


CR 2005/52 - Income tax: assessable income: basketball referees: Townsville Basketball Inc. receipts

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax laws**, **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.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' 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. The class of persons to which this Ruling applies is basketball referees who referee basketball matches conducted by Townsville Basketball Incorporated (TBI) and its affiliated associations and receive payments for refereeing matches in any of the league competitions listed below:

- Division 1;
- Under 23;
- Under 18;
- Under 16;
- Under 14;
- Under 12;
- Under 10;

- Under 8;
- Interschool competitions;
- Domestic competitions;
- Seniors; and
- Juniors.

Should TBI establish further leagues below that of State Basketball League, this Ruling will apply to referees officiating in those matches.

4. Referees who also officiate in the State and/or National League are not included in the class of persons to whom 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 17.

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 2004. 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 and telephone records which are attached to the file record maintained by the 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 part of documents incorporated into this description of the arrangement are:

- Application for Class Ruling received by facsimile on 31 March 2005;
- information provided by way of e-mail dated 13 May 2005; and
- additional information provided by way of telephone conversation on 24 May 2005.

11. Referees receive payments for officiating in matches for the TBI and affiliated associations as outlined in paragraph 3.

12. All competitions comprise male and female divisions.

13. Typically referees of junior matches are paid between \$5 and \$13 per match. Referees of more senior matches are paid in the vicinity of \$7 to \$20 per match. Current fees are such that no referee would receive more than \$1,000 in a year.

14. Referees are paid in cash, typically the week following the matches they have officiated in.

15. Referees do not always officiate in the same competition every week. It is possible that due to the number of matches being played, a referee may referee three (3) matches on a weekend.

16. Referees are required to incur expenditure for items such as, uniforms, training gear, travel, registration fees and whistles.

17. The match 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 local sporting activities by subsidising the costs associated with participation. Refereeing also provides the opportunity to be involved in the game, achieve a greater fitness level and to meet friends on a regular basis.

Ruling

18. The match fees paid to referees who officiate at matches for TBI and its affiliated associations are not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

19. Losses and outgoings incurred by the referees in connection with their refereeing activities cannot be claimed as a deduction under section 8-1 of the ITAA 1997 or any other provision of the ITAA 1997.

Explanation

20. 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

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

22. 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.

23. 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.

24. 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.

25. 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.

Match fees not ordinary income

26. The sporting activities of referees appointed to control TBI matches are considered to constitute a pastime or hobby and therefore the match fees received from the pursuit of that pastime or hobby are not assessable income.

27. The match 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 local sporting activities by subsidising the costs associated with that participation.

28. In forming the opinion that referees 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 they officiate, the seniority of the competition and the links with the community, particularly the social benefits of participation and the quantum of the fees that they can receive.

Statutory income

29. Section 6-10 of the ITAA 1997 includes in assessable income amounts that are not ordinary income; these amounts are statutory income. A list of the statutory income provisions can be found in section 10-5 of the ITAA 1997. That list includes a reference to paragraph 26(e) of the ITAA 1936.

30. Paragraph 26(e) of the ITAA 1936, provides that 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 ...

Match fees not statutory income

31. 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 referees are not considered 'employees', paragraph 26(e) of the ITAA 1936 also includes in assessable income those allowances and so on which are paid in respect of 'services rendered'.

32. The match fees of referees are considered to be 'receipts incidental to a pastime' (refer paragraphs 26 to 28). As such, the match fees are not assessable under paragraph 26(e) of the ITAA 1936 because the referees are not considered to be employees, nor are they 'rendering services'.

Expenses not deductible

33. As the match fees received by the referees are not assessable income, all losses and outgoings that are incurred in connection with their refereeing activities are not allowed as a deduction under section 8-1 of the ITAA 1997 or any other provision of the ITAA 1997.

Referees who officiate in other leagues

34. Where referees also officiate in competitions other than for the TBI and affiliated associations, those referees' activities may cease to be that of a hobby or pastime. A more detailed analysis of the circumstances of those referees may be required. Referees in this situation should discuss their circumstances with their taxation adviser or the Tax Office.

Pay As You Go (PAYG) withholding

35. As explained above, match payments paid to a referee who is engaged in a hobby or pastime 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 match payments to referees who are in the class of persons to which this Ruling applies will not be required to withhold amounts from these payments nor would they have any other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, payment summaries, annual reporting.

Detailed contents list

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

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Commissioner of Taxation

 29 June 2005

CR 2005/52

Previous draft:

Not previously issued as a draft

- sports people

Legislative references:

Related Rulings/Determinations:

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

- ITAA 1936 26(e)

- ITAA 1997 6-5

- ITAA 1997 6-5(1)

- ITAA 1997 6-10

- ITAA 1997 8-1

- ITAA 1997 10-5

- TAA 1953 Pt IVAAA

- TAA 1953 Sch 1 Div 12

- Copyright Act 1968

Subject references:

- allowances

- assessable income

- hobby vs business

- sport

- sporting organisations

ATO references

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