

Are Your Work Threads Tax Deductible?

By Robert W. Wood

Thirty years ago, most male lawyers wore suits and ties. Most women lawyers replicated that look pretty closely. Now, if you show up that way you are likely to be a real odd person out. It can be comforting to know how to dress and to blend in, and maybe it even impacts your effectiveness.

Yet it can be stressful to come up with just the right look. That's why when firms started to go casual or business casual, an army of consultants emerged. For a fee, they could tell you about plaids vs. stripes, what looks to avoid, and what colors were simply not on. All this hoopla can be expensive.

So how about taking a tax deduction for all that stuff in your closet that you only bought because you needed it for work? After all, if you have to dress a certain way at work, doesn't that mean those expensive clothes are a business expense? It's a nice idea, but be careful.

You might think about taxes when you buy, assuming that you can somehow claim it on your taxes. But should you actually do that, claiming that silly outfit as a business expense? A recent Tax Court decision suggests it's not a good idea. *See Barnes v. Commissioner*, T.C. Memo. 2016-79.

In that case, the outfit was quite a lot of Polo gear from Ralph Lauren. Yes, that can be expensive, and this particular taxpayer seemed to have a pretty good reason to write it all off. But the IRS said no, and so did the Tax Court. For the polo-donning taxpayer, that meant no deduction.

More about polo shirts below, but first think about more traditional business attire. Can you claim that business suits are like uniforms so should be tax deductible? Long before dressing for work was confusing, men and women have lost these arguments with the IRS. Those who went on to court to fight the IRS usually lost.

The tax code allows deducting work clothes, but usually only if:

- You wear them as a condition of your employment; and
- The clothes are not suitable for everyday wear.

This tax rule was even in effect even when you could hear the feel-good music of ABBA. It turns out ABBA wore outrageous outfits onstage to claim tax deductions. The Swedes wore glittering hotpants, sequined jumpsuits and platform heels. Björn Ulvaeus would later explain that the reason for the outfits was the Swedish tax code. The expensive outfits were tax deductible only if they were so outrageous they couldn't be worn on the street.

That story is worth remembering, since U.S. tax law is similar. More recently, there was Lady Gaga's meat dress. It certainly wasn't useful for normal wear, so it would qualify for a tax deduction. In contrast, your regular business wear fails the tax test. It is not enough that you don't wear your work clothes away from work.

The clothing must not be suitable for regular wear. Think firefighters, health care workers, law enforcement, letter carriers, professional athletes, and transportation workers (air, rail, bus, etc.). Musicians and entertainers can deduct theatrical clothing not suitable for everyday wear.

Required protective clothing like safety boots, safety glasses, hard hats, and work gloves are OK. Some workers today arguably treat their work clothes almost like protective gear. You commute to work in normal clothes, and put on the strange business attire just for your work hours.

One TV anchor wound up in court deducting clothing items that I'm guessing she later regretted. In *Hamper v. Commissioner*, T.C. Summ. Op. 2011-17, a newscaster wrote off \$20,000 a year for her clothes. She argued that she was required to adhere to Women's Wardrobe Guidelines for "standard business wear." Besides, she wore it only at work and even kept it separate from her personal clothing.

Even with these arguments, the IRS and Tax Court said no to her write-off. It didn't help that she was aggressive in what she claimed. On top of business suits and dresses, she deducted lounge wear, a robe, sportswear, lingerie, thong underwear, an Ohio State jersey, jewelry, running shoes, dry cleaning, business gifts, cable TV, contact lenses, cosmetics, gym memberships, haircuts, Internet access, self-defense classes, and her subscriptions to Cosmo, Glamour, Newsweek and Nickelodeon.

Suffice it to say that her tax return was a tad aggressive. Most of us who don't wear specialized clothes for work can only deduct the used clothing we give to charity. When you do that, you can only claim its market value, which usually isn't much.

What about our recent polo-donning taxpayer? The recent polo case involved a Ralph Lauren salesman named Terance Barnes. He was required, as a condition of his employment, to wear Ralph Lauren clothing, so he had a pretty good argument.

Even so, the IRS went through the usual analysis and pointed out that all of this polo wear was suitable for wearing most all of the time. It just wasn't specialized enough, not like the ABBA hotpants and sequined jump suits. Barnes thought he had pretty good arguments about his employer's requirements. So he headed off to Tax Court.

The Tax Court judges might even wear polos under their judicial robes? I don't know, but regardless, the Tax Court sided with the IRS. Whatever the requirement of the employer, these clothes were hardly so specialized that they were only useful in the Ralph Lauren store.

In fact, the Tax Court didn't think this was a close case, regardless of how Barnes postured his argument. Sure, you can deduct as business expenses some things your employer may require. But the clothing rule trumps the employer's requirement. Even if your employer requires you to wear a ___, if it is suitable for wear outside of work, you lose.

But are these tax deductions you are forgoing all that valuable? Section 162 permits a deduction for expense incurred in carrying on a trade or business. An employee is in the business of being an employee. Thus, any expense an employee incurs related to his employ that is not reimbursed by the employer may generally be deducted as an "unreimbursed employee expense" on the employee's tax return.

Unfortunately, these deductions are only available to those who itemize. Plus, they are subject to a floor equal to 2 percent of adjusted gross income. That means even if you qualify for this kind of deduction, the payday from claiming it can be pretty small.



Robert W. Wood is a tax lawyer with www.WoodLLP.com, and the author of "Taxation of Damage Awards & Settlement Payments" (www.TaxInstitute.com). This is not legal advice.