

**Division of Accounting
Payroll Compliance Group**

**Bulletin # 2015_001
Uniform & Clothing Allowance Fringe Benefits**

INTRODUCTION

The Division of Accounting (DOA) is responsible for working with State of Delaware (State) Organizations to ensure appropriate application of regulations associated with fringe benefits offered to State employees.

This bulletin provides guidance on the tax implications of uniform and clothing allowances made to employees to ensure that proper communication is given to the employee at the time of receipt and that the State is in compliance with federal and state tax laws and regulations.

FACTS

Fringe benefits include any compensation other than cash wages. The general rule is that the compensation is taxable; however, the Internal Revenue Code provides exclusions for numerous forms of non-cash compensation provided to employees.

The facts on which this opinion is based are that several State Organizations employ individuals whose specialized job requirements include issuance of uniforms, clothing, or footwear, or cash allowances for the purchase of these items.

NOTE: *The rules cited in this document apply to clothing/footwear purchased by the employer and issued to the employee, clothing/footwear purchased by the employee and reimbursed by the employer, and clothing/footwear purchased by the employee using a State purchasing card. It also covers allowances provided for the care and upkeep of said clothing/footwear.*

There is no specific statutory guidance on clothing or uniforms. Tax determinations are made based on rules for business deductions and working condition fringe benefits (see definitions below) and how expenses are substantiated. The IRS requires employers to make tax determinations by applying a reasonable person's understanding of IRS regulations.

Publication 17 (2012) – Individual Tax Guide & Publication 529 – Miscellaneous Deductions

Employees can deduct the cost and upkeep of work clothes if two requirements are met.

- Employees must wear them as a condition of employment
- The clothes are not suitable for everyday wear.

It is not enough that employees wear distinctive clothing. The clothing must be specifically required by the employer. Nor is it enough that employees do not, in fact, wear their work clothes away from work. The clothing must not be suitable for taking the place of regular clothing.

Examples of workers who may be able to deduct the cost and upkeep of work clothes are: delivery workers, health care workers, law enforcement officers, and transportation workers (air, rail, bus, etc.).

Given no specific guidelines from the IRS, applying the second requirement is subjective in nature. You should apply a “reasonable person” approach (what would a reasonable person say) when deciding whether the clothing can be worn for everyday use. These rules need to be applied individually to the different types of clothing or footwear purchased to determine whether they are excludable from an employee's wages. Organizations should evaluate the clothing that they purchase or reimburse to the employee to decide whether it qualifies as taxable or non-taxable based on the IRS rules.

If it is determined that the clothing qualifies as a taxable fringe benefit then the IRS requires that the fair market value be included on the employee's W-2 and withholdings be deducted.

If something is determined to be non-taxable the Organization must document the justification for the determination and retain the justification in the event of an IRS field audit.

DEFINITIONS

- **Working condition fringe benefits** include property or services that, if the employee had paid for the property or service, the cost would have been deductible on the employee's individual income tax return. Therefore, if the cost of an item is deductible by an employee as a business expense, it may be excludable from the employee's wages as a working condition fringe benefit, if provided by the employer. *IRC §132(d)*
- **Accountable Plan** – a plan that meets the requirements as specified by the IRS.
 - Reimbursed expenses paid in connection with the performance of services for the employer.
 - The employee substantiates the reimbursed expense to the employer.
 - The employee returns amounts paid by the employer that exceed substantiated expenses.
- **Non-accountable Plan** – a payment or reimbursement arrangement that does not meet the requirements of an accountable plan – payments under such plans are wages and subject to withholding.

FINDINGS

Periodic allowance payments made to employees for the purchase and maintenance of specific articles of *employer-required* uniforms are not taxable to the employees provided that the uniforms are not adaptable to general use, and are not worn for general use. In addition, the employees must substantiate the expenses. If the employer does not require substantiation, the allowance is taxable as wages and subject to withholding when paid.

REGULATORY REFERENCES

In rendering this opinion, we reviewed the applicable Code, Regulations, and laws as cited below.

IRS

Publication 15-B (2012) – Employer’s Tax Guide To Fringe Benefits

<http://www.irs.gov/publications/p15b/ar02.html>

General Rules for the Working Condition Fringe Benefit exclusion

- Must relate to employer's business and be provided so employee can perform his or her job
- Employee would have been entitled to an income tax deduction if paid personally
- Business use must be substantiated with records; meaning, the accountable plan rules must be met for reimbursements or clothing allowances. *IRC §162; Reg. §1.62-2(c)(1)*

NOTE: If the clothing qualifies as excludable, then reimbursement for the cleaning costs of the clothing is also excludable.

June 15, 2015 - IRS Memorandum – Tax Treatment of Uniforms Issued to Government Employees by Fire and Police Departments

This directive applies only to 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. 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 requirement will be met.

NOTE: This exception does not apply to other employees of a police or fire department.

Due to the wide range of clothing and the business requirement variations across State Organizations, a list of clothing that is specifically non-taxable cannot be included in this bulletin. To assist in the determination, below are examples of actual IRS determinations.

Examples:

1. Polo shirts are a popular article of clothing provided to employees and are almost always taxable. Embroidered logos and patches make no difference in the tax determination. The only alterations that make the value of the shirts a non-taxable working condition fringe benefit is if they are a high visibility color (i.e., bright orange shirts for road crews), or they have reflective lettering as a safety feature for situations where visibility is low (i.e., "POLICE" added to shirts worn by officers working a traffic accident at night).

NOTE: Please see the possible exception for police officers and firefighters above.

2. In a court case, the employee worked outdoors in very cold weather and purchased insulated coveralls and insulated work shoes. The court ruled that the insulated coveralls met the requirements because it was unlikely that they would be worn for everyday use (very bulky and utilitarian fashion) but they felt that the insulated shoes were suited for informal personal use and; therefore, did not meet the second requirement and were a taxable fringe benefit.
3. An Organization is required to reimburse certain employees for shoes under a union contract. The shoes are not safety shoes. If the shoes are not safety shoes and are adaptable for general wear, the reimbursements are included as wages to the employees even if the employer is required to make the payment.
4. The State of Delaware's IRS Federal, State, and Local Government (FSLG) representative advised that it does not matter if the employer-provided clothing/shoes are left in a locker at the worksite. If the clothing/shoes are adaptable to normal wear, the value is taxable.

Safety Equipment – Because individuals can deduct the cost of protective clothing required for work, safety equipment is excludable from employee wages if the equipment is provided to help the employee perform his/her job in a safer environment. To be excludable, it is not necessary that the equipment be required by the employer. However, the accountable plan rules defined above must be met for reimbursements for safety equipment. *IRC § 162; Reg. §1.62-2(c)(1)*

Examples of workers who may be required to wear safety items are: carpenters, cement workers, chemical workers, electricians, machinists, pipe fitters, and truck drivers. Examples of safety equipment are: safety shoes or boots, safety glasses, hardhats, work gloves, and anti-glare screen for computers.

TAX ADVICE DISCLAIMER

Although the opinion provided here is presented in good faith and believed to be correct, it is General in nature and is not intended as tax advice. Furthermore, the facts and regulatory references applicable to this scenario may not be applicable to or suitable for other similar scenarios that may require consideration of other factors.

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