TR 93/35 - Income tax: medicare levy payable by persons entitled to full free medical treatment: dependants for medicare levy purposes

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Taxation Ruling

Income tax: medicare levy payable by persons entitled to full free medical treatment: dependants for medicare levy purposes

other Rulings on this topic

TD 92/168; TD 93/103

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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.

*[**Note:** This is a consolidated version of this document. Refer to the Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

What this Ruling is about

1. The purpose of this ruling is to clarify the circumstances in which some persons, who would normally be exempt from the Medicare levy, are required to pay half the levy.

2. Persons who are normally exempt from the Medicare levy are defined as 'prescribed persons' in subsection 251U(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).[1] They include persons who are entitled to full free medical treatment by the Defence Forces or under veterans' entitlement (repatriation) legislation; blind pensioners covered by the Social Security or Veterans' Entitlement Acts; and taxpayers who receive sickness allowances under the *Social Security Act 1991*.

Ruling

Prescribed persons

3. The broad principle is that if a prescribed person:

- does not have any dependants,

[1] All legislative references are to the ITAA 1936 unless otherwise indicated.

- has dependants who all qualify as exempt in their own right,
- has a dependant who is subject to the levy on a separate income; or
- has a spouse who is liable to pay the levy, and the spouse contributes to the maintenance of a dependant,

then that prescribed person is completely exempt from the levy: subsection 251U(2); subsection 251R(6B); subsection 251R(6C).

4. If a prescribed person is not completely exempt from the levy in accordance with paragraph 3 of this Ruling, then that prescribed person will be required to pay half the levy: subsection 251U(3).

Persons entitled to free medical treatment

5. Before 1 July 1991, a holder of a Health Care Card, a Pensioner Health Benefits Card or a Health Benefits Card (where the amount of income derived by the person or his or her spouse was not taken into account when determining the eligibility of that person for the card) were also entitled to exemption from the Medicare levy. This no longer applies: subsection 251U(1).

6. Blind pensioners covered by the Social Security or Veterans' Entitlements Acts, and persons who receive sickness allowances under the *Social Security Act 1991* continue to be entitled to exemption from the Medicare levy after 1 July 1991: subsection 251U(1).

Partial levy where spouse or dependant children are not prescribed persons

7. If a prescribed person has a spouse or one or more dependant children who are not prescribed persons as described in paragraph 3 of this Ruling, then that prescribed person is liable for payment of one half of the levy that would have been payable by a non-exempt person: subsection 251U(3). A partial levy is imposed in these circumstances because the spouse or dependants are eligible for benefits under the Medicare scheme. The spouse and dependants may not be in receipt of income (in excess of the relevant threshold) and, had full exemption from the levy been granted, there would not have been any contribution made towards the cost of Medicare for persons who are entitled to benefit under it and who are not entitled to exemption from the levy.

Family agreement

8. If both the taxpayer and spouse are prescribed persons, a child of theirs may be treated as a dependant of only one spouse, in which case only that spouse will be liable to pay one half of the levy and the other spouse will be completely exempt. In these cases a 'family agreement' must be entered into (subsection 251R(6D)) on or before the date of lodgement of the return of income of the spouse claiming the exemption, or within such further time as the Commissioner allows: subsection 251R(6E). The agreement must state that, for levy purposes, the child is not to be treated as a dependant of the person claiming the exemption, and is to be treated as a dependant of the other spouse: subsection 251R(6D). The document evidencing the agreement must be kept for a period of 5 years commencing on the date of lodgment of the return of income of the spouse claiming the exemption: subsection 251R(6F).

Dependants

9. For Medicare levy purposes the spouse and children under 21[2] of a person are treated as dependants of that person provided they are Australian residents and the person contributes to their maintenance. A child aged 21 to 24 who is a full time student is also included as a dependant if his or her separate net income is less than $1786: subsection 251R(3); subsection 251R(4).

10. For Medicare levy purposes a man and woman living together in a de facto relationship are regarded as legally married (subsection 251R(2)) and a 'child' includes an adopted child, a step-child or an ex-nuptial child: subsection 6(1).

11. Where parents are divorced or separated and each contributes to the maintenance of a child, the child is taken to be a dependant solely of the parent who is entitled to receive family allowance in respect of the child: subsection 251R(5).

12. A person is taken to have contributed to the maintenance of a spouse or dependant child during any period in which they reside together unless the contrary is proven: subsection 251R(6). This means, for example, that a husband and wife living together who are each in receipt of income are, for Medicare levy purposes, each treated as a person who has a dependant. Each is regarded as a dependant of the other.

13. It is open to persons living together to prove that they have not contributed to the maintenance of each other by providing evidence

[2] As amended by Item 3 of Schedule 5 to the *Tax Laws Amendment (2005 Measures No. 3) Act 2005*.

establishing beyond doubt that each was self-supporting. Generally, the starting point in such an exercise would be a detailed record of actual household expenses and the amounts contributed by each person. Normal domestic sharing arrangements, e.g., a common account to which each person contributes and which is used to meet joint expenses, is not ordinarily sufficient to establish that one person has not contributed to the maintenance of the other.

Part year relief from the levy

14. Where an exempt taxpayer is entitled to relief from the Medicare levy for only part of the year of income an appropriate portion of the full year relief is granted.

Date of effect

15. This Ruling applies to years of income commencing both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Previous Rulings

16. The relevant principles from Taxation Ruling IT 2365 have been incorporated into this Ruling. Accordingly, Taxation Ruling IT 2365 is now withdrawn.

Commissioner of Taxation
28 October 1993

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IT 2365; TR 2006/10

Subject references
- dependants
- medicare levy
- prescribed persons

Legislative references
- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 251R(2)
- ITAA 1936 251R(3)

- ITAA 1936 251R(4)
- ITAA 1936 251R(5)
- ITAA 1936 251R(6)
- ITAA 1936 251R(6B)
- ITAA 1936 251R(6C)
- ITAA 1936 251R(6D)
- ITAA 1936 251R(6E)
- ITAA 1936 251R(6F)
- ITAA 1936 251U(1)
- ITAA 1936 251U(2)
- ITAA 1936 251U(3)
- Tax Laws Amendment (2005 Measures No. 3) Act 2005 Sch 5
- Social Security Act 1991
- TAA 1953