IT 2396 - Income tax : income of family day caregivers : income tax deductions allowable : paye provisions

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TAXATION RULING NO. IT 2396

INCOME TAX : INCOME OF FAMILY DAY CAREGIVERS : INCOME TAX DEDUCTIONS ALLOWABLE : PAYE PROVISIONS

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210768	FAMILY DAY CAREGIVERS	25(1)
	ASSESSABLE INCOME AND ALLOWABLE DEDUCTIONS	51(1)
		54
		72
		221A

PREAMBLE This Office recently had occasion to consider the income tax liability of fees received by Family Day Caregivers and the extent to which they are entitled to income tax deductions for costs incurred in connection with their activities as child-minders. In particular, the question of whether day caregivers are employees in receipt of salary and wages for the purposes of the PAYE provisions of the income tax law was raised.

FACTS 2. Family Day Care schemes consist of networks of individuals providing supervision, care and developmental activities, in their own homes, for other people's young children. The schemes are organised and supported by central non-profit co-ordinating units funded through operational grants from the Commonwealth Government. In addition to operational grants the Commonwealth also subsidises, generally through the co-ordinating units, the child care fees of low income families.

3. The co-ordinating units are the initial contact points for parents requiring day care for their children. A unit matches the parent's childminding requirements with a particular caregiver. Caregivers indicate to the co-ordinating units the times they are available and the numbers of children they are prepared to accept. After the initial placement there is little contact between parents and the co-ordinating units.

4. The caregiver receives a fee calculated on the day care provided. It is paid either directly by the parents or through the co-ordinating units.

5. Child care services are regulated in the various States by the respective State governments. Legislation in the various States requires caregivers to meet certain standards. In some cases general compliance with these standards is overseen by co-ordinating units. In the main, however, caregivers are not

subject to any external control over the manner in which they carry out their day to day tasks of providing child day care.

RULING

Liability to Income Tax

6. Because the fees received by caregivers are reward to them for the use of facilities and the provision of services, they represent income within the ordinary meaning of the term and are liable to income tax.

PAYE Provisions

7. Whether fees paid to caregivers are to be subject to tax instalment deductions under the PAYE provisions in Division 2 of Part VI of the Income Tax Assessment Act depends upon the operation of the definitions of "employee" and "salary or wages" in section 221A. An employee is defined as a person who receives or is entitled to receive salary or wages. The term salary or wages is defined to include salary, wages, commission, bonuses or allowances paid to employees. It also includes payments made under a contract wholly or principally for the recipient's labour, not being payments wholly or principally of a private or domestic nature.

8. Family day caregivers are not considered to be either "employees" or in receipt of "salary or wages". The fees they receive are not salary, wages, commissions, bonuses or allowances as the words are ordinarily understood. Nor are they considered to be principally for the caregiver's labour - they are paid for a combination of factors including not only supervision by caregivers but also the provision of facilities and services. Neither co-ordinating units nor parents are required to make tax instalment deductions from fees paid to caregivers.

Income Tax Deductions

9. While it is not practicable to provide an exhaustive list of the expenses which may be allowable as income tax deductions, the following list illustrates the sorts of expenses which are allowable as income tax deductions.

(i) Expenditure on food, toiletries and other consumable household items incurred in providing day care services. If the food, etc. is taken from normal domestic supplies the caregiver may make an estimate of the costs involved and should provide full details of how the estimate was calculated.

(ii) Expenditure on electricity or gas incurred in providing day care services. A reasonable estimate of the expenditure will be acceptable.

(iii) The cost of telephone calls made in connection with the care of a child. The portion of telephone rental which relates to deductible calls may also be allowed.

(iv) Expenditure on protective clothing incurred for use in providing day care services, i.e. protective aprons, gloves, etc.

(v) The cost of hiring help to clean the area used for childminding including the cost of any additional cleaning materials or equipment necessary to clean the area used for child minding.

(vi) The cost of replacing toys and other small non-depreciable items used as part of providing childcare.

(vii) Depreciation of playground equipment, beds and other substantial items of equipment owned by the caregiver and used in providing daycare services. Details of the rate at which depreciation can be claimed are available from local branches of the Australian Taxation Office.

(viii) The cost of transporting children in care e.g. transport to and from school, for medical attention etc. Where the travel involved is less than 5,000 kilometres in an income year a deduction may be calculated using a set rate per kilometre. Otherwise full details of the claim are required. Details of the set rate per kilometre for various types of motor vehicles are available from local branches of the Australian Taxation Office.

(ix) Expenditure on premiums under an insurance policy directly related to the day care activities, e.g. premiums payable on a public risk policy.

(x) Expenditure on mortgage interest, rent, general household insurance, rates and repairs will generally not be allowable as income tax deductions unless a particular area of the home is set aside exclusively for the care of the children. Where an area is exclusively set aside a portion of the expenditure may be allowed depending upon the extent of income received and the area set aside.

COMMISSIONER OF TAXATION
16 April 1987