TD 93/114 - Income tax: is a police officer, who is required to maintain an adequate level of physical fitness in order to undertake police duties, entitled to claim a deduction for fitness related expenditure?

This cover sheet is provided for information only. It does not form part of *TD 93/114 - Income tax: is a police officer, who is required to maintain an adequate level of physical fitness in order to undertake police duties, entitled to claim a deduction for fitness related expenditure?*

This document has changed over time. This is a consolidated version of the ruling which was published on *5 June 1996*

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

Taxation Determination

Income tax: is a police officer, who is required to maintain an adequate level of physical fitness in order to undertake police duties, entitled to claim a deduction for fitness related expenditure?

1. Where police duties do not require an officer to undertake regular strenuous physical activity, expenses of keeping fit are not deductible under subsection 51(1) of the *Income Tax Assessment Act 1936*. This type of expense does not have the essential character of being incurred in the course of gaining or producing assessable income.

2. An employer's requirement that an employee incur expenditure which is not related to income-producing activities does not convert that expenditure into a deductible outgoing (per Hill J in *FC of T v. Cooper* 91 ATC 4396 at 4414; (1991) 21 ATR 1616 at 1636). Therefore, whilst Police Regulations may require an officer to remain in a physically fit condition, this does not mean expenditure related to keeping fit is allowable as an income tax deduction.

3. However, there may be circumstances where such expenditure by a police officer is an essential element of gaining income. This could occur in those occupations within the police force where strenuous physical activity by an officer is an essential and regular element of performing that officer's duties. It is considered a police academy physical training instructor may be in this category.

4. Those expenses which may be claimed in the above circumstances include gym fees and depreciation of gym equipment. No deduction is available in respect of expenditure on any items of conventional clothing which may be used in the course of keeping fit. This would include such things as tracksuits, running/aerobic shoes, socks, T-shirts or shorts.

Example 1

A general duties police officer regularly plays squash to ensure he maintains a high level of fitness as he may be called upon to undertake strenuous activities at any time in the line of duty. The officer claims his squash fees as a deduction. As the officer's ordinary duties do not require regular strenuous physical activity, no deduction is available to the officer for squash fees or any related expenses.

Example 2

A police academy PT instructor regularly attends a commercially operated gymnasium to ensure he is in peak condition to perform his duties. The officer claims gym fees, the cost of special protective aerobic shoes

and the cost of a track suit. As the officer's ordinary duties require regular strenuous physical activity, a deduction would be available for gym fees and the cost of the special protective aerobic shoes. A deduction is not allowable for the cost of the track suit because it is conventional clothing and the expense is private in nature.

Commissioner of Taxation
17/6/93

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