

## Testing of Employer Provided clothing

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### Background

In general, employers often provide employees with articles of clothing to wear in place of their personal clothing while performing their duties for the employer.

In order for any clothing or uniforms that are provided to the employee not to be a taxable event, the clothing must meet both of the following requirements:

- The clothing provided must be a condition of employment (the employer mandates the employee's where the provided clothing to work), and
- The clothing cannot be worn or adaptable to street wear (e.g. blue jeans or polo shirts).

**Both conditions must be met.**

### Law:

Internal Revenue Code (IRC) section 61(a)(1) requires employees to include the value of fringe benefits received from their employers in gross income. The value of the fringe benefit to be included is the fair market value of the benefit less any amount paid by the employee for the benefit.

Treasury Regulation (TR) 1.61-21(5) states "The provider of a fringe benefit is that person for whom the services are performed, regardless of whether that person actually provides the fringe benefit to the recipient. The provider of a fringe benefit need not be the employer of the recipient of the fringe benefit..."

IRC section 132(d) defines the term working condition fringe to mean "any property or service provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167." IRC 162 addresses trade or business expenses while IRC 167 covers depreciation of trade or business property.

It is well accepted that clothing is deductible as a business expense only where (a) it is required by the employer or essential to the taxpayer's employment; (b) it is not suitable for general wear or use away from work; and (c) was not, in fact, worn while away from work. *Drill v. Commissioner*, 8 T.C. 902 (1947); *Yeomans v. Commissioner*, 30 T.C. 757, 767 (1958); Rev. Rul 70-474, 1970-2 C.B. 34



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IRC section 132(e) defines de minimus fringe benefits as “any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer’s employees) so small as to make accounting for it unreasonable or administratively impracticable.”

If it is determined that an article of clothing is a uniform, the maintenance of such article of clothing is allowed as a deduction as well. *Mortrud v. Commissioner*, 44 T.C. 208 (1965)

Accountable plan rules are provided for in IRC 62(c). For an allowance to not be taxable, three requirements must be met: 1) must be a business connection, 2) must be “adequate” accounting by recipient, and 3) excess reimbursements or advances must be returned. Regulations 1.62-2(e) and 1.274-5T(b)(2) define “adequate” accounting to verify time, date, place, amount, and business purpose of the expense. Receipts are required.

Reg. 1.62-2(c)(3) discusses non-accountable plans as an allowance program that does not meet all three of the requirements for an accountable plan. Payments made under a non-accountable plan are taxable wages to the employee when paid to an employee. Reg 1.62-2(h)(4)(ii) requires withholding on payments made under a non-accountable plan when the advance/reimbursement is made to the employee.

IRC section 262 states “except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.”

Examples of court cases where clothing was disallowed because they were considered adaptable to streetwear:

1. *Colbert versus Commissioner*, T.C. Summary Opin 2018 – 7. Personal Security Services Officer. Blue Jacket, Blue Vest, polo shirt, khakis.
2. *Boltinghouse versus Commissioner*, T.C. Memo 2007-234. Salesman at Men’s Warehouse. Suits, slacks, ties, and shirts.
3. *Udoh versus Commissioner*, 7 T.C.M. 2056 (1999). Insurance agent. Suits, blazers, and shoes.
4. *Hafeez versus Commissioner*, T.C. Summary Opin 2010-109. Chauffer. Suit.