


CR 2003/5 - Income tax: assessable income: football umpires: Northern Tasmanian Football Umpires Association Inc. (NTFUA) 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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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: football
umpires: Northern Tasmanian Football
Umpires Association Inc. (NTFUA) receipts

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **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 applied in this Ruling are sections 6-5 and 8-1 of the *Income Tax Assessment Act 1997* ('ITAA 1997') and paragraphs 26(e) and 26(eaa) of the *Income Tax Assessment Act 1936* ('ITAA 1936').

Class of persons

3. The class of persons to whom this Ruling applies are Australian Rules football umpires who are members of the Northern Tasmanian Football Umpires Association Inc. (NTFUA) and receive payments for umpiring matches in any of the following Tasmanian Football Leagues:

- The Northern Tasmanian Football Association - Division 1;
- The Northern Tasmanian Football Association - Division 2;
- The North East Football Union;

- The Northern Tasmanian Junior Football Association; and
- Other Northern Tasmanian football competitions that are supported by the NTFUA when there is a sufficient number of umpires available.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 9 to 27 is carried out in accordance with the details of the arrangement provided in this Ruling.
6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:
 - a) 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
 - b) this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies to years commencing both before and after the date of issue. However, the 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

9. The arrangement that is the subject of the Ruling is described below.

10. Football Tasmania is the peak administrative body for Australian Rules football in Tasmania. It receives funding of over \$1 million from the Australian Football League. The funding is supplemented by limited source revenue. Football Tasmania is also responsible for the development of Australian Rules football in Tasmania.

11. NTFUA acts as the billing agent for its members for the purpose of invoicing the football associations to which members provide their services.

12. Invoices are sent separately for (a) members' match fees and (b) football associations' contributions to both the personal injury insurance obtained on members behalf by the NTFUA and training ground hire. Invoices in relation to (a) are sent on behalf of the members of the NTFUA.

13. The money collected from the football associations is distributed to individual umpires by the NTFUA.

14. The NTFUA levies each football association for training ground hire and personal injury insurance on a per appointment basis. The proportion of each association's contribution is calculated relative to each association's share of total appointments.

15. Members of the NTFUA provide their services to the following Tasmanian Football Associations:

- the Northern Tasmanian Football Association - Division 1;
- the Northern Tasmanian Football Association - Division 2;
- the North East Football Union;
- the Northern Tasmanian Junior Football Association; and
- other Northern Tasmanian football competitions that are supported by the NTFUA when there is a sufficient number of umpires available.

16. NTFUA members are paid a match fee for each match they umpire. The amount paid varies from league to league, is dependent on what grade (Seniors, Reserves, etc) is umpired and whether the umpire is a field, goal or boundary umpire. Current match fees are such that most umpires receive between \$1,000 and \$2,000 in a season and no umpire would receive more than \$3,000. The maximum an umpire would receive for a standard roster match would be \$105.

17. Members are paid monthly by Electronic Funds Transfer into a nominated bank account.

18. In addition, a 'travel allowance' is paid to the owner of one 'official car' per game when members officiate at those matches outside the Launceston metropolitan area. This is currently paid at the rate of 48.5 cents per kilometre. Individual members have the choice of travelling via the nominated vehicle or finding their own transport.

19. Members do not receive any allowances and benefits other than their match fee and the 'travel allowance' (refer paragraph 18).

20. The completion of a NTFUA registration form is the only condition precedent of individual membership of the NTFUA from year to year. The registration form records the member's name and address, provides medical and emergency contact information and requires members to follow the directions (in relation to the manner in which games are umpired) set by NTFUA coaching staff.

21. No contract (written or verbal) exists between the NTFUA and individual football associations. The NTFUA (acting on behalf of its members) and the football associations negotiate annually to determine the quantum of the match fee paid to each category of umpire. Each association's share of additional expenses (training ground hire and personal injury insurance) is accorded on a fee per appointment basis.

22. Individual umpire performance is evaluated on a regular basis by the Regional Umpires Coach (RUC), the Field, Boundary or Goal Umpires' Coaches, or one of several volunteer umpires' observers. The RUC is appointed by the NTFUA and has ultimate responsibility for the selection of umpires for particular matches. Football Associations have no role in relation to the evaluation of umpire performance, nor do they have any control over the selection of umpires for particular games.

23. Umpiring appointments are made solely on the basis of merit, such that the best available umpires are appointed to the most important games. Where an umpire's performance has been judged unsatisfactory, the most likely course of action is that they will be demoted to a lesser grade or competition.

24. Members are required to incur expenditure upon their own shoes (white running shoes or football boots), training gear, track

suits, whistles, wrist bands, shirts and trousers (for goal umpires) and other equipment (liniment, bandages etc.).

25. If an umpire advises, at short notice, that they are not available, the Appointment Secretary (NTFUA) liaises with the relevant coach (field, boundary or goal) with a view to finding a suitable replacement.

26. The match payments 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 that participation. Individual umpires contend that the primary motivation for their involvement in umpiring is:

‘a love of Australian Rules (football) and a desire to contribute to the communities in which the game is played. Umpiring also provides the opportunity to achieve greater fitness and to enjoy the social camaraderie provided by the membership of the NTFUA’.

Ruling

27. The match fees and the car allowance received by members of the Northern Tasmanian Football Umpires Association Inc (NTFUA) are not assessable income.

28. Losses and outgoings incurred deriving the match payments and car allowance cannot be claimed as a deduction.

Explanations

29. A payment or other benefit received by an umpire is assessable income if it is:

- income in the ordinary sense of the word (*ordinary income*); or
- an amount of benefit that through the operation of the provisions of the tax law is included in assessable income (*statutory income*).

Ordinary Income

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

31. 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.

32. 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.

33. Furthermore, where a person'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.

34. 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

35. The sporting activities of NTFUA members 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.

36. Their participation in umpiring activities is a social or personal pursuit of a non-commercial nature. Individual NTFUA members have stated their primary motivation for umpiring is their love of Australian Rules (football) and a desire to contribute to the communities in which the game is played. In addition, participation also provides the opportunity to maintain fitness and enjoy the social camaraderie of association membership.

37. 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 that participation.

38. In forming the opinion that the NTFUA members 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 that they officiate, the seniority of the football leagues, the links with the community of those leagues, particularly the social benefits of participation and the quantum of the fees that they can receive.

Travel allowance

39. In addition, the travel allowance does not constitute ordinary income as it is considered a reimbursement of a member's expenditure on a private or personal pursuit.

Provisions relating to statutory income

40. Section 6-10 of the ITAA 1997 includes in assessable income amounts that are not ordinary income; these amounts are statutory income.

41. The relevant two provisions of the ITAA 1936 are:

- paragraph 26(e), which provides that the 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 ...’;
- paragraph 26(eaa), which provides that the assessable income shall include ‘... a benefit that, but for section 22 of the *Fringe Benefits Tax Assessment Act 1986* (‘FBTAA 1986’), would be an expense payment fringe benefit within the meaning of that Act – the amount of the reimbursement referred to in that section ...’.

Match fees

42. The main issue to consider with respect to paragraph 26(e) is whether the payment is '*given or granted to him in respect of... any employment of or services rendered ...*'. Whilst the NTFUA members are not considered 'employees', paragraph 26(e) also includes in assessable income those allowances etc, which are paid in respect of 'services rendered'.

43. The match fees paid to NTFUA members are considered to be 'receipts incidental to a pastime' (refer paragraphs 35 to 38). As such, the match fees are not assessable under paragraph 26(e) because the umpires are not considered to be employees, nor are they 'rendering services'.

Car Allowance

44. A 'travel allowance' is paid to the owner of one 'official car' per game, when members officiate at those matches outside the Launceston metropolitan area. The 'allowance' is currently paid at the rate of 48.5 cents per kilometre.

45. Both paragraphs 26(e) and 26(eaa) include certain allowances, benefits and reimbursements in assessable income, where those allowances or reimbursements are given or granted in relation, directly or indirectly to any employment or services rendered.

46. Paragraph 26(eaa) specifically includes car expense reimbursements that would be expense payment fringe benefits under the FBTA 1986 but for the exemption contained in section 22 of that Act. The 'allowance' received by NTFUA members does not constitute an 'expense payment benefit' under section 20 of the FBTA 1986 as there is no employer/employee relationship, the prerequisite that characterises a fringe benefit.

47. The main issue to consider with respect to paragraph 26(e) is whether the payment is '*given or granted to him in respect of... any employment of or services rendered ...*'. Whilst the NTFUA members are not considered 'employees', paragraph 26(e) also includes in assessable income those allowances etc, which are paid in respect of 'services rendered'.

48. Given the match fees of NTFUA members are considered to be 'receipts incidental to a pastime' (refer paragraphs 35 to 38), the related 'travel allowance' is not assessable under paragraph 26(e) because the umpires are not considered to be employees, nor are they 'rendering services'.

General Deductions

49. As the match fees and car allowance received by the umpires are not assessable income, all losses and outgoings that are incurred in respect of deriving those amounts are not allowed as a deduction under section 8-1 or any other provision of the ITAA 1997.

Umpires who officiate in other leagues

50. Where an umpire who officiates in leagues covered by this Ruling, also officiates in more senior leagues than those administered by the NTFUA, that umpire's activities may have ceased to be that of a hobby or pastime. A more detailed analysis of the circumstances of those umpires may be required. Umpires in this situation should discuss their circumstances with their taxation adviser or the Australian Taxation Office.

Pay As You Go (PAYG) withholding

51. As ruled above, match payments paid to an umpire who is engaged in a hobby or pastime are not assessable income. The payments are not a payment for work and services and therefore the PAYG withholding provisions of Subdivision 12-B of Schedule 1 of the *Taxation Administrative Act 1953* do not apply. Tax should not be withheld from the match payment of umpires who are in the class of persons to whom this Ruling applies.

Detailed contents list

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Commissioner of Taxation

22 January 2003

Previous Ruling:

- sport

Not previously released in draft form

Related Rulings/Determinations:

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

Legislative references:

- TAA 1953 12B Sch 1
- TAA 1953 Part IVAAA
- FBTAA 1986 20
- FBTAA 1986 22
- ITAA 1936 26(e)
- ITAA 1936 26(eaa)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- Copyright Act 1968

Subject references:

- allowances
- assessable income
- hobby v., business
- sports people
- travel allowances
- motor vehicle allowances
- sporting organisations

ATO References

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