



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

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OFFICE OF
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The Honorable Bill Nelson
United States Senator
Landmark Two
225 East Robinson Street, Suite 410
Orlando, Florida 32801

Attention:

Reference:

Dear Senator Nelson:

This letter is in response to your inquiry dated August 11, 2006, on behalf of your constituent, _____, regarding the taxation of employee uniforms. I hope the following information clarifies the deductibility of uniforms.

An employee can exclude from gross income any fringe benefit which qualifies as a working condition fringe under § 132(a)(3) of the Internal Revenue Code (Code). A "working condition fringe" includes any property or services provided by an employer to an employee to the extent that, if the employee paid for such property or services, such payment would be allowed as a deduction under Code §162 as an ordinary trade or business expense.

Revenue Ruling 57-143, 1956-1 C.B. 89, holds that clothing required to be worn on the job that is not distinctive in character is not a uniform. The fact that someone was required to wear such clothing does not warrant a deduction for its cost.

Revenue Ruling 70-474, 1970-2 C.B. 34, sets forth the standard for deductibility under Code § 162 of police, firefighter, and other similar employee uniforms. The ruling states that the cost of acquisition and maintenance of uniforms is deductible under § 162 if the uniforms are specifically required as a condition of employment, and they are not of a

type adaptable to general or continued usage to the extent that they take the place of regular clothing. “The deduction is not allowable if the uniform is suitable for ordinary wear.” *Id.*

The following three cases illustrate the Service’s position on the deductibility of uniforms. In *Connelly v. Commissioner*, 262 F.2d 411 (2d Cir. 1959), the taxpayer sought to deduct the cost of aprons and strong work clothes that he used in his job as a buffer and polisher of rough plastics. In denying the deduction, the court held that the employer did not require these items as a condition of employment and they were also adaptable to general usage.

Nilson v. Commissioner, T.C. Memo. 1983-718, and *Fausner v. Commissioner*, T.C. Memo. 1971-277, both involved airline pilots. In both cases portions of their uniforms which were suitable for street or home use were not deductible under Code § 162. The nondeductible items included black socks, a black raincoat, and black shoes.

Pevsner v. Commissioner, 628 F.2d 467 (5th Cir. 1980), reversed a Tax Court decision which held that a manager of a designer boutique who was required to purchase and wear that designer’s clothing on the job, but who did not wear the clothing off the job because it was inconsistent with the taxpayer’s simple private lifestyle, could deduct the cost of such clothing. The Fifth Circuit noted that the clothing at issue was adaptable for general usage. Under an objective test, no reference is made to the individual’s lifestyle or personal taste. Adaptability for personal or general use depends on what is generally accepted for ordinary street wear. 628 F.2d at 470.

Thus, under Code section 162, the cost of clothing an employee is required to wear at work is deductible by the employer only if the clothing is a uniform that is required as a condition of employment and is not adaptable to ordinary wear. The fact that an employer prohibits the use of these articles of clothing while the employee is not at work does not alter this conclusion with regard to police, firefighters, and similar employees.

In summary, the cost of police and/or firefighter uniforms is excludible from an employee’s gross income under Code section 132(a)(3) as a working condition fringe if the cost of such clothing would otherwise be deductible by the employee under section 162 as a trade or business expense. Such uniforms will otherwise be deductible by an employee under Code section 162 if such uniforms are specifically required to be worn as a condition of employment and such uniforms are not suitable for everyday wear.

I hope that this general information is helpful in responding to . If you have further questions, please call me or of my staff at () .

Sincerely,

Lynne Camillo
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Tax Exempt & Government Entities