by the book

- “A matter of legislative grace”
- Which means, practically:
  - Taxpayer bears burden of proof
  - Taxpayer must show (s)he is entitled
- *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992)



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# § 162—ordinary & necessary

- The IRC states:
  - There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business



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# § 162—ordinary & necessary (continued)

- A business expense is
  - Ordinary if it is normal or customary within a particular trade or business
  - Necessary if it is appropriate and helpful for the development of the business



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# Fireman Meals

- General rule – firefighters cannot take a deduction for meals
  - *Duggan 77 TC 911*  
no deduction even during 24-hour shifts
  - *Phillips TCM 1990-356*  
no deduction even though union rules required common meals
  - *Morton TCM 1986-132*  
no deduction despite severe peer and supervisory pressure



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# Fireman Meals (cont.)

- Special, but rare, circumstances may permit a deduction:
  - *Sibla* (68 TC 422, 611 F.2d 1260)
  - *Matta* (TCM 1990-356)
- To be deductible, the employer must require participation





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# Uniforms (Less Allowances)

- Cost of uniforms and upkeep in excess of any allowance is deductible
  - Police officers, firefighters, letter carriers, nurses, airline workers (Rev. Rul. 70-474)
  - Jockey uniforms/supplies (Rev. Rul. 70-475)
  - Scrubs worn by nurses, doctors, hospital workers (Crawford TCM 1993-192)



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# Police—gym, watch, etc.

- The “but for” test
  - No gym/spa even if required to be fit (Rev. Rul. 78-128)
  - No haircuts (Drake 52 TC 842)
  - No makeup, manicures, teeth whitening (Hamper TCM 2011-17)
  - No wristwatch (Rev. Rul. 82-168)



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# Police Meals

- General rule redux—law enforcement officers cannot take meal deduction
  - No deduction for FBI surveillance meals (Kessler TCM 1985-254)
  - Special circumstance exception (Christey CA8 841 F.2d 809)
  - Not even for tax pros during filing season! (Antos TCM 1976-89)



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# 10% Penalty Exception

- Qualified public safety employees may take distributions from a benefit plan after separating from service at age 50
  - Without incurring additional 10% tax (IRC § 72(t)(10))



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# Health Insurance Exception

- There is also an exclusion from gross income of up to \$3,000 to pay for health insurance
  - for distributions from government plans
  - to retired qualified public safety officers (IRC § 402(1))



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# Railroad Workers

- General rule re-redux—railroad workers away from home cannot take a deduction for meals
  - “Sleep or Rest Rule” (Rev. Rul. 75-170)
  - Need not be for an entire 24-hour day or throughout hours from dusk to dawn...
  - Cannot be merely a brief interval for meals



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# Military Uniforms

- Military uniforms in excess of any allowance are deductible – maybe
  - Active military and dress uniforms (Reg. §1.262-1(b)(8))
  - Reservationalists or civilian staff at military school (Rev. Rul. 55-109 and Rev. Rul. 59-219)
  - Fatigue uniforms for active military (Rev. Rul. 67-115)



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# Ships at Sea

- In general, no particular tax advantage for those in international waters
  - § 911 exclusion for foreign income applies (Clark TCM 2008-71)
  - M&IE for those at sea who are provided meals?  
(Johnson 115 TC 220)



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# Ministers—income

- Ministers typically receive a Form W-2 but...
  - Are “love offerings” taxable income or gifts?
  - What about honoraria for weddings or funerals?



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# Ministers—parsonage allowance

- IRC § 107 has two subsections – both contain an exclusion from gross income
  - rental value of home furnished to minister
  - parsonage allowance to provide for rent or ownership of a home
- U.S. District Court in Wisconsin has held second subsection unconstitutional



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# Summary

- Don't believe everything your barber, uncle or second cousin once-removed says
- Don't let your clients bully you
  - the possible \$1,000 preparer penalty is no doubt less than your fee
- However, if something is deductible, take it
- Be ready to research beyond IRS pubs



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# Questions?

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