


CR 2002/75 - Income tax: Travel Allowance paid to New South Wales Judges

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 May 2003*



Class Ruling

Income tax: Travel Allowance paid to New South Wales Judges

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

[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.]

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are section 8-1 and Subdivision 900-B of the *Income Tax Assessment Act 1997* ('ITAA 1997')

Class of persons

3. The class of persons to which this Ruling applies is New South Wales (NSW) Judges who are paid a daily rate of travel allowance to cover accommodation, meals and incidental expenses whilst on official business.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 9 to 14 in this Ruling.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 July 2001. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the Gazette; or
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents:

- Application for Class Ruling from the Chief Judge of the District Court of NSW dated 23 April 2002.
- The Report and Determination of the Statutory and Other Offices Remuneration Tribunal (the NSW Tribunal) dated 11 April 2002.
- Correspondence from the NSW Tribunal dated 24 June 2002.

These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description.

10. The NSW Judges have recently sought and been granted access to the NSW Tribunal for the purpose of having an appropriate determination made in respect of their travel allowances.

11. The NSW Tribunal is an independent body established by the *Statutory and Other Offices Remuneration Act 1975* (NSW). Under this Act the NSW Tribunal determines the remuneration by way of salary or allowances of NSW office holders listed in the schedules of the Act. Allowances include a travelling or subsistence allowance for travel within Australia by a Judge or Acting Judge of a court.

12. The NSW Tribunal's Report and Determination into Judge's travel rates was undertaken in accordance with its powers under the Act. Furthermore its determination was underpinned by two guiding principles:

- Office Holders are not expected to gain or lose financially as a result of travelling on official business.
- Where an office holder is accommodated in private, non-commercial accommodation such as the home of a family member or friend, one third of the specified rate is applicable.

13. The NSW Tribunal's review focussed on the particular needs of Judges when travelling and staying in various centres (particularly non metropolitan NSW) and determined the following travel allowances, covering accommodation, food and drink and incidentals, would be paid where the travel necessitated an overnight stay:

1. Capital City Rates

Adelaide, Canberra, Darwin, Hobart	\$292.90
Brisbane, Melbourne, Perth, Sydney	\$362.90

2. Newcastle and Wollongong \$292.90

3. Other NSW areas \$246.65

The full daily allowance rate is paid only where the Judge stays overnight at commercial accommodation. Where the stay is at

non-commercial accommodation, such as the home of a family member or friend, one third only of the daily rate is paid.

14. In determining the amounts payable the NSW Tribunal had regard to a number of matters including surveys of accommodation and meal costs both inter and intra state, views of assessors and various occupational aspects pertaining to the Judges. It also conducted its own survey of relevant costs for Newcastle and Wollongong.

Ruling

15. The travel allowance amounts payable to NSW Judges in accordance with the determination of the NSW Tribunal dated 11 April 2002 are considered reasonable for the purposes of the exception from substantiation under section 900-50 of the ITAA 1997.

15A. Furthermore, provided the NSW Tribunal continues to adopt the principles set out in paragraph 12 of this ruling in its determinations, the travel allowance amounts payable to NSW Judges in accordance with those determinations issued after 11 April 2002 are considered reasonable for the purposes of exception from substantiation under section 900-50 of the ITAA 1997.

Explanations

Reasonable Allowance Amount

16. The basic tests for deductibility of work-related expenses are in section 8-1 of the ITAA 1997. This states that you can deduct any loss or outgoing to the extent that it is incurred in gaining or producing your assessable income. However, you cannot deduct a loss or outgoing if it is of a capital, private or domestic nature.

17. Under Subdivision 900-B of the ITAA 1997, a deduction is not allowable for a work expense unless the expense qualifies as a deduction under another provision of the ITAA 1997 and written evidence of the expense(s) has been obtained and retained by the employee taxpayer.

18. However, there are exceptions where written evidence is not required to substantiate the expense. Section 900-50 of the ITAA 1997 provides relief from the substantiation provisions for travel expenses claimed where the taxpayer is in receipt of a travel allowance and the amount claimed is within the amount considered reasonable by the Commissioner. Reasonable allowances amounts are set out each year by the Commissioner. For the 2001-2002 income

year they are contained in Taxation Ruling TR 2001/4 and for the 2002-2003 income year in Taxation Ruling TR 2002/12.

19. Paragraphs 68 to 75 of TR 2001/4 and paragraphs 67 to 74 of TR 2002/12 specify the conditions that must be satisfied for an allowance to be considered a travel allowance for the purpose of the exception from substantiation. The travel allowances set by the NSW Tribunal in respect of the Judges satisfy all of the conditions.

20. In setting reasonable amounts the Commissioner takes a number of factors into account including historical average increases in costs, surveys of actual costs produced by a number of organisations including the Department of Employment Workplace Relations and Small Business, and the Commonwealth Remuneration Tribunal, as well as salary levels, occupational considerations and the circumstances under which the various allowances are paid.

21. The Commissioner also accepts that the daily travel allowance expense claims made by office holders covered by the Commonwealth Remuneration Tribunal are reasonable if they do not exceed the rate of allowances set by that tribunal for that office holder. In setting the allowances, which cover accommodation, meals and incidental expenses, the Commonwealth Remuneration Tribunal receives submissions from interested parties, examines relevant salary movements and takes account of price movements relevant to the kinds of expenditure for which the allowances are paid.

22. The travel allowance amounts payable to the NSW Judges have been determined by the NSW Tribunal after consideration of similar factors as those outlined above. They were also underpinned by the guiding principle that office holders are not expected to gain or lose financially as a result of travelling on official business.

23. The amounts determined for the capital cities were consistent with reasonable amounts determined by the Commissioner for the 2002 income year (see TR 2001/4) whilst the survey for Newcastle and Wollongong suggested that the travel allowance should be higher than the Commissioner's reasonable allowance amounts for those centres. For other areas the NSW Tribunal noted that the rates for accommodation and meals varied considerably from town to town in NSW but that, on balance, the NSW Tribunal was persuaded that with the exception of Newcastle and Wollongong a common rate should be applied for the remainder of NSW in the knowledge that across a year a Judge will most likely be neither financially advantaged or disadvantaged.

24. Having regard to the independent nature of the NSW Tribunal and the processes used and principles applied by it in determining the amount of the travel allowances, the Commissioner accepts that, subject to the other requirements for deductibility being met, work related travel allowance expense claims by the NSW Judges are

reasonable if they do not exceed the rate of allowances set for them by the NSW Tribunal.

25. It should be noted that where a travel allowance is received in respect of travel that does not involve sleeping away from home this allowance is not a travel allowance for the purpose of the exception from substantiation in section 900-50 of the ITAA 1997. Any claim for work related travel that does not involve sleeping away from home is subject to the normal substantiation requirements.

Claiming a deduction

26. Where the amount of the travel allowance is included on the Judge's payment summary the allowance should be included at the appropriate question in the Judge's tax return. A deduction may then be claimed without obtaining written evidence or keeping a travel diary up to the Commissioner's reasonable amount provided that deductible expenses at least equal to the reasonable amount have been incurred. This means that although written evidence is not required to be produced for each claim the basis for determining the amount of the claim and that the expense was actually incurred for work-related purposes may still be required to be shown. The reasonable amount cannot automatically be claimed.

27. Alternatively the amount of the allowance may be declared in the tax return and a deduction higher than the reasonable amount, equal to the amount of the expense actually incurred, claimed. In this case the exception from substantiation does not apply and written evidence supporting the claim must be kept for the whole amount of the claim.

28. It is possible that the Attorney General's Department (AGD) may choose not to show the allowance on the Judge's payment summary. This can occur if the AGD is reasonably satisfied that the Judge will incur deductible expenses at least equal to the amount of the allowance paid, and that the expenses will be incurred for the purpose for which the allowance was paid. In these circumstances, provided the Judge has incurred deductible expenses at least equal to the amount of the allowance received, a deduction does not need to be claimed and the allowance does not need to be shown as assessable income in the Judge's tax return. If a deduction is claimed (either up to the reasonable amount in which case no written evidence is required or above the reasonable amount in which case written evidence is required to substantiate the whole amount) then the allowance must be shown as assessable income even if it is not shown on the Judge's payment summary.

Detailed contents list

29. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

2 October 2002

Previous draft:

Not previously released in draft form

- substantiation

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TR 2001/4; TR 2002/12

Legislative references:

- ITAA 1997 8-1
- ITAA 1997 Subdivision 900-B
- ITAA 1997 900-50
- Copyright Act 1968
- Statutory and Other Offices
Remuneration Act 1975 (NSW)

Subject references:

- work related expense
- travel allowance

ATO References

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