

Policy on the Taxation of Clothing: [Name of School, College or Unit (SCU)]

**The nation should have a tax system that looks like someone designed it on purpose – William E. Simon, Former Secretary of Treasury of the U.S**

**I**. **Tax Law:** The Courts impose a higher standard on the tax-free reimbursement of clothing provided by U-M to its employees than virtually all other such reimbursed expenses.

Clothing is deductible (in this case, reimbursable tax-free) only when:

(A) it is required by the employer for business purposes,

(B) it is not suitable for general wear or use away from work, and

(C) it is not, in fact, worn while away from work.[[1]](#footnote-1)

Whereas virtually every other expense must only meet prong (A) above. For instance, in carrying out their duties, employees may use smart phones at home, while out of town at conferences or at social events and, provided these technology tools are used primarily for business purposes, may be reimbursed their costs on a tax-free basis. However, in addition to a business need, the clothing in question must not be suitable for general wear and must not be worn while away from work.

 A noted exception to forego taxation with respect to clothing includes items provided by the employer to its employees that in the aggregate for the calendar year are considered to be de minimis, i.e., less than $75.[[2]](#footnote-2)

**II.** **Examples:**

A. The taxpayer sought to deduct the cost of aprons that he used in his job to buffer and polish rough plastics. The Connelly court denied the expense because the clothing was adaptable to general usage.[[3]](#footnote-3) Although the aprons were faded and worn out, the court still considered them to be subject to taxable income.[[4]](#footnote-4)

B. The courts have held that pilots must include certain portions of their uniforms in taxation since they were suitable for street or home use. Clothing included black socks, a black raincoat, and black shoes.[[5]](#footnote-5) These cases analyzed each piece of clothing to determine whether the items were subject to taxation.

C. The Pevsner court held that a manager who was required to purchase and wear clothing for her job with Yves St. Laurent must include the value of the clothing into her taxable income notwithstanding the fact that she did not wear the clothing after hours because it was inconsistent with her simple and private lifestyle.[[6]](#footnote-6) The courts adopted an objective rather than a subjective test when analyzing suitability for ordinary wear.

**III. IRS Enforcement**

The Internal Revenue Service (IRS) closely scrutinizes this issue and will request specific and detailed documentation upon examination, resulting in possible tax liabilities assessed against employees as well as significantly increasing the university’s administrative burden. The IRS recently audited several universities on their use of clothing and has requested specific information accordingly:

Provide “all written policies on …clothing”, including “a list of uniform items given to employees with the sample photos of employee uniforms. Or have sample clothing items available on the day of appointment”.

**IV. Recommended Approach to Minimize Taxes**

**Step 1:** Exclude clothing that meets the de minimis exception from income tax, i.e., less than $75 in the aggregate for the calendar year.

**Step 2:** Separate clothing from equipment. Equipment is held to the general standard of a business need and, thus, may be used off campus when primarily furthering a business purpose, e.g., computers, consoles, equipment with U-M logos, etc.7

**Step 3:** Identify clothing that is not suitable for general wear or use away from work, e.g., academic regalia.

[To minimize tax risks, it is highly recommended that the SCU include in its guidelines on faculty attire that the use of the clothing is limited exclusively to university events and should be kept on campus.]

**Step 4:** Any remaining clothing should be taxed to the employees at the fair market value (FMV).

**If you have any questions or wish to discuss, please contact the tax team at taxreporting@umich.edu.**

1. Drill v. Commissioner, 8 T.C. 902 (1947); Yeomans v. Commissioner, 30 T.C. 757 (1958); Rev. Rul. 70-474, 1970-2 C.B. 34. [↑](#footnote-ref-1)
2. The de minimis exception under Internal Revenue Code (IRC) Section 132(e). [↑](#footnote-ref-2)
3. Connelly v. Commissioner, 262 F.2d 411 (2d Cir. 1959). [↑](#footnote-ref-3)
4. Drill, supra, note 2. [↑](#footnote-ref-4)
5. Nilson v. Commissioner, T.C. Memo. 1983-718; Fausner v. Commission, T.C. Memo. 1971-277. [↑](#footnote-ref-5)
6. Pevsner v. Commissioner, 628 F. 2d 467 (5th Cir. 1980). [↑](#footnote-ref-6)