


***TD 2006/62 - Income tax: are certain payments to a volunteer foster carer to provide foster care assessable income?***

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# Taxation Determination

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

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This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant 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. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## 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:
  - a. foster care is provided to children unable to live with their parents, on a long or short term basis, for a variety of reasons;
  - b. payments to volunteer foster carers are made to help meet the costs associated with providing care for foster children;
  - c. volunteer foster carers do not include employees of foster care agencies;
  - d. the payments are not received as part of a business of providing foster care;
  - e. the payments covered by this Determination are the standard or basic foster care subsidies plus additional loadings or allowances; and
  - f. 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.

# TD 2006/62

## **Date of effect**

3. This Determination applies to years commencing both before and after its date of issue. However, this Determination 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 Determination.

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**Commissioner of Taxation**

4 October 2006

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## Appendix 1 – Explanation

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❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the 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 income<sup>1</sup> under section 6-10 of the ITAA 1997.
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, carrying on a business or rendering services (*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. The Note to subsection 6-10(1) of the ITAA 1997 refers to the summary list in section 10-5 of the ITAA 1997 of particular types of assessable income. Allowances and benefits in relation to employment or rendering services are included in this list, and reference is made to paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936).
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, and 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 income under paragraph 26(e) of the ITAA 1936 (*Smith v. FC of T* (1987) 19 ATR 274; 87 ATC 4883).

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<sup>1</sup> 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**.'

## References

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*Previous draft:*

TD 2006/D35

- ITAA 1997 6-10
- ITAA 1997 6-10(1)
- ITAA 1997 6-10(2)
- ITAA 1997 10-5
- TAA 1953

*Subject references:*

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

*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

*Legislative references:*

- ITAA 1936 26(e)
  - ITAA 1997 6-5
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ATO references

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