




CR 2004/87 - Income tax: assessable income: sport umpires and coaches: Trinity College Gawler Incorporated

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 This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

 This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*



Class Ruling

Income tax: assessable income: sport
umpires and coaches: Trinity College
Gawler Incorporated

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Preamble

*The number, subject heading, **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 laws dealt with in this Ruling are sections 6-5, 6-10 and 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) and paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936).

Class of persons

3. Subject to paragraph 4, the class of persons to which this Ruling applies are sports umpires and coaches who receive payments for officiating or coaching sporting events administered by the Trinity College Gawler Incorporated ('the College').

4. Teachers and other employees of the College are not included in the class of persons to which this Ruling applies.

Qualifications

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

6. 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 in paragraphs 10 to 19.

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

- 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
- this Ruling may be withdrawn or modified.

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Date of effect

9. This Ruling applies from 1 July 2003. However, this 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;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents which are attached to the file record maintained by the Australian Tax Office for this ruling. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Class Ruling dated 3 May 2004;
- Tax Office record of telephone conversations between a representative of the applicant and a taxation officer; and
- E-mail received on 7 July 2004 from a representative of the applicant.

Sport umpires and coaches

11. Umpires and coaches are required by the College to referee and coach sporting activities.

12. Each umpire receives \$25 per game that they umpire. Each coach receives either \$1,000 or \$1,600 per season per team.

13. Each umpire will referee one game per week.

14. Each coach will coach one team per season only.

15. The umpires and coaches will not receive any allowances or benefits other than the amounts referred to in paragraph 12.

16. The fees paid by the College to the umpires and coaches are not intended to cover expenses. The amount is meant to offset costs of travel, uniforms, shoes and accreditation courses. The fee paid is intended to encourage participation in the College's sporting activities.

17. The umpires are relatives of current students, former students or other persons with a connection with the College.

18. The coaches are mostly school teachers employed by the College, while the remainder are persons who have an association with the school. This ruling does not cover coaches who are employed by the College.

19. There are no formal contractual arrangements between the College and the umpires and coaches covered by this ruling.

Ruling

20. The fees paid to umpires and coaches described in paragraph 3 of this ruling who referee and coach sporting activities at the College described in paragraphs 10 to 19 of this ruling are not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

21. Losses and outgoings incurred deriving the fees described in paragraph 12 of this ruling, cannot be claimed as a deduction under section 8-1 of the ITAA 1997 or any other provision.

Explanation

22. A payment or other benefit received by a taxpayer is assessable income if it is:

- income in the ordinary sense of the word (ordinary income); or
- an amount or benefit that through the operation of the provisions of the tax law is included in assessable income (statutory income).

Ordinary income

23. Under subsection 6-5(1) of the ITAA 1997 an amount is assessable income if it is income according to ordinary concepts (ordinary income).

24. In determining whether an amount is ordinary income, the courts have established the following principles:

- what receipts ought to be treated as income must be determined in accordance with the ordinary concepts and usages of mankind, except in so far as a statute dictates otherwise;
- whether the payment received is income depends upon a close examination of all relevant circumstances; and
- whether the payment received is income is an objective test.

25. Relevant factors in determining whether an amount is ordinary income include:

- whether the payment is the product of any employment, services rendered, or any business;
- the quality or character of the payment in the hands of the recipient;
- the form of the receipt, that is, whether it is received as a lump sum or periodically; and
- the motive of the person making the payment. Motive, however is rarely decisive as in many cases a mixture of motives may exist.

26. Furthermore, where a taxpayer's activities constitute a pastime or hobby rather than an income-producing activity, money and other benefits received from the pursuit of that pastime or hobby are not assessable income, nor are the expenses allowable deductions.

27. Participation in activities generating pastime or hobby receipts is a social or personal pursuit of a non-commercial nature. Pastime receipts are not intended to, nor do they usually, cover expenses. Even regular receipts obtained from a pastime or hobby are still characterised as receipts from a pastime or hobby and accordingly are not assessable income. A receipt that is an incident of a pastime or hobby would also not be assessable, even if it arises from the provision of a service. However, the nature of such a receipt or receipts is relevant in determining whether the pastime has become a business. The receipt or receipts could indicate, for example: a commercial activity; an intention to make a profit from the activity; or an increase in either the size and scale of the activity or the degree of repetition or regularity of the activity.

28. The umpiring and coaching activities of those community members who umpire and coach matches conducted on behalf of the College are considered to constitute a pastime or hobby. Therefore, the fees received from the pursuit of that pastime or hobby are not assessable income. The fees are not intended to, nor do they usually, cover expenses. The purpose of the payment is to encourage members of the community to participate in the College sporting activities by subsidising that participation.

29. In forming the opinion that the umpires who comprise the class of persons to whom this Ruling applies are engaged in a pastime or hobby, we have taken into account the number of games at which the umpires officiate, the links they have with the College, the social benefits of participation, the regularity of the payments received and the quantum of the fees that they can receive.

30. In forming the opinion that the coaches who comprise the class of persons to whom this Ruling applies are engaged in a pastime or hobby, we have taken into account they may coach only one team, the commitment of time that coaches must give to their teams, the links they have with the College, the social benefits of participation, the regularity of the payments received and the quantum of the fees that they can receive.

Statutory income

31. Section 6-10 of the ITAA 1997 includes in assessable income amounts that are not ordinary income; these amounts are statutory income.

32. Paragraph 26(e) of the ITAA 1936 is the relevant statutory income provision that may have application to the circumstances here. This provision provides that the assessable income shall include:

... the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in relation directly or indirectly to, any employment of or services rendered ...

33. The main issue to consider with respect to paragraph 26(e) of the ITAA 1936 is whether the payment is '*... given or granted to him in respect of ... any employment of or services rendered ...*'. Whilst the umpires and coaches are not considered 'employees', paragraph 26(e) of the ITAA 1936 also includes in assessable income those allowances etc. which are paid in respect of 'services rendered'.

34. The payments to the umpires and coaches are considered to be 'receipts incidental to a pastime' (refer paragraph 28). As such, the payments are not assessable under paragraph 26(e) of the ITAA 1936 because the umpires and coaches are not considered to be employees, nor are they 'rendering services'.

General deductions

35. As the match fees received by the umpires and the payments received by the coaches are not assessable income, all losses and outgoings that are incurred in respect of receiving those amounts are not allowed as a deduction under section 8-1 of the ITAA 1997 or any other provision of the ITAA 1997.

Umpires and coaches who officiate in other games

36. Where umpires officiate in matches additional to those conducted by the College, those umpires' activities may have ceased to be that of a hobby or pastime. Where coaches coach teams in addition to College teams, those coaches' activities may have ceased to be that of a hobby or pastime. A more detailed analysis of the circumstances of those umpires and coaches may be required. Umpires and coaches in this situation should discuss their circumstances with their taxation adviser or the Taxation Office.

Pay As You Go (PAYG) withholding

37. As explained above, fees paid to umpires and coaches are not assessable income. The payments are not regarded as withholding payments under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*. An entity making such payments to the coaches and umpires who are in the class of persons to which this Ruling applies will not be required to withhold amounts from these payments.

Detailed contents list

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

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Commissioner of Taxation

18 August 2004

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16

Legislative references:

- Copyright Act 1968
- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- TAA 1953 Pt IVA
- TAA 1953 Sch 1 Div 12

ATO references

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