IT 297 - Deductions - expenditure incurred by employee taxpayers in providing and/or maintaining clothing worn in the course of employment.

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TAXATION RULING NO. IT 297

DEDUCTIONS - EXPENDITURE INCURRED BY EMPLOYEE TAXPAYERS IN PROVIDING AND/OR MAINTAINING CLOTHING WORN IN THE COURSE OF EMPLOYMENT.

F.O.I. EMBARGO: May be released

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I 1103379	PROTECTIVE CLOTHING UNIFORMS	51(1)

OTHER RULINGS ON TOPIC: CITCM'S 758, 773, 812. IT 300

FACTS The instructions in CITCM 812 on the above subject were re-examined in the light of decisions handed down by Taxation Boards of Review.

RULING 2. It is clear, from a careful examination of the decision of the Full High Court in the case of FC of T v Finn (1961) 106 CLR 60, that any test based on particular clothing being worn as a condition of employment is no longer tenable. Boards of Review have observed on several occasions that the expenditure incurred by Finn was 'in carrying out activities beyond any which had been or could lawfully have been specifically required of him' by his employer - per Kitto J.

3. In a number of decisions, Boards of Review have decided the question of allowing deductions of the cost of employees' clothing by applying the test whether this clothing was necessary and peculiar to the taxpayer's occupation. On this test, 'conventional clothing' in the sense of clothing of a type usually worn by men (or women) in the taxpayer's station in life regardless of their occupation is, apart from the exceptional circumstances noted in paragraph 10 below, not deductible - cf 13 TBRD Case N60; 11 CTBR(NS) Case 26. The business suit of a bank manager and the normal working clothes of a labourer are equally conventional clothing in this sense.

4. To be accepted as necessary and peculiar to a taxpayer's occupation, it is considered that clothing should satisfy one or more of the following conditions:-

(a) that it is in the nature of a uniform prescribed by his employer;

(b) that it assists the taxpayer in some way in performing the duties for which he is paid;

(c) that it protects the taxpayer from the risk of personal

injury in performing those duties; or

(d) that, as a matter of common acceptance and universal experience, it is of a character generally worn by persons following the taxpayer's occupation in protection of conventional clothing.

5. Clothing falling within Class A of the Circular Memorandum (uniforms) clearly satisfies the above conditions, as also do the safety helments, etc., mentioned under Class B, paragraph 15. With regard to other items under Classes B and C, the circumstance that the employer does not provide either the clothing or a cash allowance is no longer a valid ground for denying a deduction. The allowance of a deduction is to be determined rather by the nature of the clothing and the circumstances in which it is worn and used. For example, as a general rule the overalls, aprons, coats, wrap-ons, protective gloves and caps, and fishermen's boots, listed under Class C will now qualify for deduction, but other types of footwear, singlets, etc., would generally not so qualify. To this extent the rulings in the Circular Memorandum are modified.

6. The modified rulings should be applied only where the claim in the taxpayer's return is sufficiently descriptive to positively identify the clothing as being necessary and peculiar to the occupation - as, for example, a claim for 'Overalls' by a painter. Claims under such vague general headings as 'Working Clothes' should be disallowed.

7. A type of clothing calling for special consideration is the mess dress worn by officers of the armed forces. Naval officers are provided with the initial issue of mess dress, but they buy replacements at their own expense. Military and air force officers buy their own mess dress, and the initial cost has been held to be non-deductible capital expenditure - 13 TBRD Case N 83; 11 CTBR (NS) Case 33. On the ground, however, that the wearing of mess dress is necessary and peculiar to the officer's occupation, the cost of replacements is deductible in principle. As a rule of practice, where an officer claims as a deduction the cost of such replacements, his uniform maintenance allowance should be brought into assessable income, and he should be allowed a deduction of such expenditure incurred by him during the year of income in replacing all items of uniform (including mess dress) as is established by detailed particulars. To this extent the ruling in CITCM 758, as varied by the addendum to CITCM 773 - under which deductions up to the amount of the uniform maintenance allowance are allowed without particularization - is modified.

8. In addition to deductions for the cost of working clothes of a non-conventional nature, Boards of Review have displayed a readiness to extend the deduction to the cost of conventional clothing in certain limited circumstances. Where it is established that, because of peculiar and unavoidable conditions directly attributable to a taxpayer's duties (e.g., a necessity to provide an abnormal number or variety of garments or to suffer excessive wear and tear of garments) a taxpayer

incurs extra expense beyond that which is incurred on conventional clothing by persons in occupations not subject to such conditions, a deduction may be allowed of such extra expense. As indicated in paragraph 6 of the Circular Memorandum, the application of this ruling is limited primarily to television personalities, comparable public entertainers, mannequins and models.

9. Board of Review No.3 in a decision reported as 14 TBRD Case P62, 11 CTBR(NS) Case 82, extended this principle to allow a deduction of an amount regarded by the Board as extra expense incurred on conventional clothing by a plain clothes policeman. Although this decision is in direct conflict with that reported as Case No.23, 12 CTBR (old Series), it was decided not to appeal from the decision.

10. The decision by Board of Review No.3 should not be taken, however, as extending, even in principle, the allowance of a deduction to the cost of conventional clothing worn in any other case falling within Class D of the Circular Memorandum - e.g., business executives, salesmen, etc.

COMMISSIONER OF TAXATION