


TD 2006/D35 - Income tax: are certain payments to a volunteer foster carer to provide foster care assessable income?

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This document has been finalised by TD 2006/62.



Draft Taxation Determination

Income tax: are certain payments to a volunteer foster carer to provide foster care assessable income?

❶ This publication provides you with the following level of protection:

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. You can rely on this publication (excluding appendixes) to provide you with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. No. The payments as described in paragraph 2 of this Determination to a volunteer foster carer to provide foster care are not assessable income.
2. The scheme to which this Determination applies has the following features:
 - foster care is provided to children unable to live with their parents, on a long or short term basis, for a variety of reasons;
 - payments to volunteer foster carers are made to help meet the costs associated with providing care for foster children;
 - volunteer foster carers do not include employees of foster care agencies;
 - the payments are not received as part of a business of providing foster care;
 - the payments covered by this Determination are the standard or basic foster care subsidies plus additional loadings or allowances; and
 - other payments such as incentive payments and retainer fees, and all other payments for, or in the nature of payments for, the provision of services by volunteer foster carers, are not covered by this Determination.

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Date of effect

3. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will 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 Determination.

Commissioner of Taxation

21 June 2006

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner’s preliminary view has been reached. It does not form part of the proposed binding public ruling.***

Explanation

4. Payments to a volunteer foster carer will be assessable income if they are income according to ordinary concepts (ordinary income) under section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) or statutory income¹ under paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936).

5. In determining if an amount is income according to ordinary concepts, consideration must be given to whether the amount is the product of any income producing activity. Such an activity could include employment, the carrying on of a business or the rendering of any service (*Brown v. FC of T* [2001] FCA 596; (2001) 47 ATR 178; 2001 ATC 4294).

6. Volunteer foster carers covered by this Determination are not employees, are not carrying on a business and are not paid any amount for their time or to reward them for any personal services they provide. The payments therefore do not have the character of income according to ordinary concepts.

7. In broad terms, paragraph 26(e) of the ITAA 1936 includes as statutory income allowances, gratuities, compensations, benefits, bonuses and premiums provided in respect of, or for or in relation directly or indirectly to, employment or services rendered by a person.

8. The payments to volunteer foster carers covered by this Determination are made in order to help meet the expenses associated with caring for foster children, not as a reward or recompense for any employment or rendering of services by the carer. As such, the payments do not have a sufficiently proximate connection with any employment or services rendered to be considered to be a product or consequence of such activities. Accordingly, the payments cannot be said to have been provided in respect of, or for or in relation to, such activities and are not assessable under paragraph 26(e) of the ITAA 1936 (*Smith v. FC of T* (1987) 19 ATR 274; 87 ATC 4883).

¹ Subsection 6-10(2) of the ITAA 1997 says, ‘Amounts that are *not* *ordinary income, but are included in your assessable income by provisions about assessable income, are called **statutory income**.’

Appendix 2 – Your comments

9. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date. (Note: The Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel. The Tax Office may use a sanitised version (names and identifying information removed) of the compendium in providing its responses to persons providing comments. Please advise if you do not want your comments included in a sanitised compendium.)

Due date: 21 July 2006

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References

Previous draft:

Not previously issued as a draft

Subject references:

- allowances vs reimbursements
- carer payments
- disabled care expenses
- income
- reimbursed expenses

Legislative references:

- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-10(2)

Case references:

- Brown v. FC of T [2001] FCA 596; (2001) 47 ATR 178; 2001 ATC 4294
- Smith v. FC of T (1987) 19 ATR 274; 87 ATC 4883

ATO references

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