

## **Here are the responses to remaining questions from our March 26<sup>th</sup> FSLG Forum!**

**Q.** We purchase t shirts for summer help with the City logo. They are required to return shirts at the end of season to their supervisor. Would this be taxable?

**A.** For purposes of my response I'm going to assume that "summer help" is the same as a temporary summer employee. Generally, the value of work clothing provided by the employer is not taxable to the employee if:

- a) The employee must wear the clothes as a condition of employment, and
- b) The clothes are not suitable for everyday wear.

To be excluded from the employee's income, it is not enough that you wear distinctive clothing. The clothing must be specifically required by your employer. Nor is it enough that you do not, in fact, wear your work clothes away from work. The clothing must not be suitable for taking the place of your regular clothing.

Example: The value of work clothes and their upkeep for firefighters, law enforcement officers, or letter carriers is excludable from income and not taxable to the employee because these work clothes are not suitable for everyday wear.

However, work clothing consisting of a white cap, white shirt or white jacket, white bib overalls, and standard work shoes which a painter is required by his union to wear on the job, is not distinctive in character or in the nature of a uniform. Therefore, the value of these items when provided by the employer is taxable to the employee as wages.

Similarly, the cost of buying and maintaining jeans and shirt with the company decal worn by the employee at the request of a supervisor are taxable, because these are appropriate for personal use.

Likewise, the t-shirts that you provide for your summer help are suitable for everyday wear and would be taxable. The fact that they have to be turned in at the end of their employment does not diminish the benefit to the employee.

**Q.** An employer has a written recognition program that provides small gift awards (like a picture, vase, book) that cost under \$50 an item to employees that meet specific criteria (customer service, work performance standards, etc) is the gift item taxable?

**A.** Except for the three exceptions noted later, prizes or awards given to employees are taxable.

Regardless of the cost of an award or its FMV, the following awards are taxable as wages to an employee unless they qualify as de minimis. Since I can't offer a dollar amount, please refer to the notes below and use your best judgment regarding the de minimis factor. If gifts are nominal in value and awarded infrequently (not expected or anticipated per person) you should be fine.

Taxable:

- Cash or cash equivalent awards, such as savings bonds or general merchandise gift certificates

- Recognition awards, cash or non-cash, for job performance, unless they are qualifying de minimis fringe benefits
- Non-cash prizes (unless de minimis) won by employees from random drawings at employer sponsored events
- Awards for performance, such as outstanding customer service, employee of the month, or highest productivity
- Achievement awards, cash or non-cash, that do not meet specific qualified plan award rules, discussed below
- Awards for length of service or safety achievement that do not meet specific requirements, discussed below Reg. §1.274-2(c)(4); . §1.274-2(c)(5)

There are three exceptions and they are:

1) Certain employee achievement awards

a. Examples of Employee Achievement Awards

An employee achievement award is an item of tangible personal property (not cash) for length-of-service or safety.

2) Certain prizes or awards transferred to charities

a. The following requirements must apply for a transferred award to be excludable from wages:

- b. • Award is for achievement
- c. • Recipient is selected without entering any contest
- d. • No substantial future services are required
- e. • Recipient transfers the award to a charitable
- f. organization recognized under IRC 170(c) prior to receiving the benefit

3) De minimis awards and prizes. Some examples of Excludable De Minimis Awards

- a. • Nominal gifts for birthdays, holidays
- b. • Holiday turkey and hams
- c. • Flowers, plaques, coffee mugs for special occasions
- d. • Gold watch on retirement
- e. • Parking for employee of the month, if value is less than statutory limit for qualified transportation fringe benefits (see section 3).

i. “Nominal” implies small in value, relative to the value of total compensation.

ii. There is no set dollar amount in the law for nominal prizes or awards. (The IRS gave advice at least once that a benefit of \$100 did not qualify as de minimis.) ILM 200108042

**Q.** One of our supervisors donates 4 tickets to a major league baseball game at our Benefit Fair. Taxable or non-taxable.

**A.** Taxable.

Non-cash prizes and awards won by employees from random drawings at employer-sponsored events are always taxable, unless de minimis(see definition below.) Major league baseball game tickets would not be de minimis even if an employee won just one of them. It is easy to account for the value of the Major League Baseball Game tickets. The Fair Market Value of the ticket would be reportable on Form W-2 and subject to all employment taxes.

Definition of De minimis:

De minimis fringe benefits include any property or service, provided by an employer for an employee, the value of which is so small in relation to the frequency with which it is provided, that accounting for it is unreasonable or administratively impracticable. The value of the benefit is determined by the frequency it is provided to each individual employee, or, if this is not administratively practical, by the frequency provided that employer to the workforce as a whole, IRC Section 132(e); Reg. Section 1.132-6(b)

**For more information from FSLG check into the following resources:**

Subscribe to the FSLG Newsletter:

<https://public.govdelivery.com/accounts/USIRS/subscriber/new?>

Call FSLG Customer Account Services:

*1-877-829-5500 for specific questions about exempt organizations!*

Compliance Check: FSLG Self-Assessment Tool

<http://www.irs.gov/pub/irs-pdf/f14581.pdf>

Pre-recorded IRS Training

<http://www.tax.gov/Governments/Employers>