

Deducting a Handgun

An October 2010 discussion on SoloSez, the email listserv for general practice, solo and small firm lawyers

All you tax gurus:

I am planning to take a tax deduction for my CCW handgun purchase this year. In my "good cause" statement to get my CCW permit, I listed the potentially dangerous elements of my profession -- and based on that statement was issued a relatively rare California concealed weapons permit.

Do you think that this is a deductible business expense? Do you think it would withstand an audit? I read one case on point where an insurance adjuster used this argument and lost because the court didn't think insurance adjuster's job was dangerous enough to justify the deduction.

I would not do it. It seems to be pushing things a lot and I think that the insurance adjuster's case will likely control. However, take your chances, you never know if it will go through or if you will miss an audit. Of course, just having it there might be enough to trigger the audit if someone is having a bad day and thinks you are trying to be cute.

As is often said, pay your money and take your chance. If it goes through, you will probably save, what, \$20 or \$30? If it does not go through, you might have to pay that same amount back plus you might have to pay additional fees and penalties, as well as whatever else they might find if they audit you and, you will have to put additional time into the whole matter, time that you probably bill out a lot more for than you would save.

Just my thoughts,

Frank J. Kautz, II, Massachusetts

Here's a pretty good article on the subject:

<http://faculty.lebow.drexel.edu/CuratolaA/management%20accounting%20199601.pdf>

Thanks for all your feedback so far.

Every year I purchase audit defense insurance just in case.

Brian Pedigo, California

Do you think that this is a deductible business expense? Do you think it would withstand an audit?

No, and no. Having a gun is not related to your profession, no matter how dangerous. It's purely a personal expense, which is non-deductible.

Gregory Zbylut, California

Maybe it's kind of like a car, and you have to keep a record of how many bullets you fire for business purposes, and how many you fire for personal purposes.

Patrick W. Begos, Connecticut

That's a strong statement eye chart!

How do you think the analysis differs with a single handgun for protection vs. a security alarm system? Or a security guard for a high-risk business? Or a gun for one of those money-transport company guys.

-Brian Pedigo

How much of a deduction are we talking about? Is the deduction worth the trouble?

John J. Genova, New York

If you could show you only use it for business? isn't that like clothes? Clothing cannot be deducted for business expense, IIRC, because the taxpayer cannot show to a high degree of certainty that you can only use the clothing items for work.

Tom Crane, Texas

Where's your CPA?

Come on, you knew I had to go there.

Andrew

PS: I personally think you shouldn't take the deduction, but I'm not a CPA. My opinion is worth about as much as the lint in my pocket.

Andrew Flusche, Virginia

I'm with Greg in that a handgun in this context is very similar to deducting car expenses - the personal and business uses become so intertwined that it effectively denies the deduction.

What Greg is really harping on is that for a 162 deduction it needs to be an "ordinary and necessary" expense. A security alarm system for an office can be an ordinary and necessary expense. Even armed security guards can be an ordinary and necessary expense if what they're guarding warrants that level of security. The difference with guns for armored transport is that the guns are only required when "on-duty" so to speak. Once you stop doing the armored transport work, you put the guns back into a storage locker and account for each gun and bullet. The guards then go home unarmed or with their own personal firearms that didn't qualify for 162.

Although I won't say it's impossible to deduct as an ordinary and necessary expense, the rest of us seem to be able to practice law just fine without firearms.

--Vince

Vincent Kan, Illinois

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back into a storage locker and account for each gun and bullet. The guards then go home unarmed or with their own personal firearms that didn't qualify for 162.

Although I won't say it's impossible to deduct as an ordinary and necessary expense, the rest of us seem to be able to practice law just fine without firearms.

Well, first, I do keep a gun in the office. And I do know a NUMBER of attorneys who keep guns in the office and/or on themselves. I keep this particular gun only in the office, and I bought it specifically to keep in the office. It doesn't go home with me. It's the "Office gun". Just as I have office furniture, office computer and office printer. It's sole purpose is to defend me, if necessary, at the office. Just as I have a fire extinguisher at the office; I may never use it, but if I need it I want to have it. And I deduct the cost of the extinguisher and servicing of it and periodically, when I have to replace it.

Back when I bought the gun, about a decade ago, I deducted it; it was not challenged, which, granted, is not to say that it would necessarily pass muster if I was audited, but it is exclusively an 'office gun' and has never been to my house.

Now, the situation for the original poster is a bit different; apparently this is a CCW weapon and is going to be on his personal body in and out of the office; I do agree that this is difficult to separate personal from business use; and frankly I wouldn't even try to deduct a personal firearm that I carry with me; it's personal. But, I am curious, if an item is purpose bought for the office, is kept and used exclusively there, why wouldn't it be deductible?

And, frankly, I can't see deducting the cost of the CCW license itself; it's not a bar license and you're not required to have it to practice your profession.

--Vince

Vincent Kan

I would posit that an office firearm can be a deductible ordinary and necessary business expense for an attorney but that proving it on audit may be more work than its worth. Similarly, although a nurse beat the IRS in successfully defending her deduction of MBA tuition you need great facts, copious documentation, and confidence you're gonna be able to reach "substantial authority" for the position. Not impossible, but is it worth the (at top marginal rates) 35% of the

gun's cost?

And that's before I even think about amortizing the cost as a depreciable asset... haven't looked into it but I wonder if there's a MACRS category for firearms?

--Vince

Vincent Kan

Out of an abundance of caution, why not just ship the gun to me? I won't try to deduct it. That way Greg will be happy, and we all win.

;o)

Eric Ridley

Not a lawyer, but loves him some new handguns...

As a former revenue agent, I am trying to think how quick I would have scheduled an audit to go see a guy to argue over his gun. I think that tax return would be at the bottom of the barrel.

It reminds me of the time we stopped a criminal investigation because the husband was killed with a butcher knife in his home with the big protective family dog sleeping in the room. After the criminal investigator was pulled off the case, guess who the lucky schmuck was who got to go work with the guy's wife who was the prime suspect?

Jim Pardue, North Carolina

Refining the question, it appears you seek positions in support of deducting training, permitting and purchase of a pistol. Ordinary business expense frequently comes down to judgment calls. The location, nature and other variables of your particular practice would appear important to discussion, making it situation specific.

Knowing where I am located, and that firearms are viewed here as tools, my only question is "just one handgun?" What good does just one do? At what point does it become a collection? Just curious, and also tweaking the crowd who are fearful of firearms a bit.

First paragraph was serious, second less so. I have not deducted a firearm here. If I had, I

would have to address the question of numerosity.

Darrell G. Stewart, Texas

Although I do not possess a gun and am more likely to hit anyone but my intended target if given one at the moment, I do appreciate and respect the need for some lawyers to have one. Like others have said, 162 is "ordinary and necessary" and what's ordinary and necessary in my neck of the woods may be different from yours. If I were to take the deduction, I'd be looking for good facts to back it up and especially facts that show that I treat the "office" gun(s) as the office equipment and my personal gun(s) as my own personal property. Like anything dual-use, the more facts you have the support your position, the better.

With respect to the guards carrying their issued weapon home, the guards also don't generally tend to own the security company that's issuing them their weapons. The guards are carrying the employer issued weapons home as a convenience to the employer. If attorney carries the law firm issued weapon home for the convenience of the firm *and* happens to own said firm, you can see where the line between personal and business use can get blurred.

Bottom line, if you think you have good facts and can reach your required comfort level with respect to the tax position - take it.

--Vince

Vincent Kan-----

Straight out of a tax court case released today:

*In general, an expense is ordinary if it is considered normal, usual, or customary in the context of the particular business out of which it arose. *Deputy v. du Pont*, 308 U.S. 488, 495 (1940). Generally, an expense is necessary if it is appropriate and helpful to the operation of the taxpayers trade or business. *Commissioner v. Tellier*, 383 U.S. 687, 689 (1966); *Carbine v. Commissioner*, 83 T.C. 356, 363 (1984), *affd.* 777 F.2d 662 (11th Cir. 1985).*

Given that, I am not sure a handgun meets the definition of ordinary, nor does it meet the definition of necessary. So...nondeductible.

Gregory Zbylut

Applying the same logic/argument, a lawyer may not be allowed to take a deduction for an iPad either.

-Brian Pedigo

If we all purchased an office gun wouldn't it then be "considered normal, usual, or customary."

What if we just amended our office procedure manuals to mandate an office gun? I'm thinking about placing a covenant on my house's property mandating that whomever purchases it must keep a firearm on the premises, I doubt it would be enforceable though :(

-- Sincerely,

Nicholas B. Proy, Maryland

Your instinct is correct. This covenant would not run with the land. :)

Stephanie Hill

I don't see the leap. An iPad is a computer device. Computers are certainly normal, usual and customary in the legal business. Computers are also helpful in the operation of the legal business.

Seems to me a gun fails both of those tests. It's not normal, usual or customary for lawyers to carry guns.

Nor is a gun helpful in the operation of the business - it may make you (feel) safer, but it doesn't aid in the lawyering process. I suppose this last point is more debatable than the first. For example, a security alarm at your office is certainly a deductible business expense, and that performs the function of keeping your office and files safe. A car is deductible, at least in part, even though it doesn't really help with the process of lawyering, and there are other ways to get where you need to be. Nonetheless, a car is an affirmative help, in that it gets you to a place where you need to be to practice your trade. A gun, on the

other hand, is more of a deterrent. I think it would be more comparable to armor-plating your car. Someone might think it's a nice feature to have, just in case, but it's not truly helpful in the operation of the business like the car itself is.

Patrick W. Begos, Connecticut

I don't think the iPad has reached the status tipping point of being "ordinary" or "usual" for lawyers. Only the l33t are sporting these high-tech slabs. If you toss it in the same bucket as "personal computer", then sure -- it's ordinary today.

Tax law seems grey in many areas. You can argue either way. Is an auditor really going to want to fight a relatively low-income solo lawyer over these grey areas? I don't think so.

-Brian Pedigo

As to your last point, there's no question that there is a difference between "things that small businesses report as business expenses" and "things that the IRS agrees are business expenses"

The reality, AFAIK, is that small businesses rarely get audited. Where people running small businesses usually run afoul of the IRS is when they have a K-1 that says they earned \$500K, but they report only \$100K on their tax return. And a lot of those people don't get caught.

I think that, if your total expenses are in a reasonable range, say under 50-60% of your gross revenues it's probably unlikely that your business return will be scrutinized. So, in that sense, sure, you CAN deduct your handgun. In that sense, you can also deduct the cost of dog food, the vacation that you took to unwind, and the dinner where your friends asked you how work was going.

Patrick W. Begos

Also, don't list it as a separate item or as "gun." Perhaps as security, but they'd just think that was alarm system or something.

Kimberly DeCarrera, Georgia

As a tax attorney who works with small businesses on a regular basis, I couldn't disagree more. Small businesses are often at risk for audit because without an in-house accountant/bookkeeper/tax pro, they tend to make the most mistakes (as compared with bigger companies). They also tend not to document as well which can turn a quick paper audit into an in person audit.

Not convinced? Check out the GAO report on audit rates (you can find it online). Statistically, taxpayers who file a Schedule C are more likely to be audited than others.

Kelly Phillips Erb

No, but it would sure speed up the bad guys running off the land <g>.

Shell Bleiweiss, Illinois

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Seems to me a gun fails both of those tests. It's not normal, usual or customary for lawyers to carry guns.

Well, see, that's a fact question.

I don't have statistics on number of lawyers who carry guns; but there are statistics on the number of judges in this state who have concealed weapons licenses. We've got 774 state court judges; most of whom are trial judges. Of those, 503 of those judges have concealed weapons licenses;

<http://licgweb.doacs.state.fl.us/stats/licensetypecount.html>

Just over 2/3. So, at least for a judge, it is "normal" and usual for them to at least have a license to carry a concealed weapon. How many of them do, I don't know but at least most of them have a license to do so.

Now, while the Department of ag does ask what your profession is when you apply for a CCW, I'm not seeing statistics on their website.

But, we do have 750,000 people in Florida who are licensed to carry

concealed firearms; not including certain "professional" licenses (security guards, private investigators, judges) We've got a population in Florida of about 18.5 Mil; but of course, minors are not eligible to get a CWL in this state. About 22 percent of the population is under 18; so that leaves an adult population of about 14.3 Mil, give or take. So. of the adult population in Florida, roughly 5% of them are licensed to carry a firearm. Assunming attorney's carry at the same rate as the general population, then 5% of them would have a license; however, given that 2/3 of the judges in this state have a license, my gut tells me that the number of lawyers carrying is probably between those two numbers. Question is, what percentage of lawyers are required to have a license before it becomes 'normal, usual and customary'?

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Ronald Jones, Florida

Can I deduct these guns? <points to flexed biceps>

dan X. nguyue, California

I won't argue with a tax lawyer. I guess I kept too much implied, because I was thinking about the type of small business that files a corporate or partnership tax return, and that is not doing stupid things on their returns. I've always heard that Sched C is a red flag.

Patrick W. Begos

I would disagree with Kelly only to the extent of the use of the word 'mistakes'. Kelly, we both know damn well that they are about as much 'mistakes' as Don Vito Corleone is a 'businessman'. In reality, a fair number of business owners use their business as a cover to treat personal expenses as 'business' expenses.

I agree that sloppy recordkeeping = audit issues. Read the Tax Court

opinions and you'll see at least one case a week that involves sloppy records and the taxpayer attempting to use the Cohan rule, usually to no avail. I'm sure Kelly beats up her clients as much as I do mine, but unless you wrest control of the books away from the client so that they can be done right, you might as well bang your head against a wall.

For the record, Unreimbursed Employee Business Expenses (PARTICULARLY vehicle mileage), and Business Use of Home (PARTICULARLY if you claim business use of 15% or more) are also red flags for the IRS.

Kelly, do you agree with me that BUoH is generally a waste? In addition to being an audit flag, what you save on taxes this year is lost down the road when you sell the home, and cannot shelter part of the sale from tax. It wouldn't be bad if the savings were invested so that the net result was a gain, but clients tend to spend their tax refunds on vacations, not invest them.

Greg Zbylut

I rarely advise a taxpayer to take the BUoH. I think the actual savings isn't as much as the taxpayer thinks (one exception: renters) and I agree that it is often a flag if the other data looks odd. Most folks don't keep the kinds of records needed to support the deduction.

I *absolutely* agree on the capital gains side.

I think what also gets lost is that some localities will then charge an additional tax for biz use of a home (Philly is one) - as the taxpayer expands the definition of their home office space for purposes of inflating the deduction on the federal side, they are also growing the amount of tax due on the local side.

Kelly Phillips Erb

... some localities will then charge an additional tax for biz use of a home (Philly is one) ...

And yet another reason to hate Philly....it's Taxifornia, but without the 24/7 nice weather.

Gregory Zbylut

Just curious - do you guys take the same view of BUoH if the taxpayer has, say, an entirely separate structure on the property, that is used exclusively for a business, and is the only location of that business?

I always took BUoH when we were living in NY, for the part of our home that my husband used exclusively for his musical instrument repair and construction business (less than 15%). Hated it when I learned about the depreciation recapture on sale of the home (we also had taken depreciation on a rental apartment in our home, so we had to recap that too. PITA.).

Now he has built an entirely separate workshop in the backyard. No doubt it's a workshop - it's filled with tools and wood and instruments in varying states of construction and repair. Not used for anything else. Should we NOT claim BUoH for that? Will IRS ever ding you for NOT claiming BUoH if you SHOULD have?

C.

Cynthia Hannah-White, Hawaii

Ha! Our weather is SPECTACULAR today. 60 degrees and sunny, as it should be in autumn, you know, in a place that actually has seasons... ;)

Kelly Phillips Erb

I don't know about deducting "firearms." However, perhaps it's really an "office security system." Seems to me that office security would be a reasonable, ordinary and appropriate business expense ;)

Bruce L. Dorner, New Hampshire

Sorry, I can't resist one more follow-up question:

How about an "office taser". Deductible?

-Brian Pedigo

I don't remember what show it was recently, but on the preview it said something to the effect of

"It isn't over till the fat man gets tasered."

Kimberly DeCarrera

I'd rather take a shot at the office nitrous oxide dispenser. At least my clients will always be happy after leaving the office. That ought to be an ordinary and necessary expense =)

--Vince

Vincent Kan

Doesn't it depend where you live? I am pretty sure when I practiced in Texas a gun and boots were standard lawyer requirements - completely deductible? In LA when I practiced there I was looking getting and deducting breast implants and plastic surgery as they seemed necessary for jury trials.

I am still trying to figure out what I need in Florida --- any suggestions???

Rinky S. Parwani, Florida

About 20 years and a walker?

Seth Crosland, Texas

Let me amend. About 40 years and a walker? I was never good at math or at not insulting women lol

Seth Crosland