



CR 2004/17 - Income tax: assessable income: football umpires: Geelong Football Umpires League Inc.

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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: Geelong Football Umpires League Inc.

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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 dealt with in this Ruling are sections 6-5, 6-10 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 which this Ruling applies is Australian Rules Football umpires who are members of the Geelong Football Umpires' League Inc. (GFUL) and receive payments for umpiring matches for any of the following local Australian Rules Football leagues:

- Geelong Football League;
- Bellarine Football League;
- Geelong & District Football League; and
- Geelong Junior Football League.

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 actually carried out is carried out in accordance with the arrangement described in paragraphs 9 to 19.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:
 - 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
 - this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies from 1 July 2003. However, this 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. The Geelong Football Umpires League Inc (GFUL) was set up to administer and co-ordinate the functions of providing umpires for Australian Rules football within the Geelong and surrounding areas. The GFUL provides umpires to the:

- Geelong Football League
- Bellarine Football League
- Geelong & District Football League
- Geelong Junior Football League

11. The GFUL issues invoices to the above leagues for umpires who are appointed to football matches played in the respective leagues. The invoices cover both match fees and travel costs.

12. The GFUL retains a percentage of match fees to cover items such as administration costs, insurance payments to cover the loss of occupational income and medical treatment etc in the event of a member's injury, and other expenses incurred by the GFUL. On a monthly basis, the balance is paid to umpires as match fees and travel allowances via electronic funds transfer into their individual bank accounts.

13. Members of the GFUL are paid a match fee for each game they umpire as well as a travel allowance where they use their own vehicles to transport other umpires, in addition to themselves to football grounds. The amount received by each umpire for the financial year is dependent upon the number and level of games umpired, the league in which they umpire and the capacity in which they officiate. Current fees are such that the maximum an umpire would receive in any given financial year would be approximately \$2,500. The highest individual match fee currently paid to a central umpire in a senior league is \$93. All fees paid to other umpires, including boundary umpires and goal umpires are less than the aforementioned amount.

14. The travel allowance, which currently ranges from \$10 to \$50 per game, is dependent upon which football grounds the umpires are required to officiate at and the distance they are required to travel to those grounds. The travel allowance for each ground is calculated on a cents per kilometre basis (currently 36 cents per kilometre) from the centre of Geelong to the respective ground. An umpire will only be paid a travel allowance if they are nominated to transport other umpires to and from the ground.

15. The only requirement for an umpire to officiate for the GFUL is that they become a member of the GFUL. An annual membership fee is payable and the quantum of that fee is dependent on whether the member is under or over 18 years of age. All returning first year members receive their second year membership free as well as a \$50 voucher to purchase umpiring clothing and accessories. This incentive is provided to encourage retention of first year umpires.

16. Members do not receive any allowances and benefits other than their match fee and travel allowance (refer paragraphs 13 and 14) and the retention incentives provided to second year umpires (paragraph 15).

17. In all cases, umpires are appointed to matches by the respective coaching panels of the GFUL with no football club or league having any influence over the selection process. All appointments are made on merit whereby the most experienced and capable umpires are appointed to the more senior or important games. Umpires appointed to games are assessed for their ability and further appointments are governed by their capabilities. Although avoided where possible, umpires may officiate at more than one match per week. However, it would be rare for a central or boundary umpire to officiate at more than thirty matches per year or that goal umpires would officiate at more than sixty matches in a season. Goal umpires are appointed to reserve and senior grade matches each week however due to the level of match fees paid to goal umpires, they still receive less than a central umpire completing only one match per week.

18. GFUL members are required to incur expenditure on match uniforms, running shoes, whistles, wrist bands, flags, coats etc. As well as uniforms for matches, umpires are also required to conform to a dress code.

19. The match fees are not intended to, nor do they usually, cover expenses. The purpose of the payments is to encourage members of the community to participate in local sporting activities by subsidising the costs associated with participation. Individual umpires contend that the primary motivation for umpiring is a love of Australian Rules Football and a desire to contribute to the community in which the game is played. Umpiring also provides the opportunity to be involved in the game, achieve a greater fitness level and to meet friends on a regular basis.

Ruling

20. The match fees and the car allowance paid to members of the GFUL who umpire matches in any of the four Australian Football leagues named in paragraph 3 of this ruling are not assessable income.

The retention incentives provided by GFUL to second year umpires are also not assessable income.

21. Losses and outgoings incurred deriving the match fees, car allowance and retention incentives cannot be claimed as a deduction.

Explanation

22. A payment or other benefit received by a taxpayer is assessable income if it is:

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

Ordinary Income

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

24. 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.

25. 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.

26. Furthermore, where a taxpayer'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.

27. 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

28. The sporting activities of GFUL 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.

29. 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.

30. In forming the opinion that the GFUL 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 at which they officiate, the seniority of those 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

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

Statutory Income

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

33. The two statutory income provisions which may have application to the circumstances of GFUL members are:

- paragraph 26(e) of the ITAA 1936, 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 ...*’; and
- paragraph 26(eaa) of the ITAA 1936, which provides that the assessable income shall include ‘... *a benefit that, but for section 22 of the Fringe Benefits Tax Assessment Act 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

34. 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 GFUL members are not considered ‘employees’, paragraph 26(e) also includes in assessable income those allowances etc. which are paid in respect of ‘services rendered’.

35. The match fees of GFUL members are considered to be ‘receipts incidental to a pastime’ (refer paragraphs 28 to 30). 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’.

Travel Allowance

36. 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.

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

38. 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 ...*'. As stated at paragraphs 34 and 35 of this Ruling in relation to match fees, the GFUL members are not considered to be employees, nor are they 'rendering services' and therefore, the travel allowance does not constitute assessable income under paragraph 26(e).

Retention Incentives

39. The retention incentives received by second year umpires from the GFUL in the form of a membership fee waiver and voucher for umpiring gear are neither ordinary income nor statutory income.

General Deductions

40. As the match fees, car allowance and retention benefits received by the umpires are not assessable income, all losses and outgoings that are incurred in respect of receiving 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

41. Where umpires who are members of the GFUL also officiate in leagues other than the four leagues listed in paragraph 3, those umpires' activities may cease 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

42. As explained above, match payments made 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 therefore the PAYG withholding provisions of Subdivision 12-B of Schedule 1 to the *Taxation Administration Act 1953* do not apply. Tax should not be

withheld from the match payments or travel allowances of umpires who are in the class of persons to which this Ruling applies.

Detailed contents list

43. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

25 February 2004

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

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

Previous Rulings/Determinations:

- Copyright Act 1968

- FBTAA 1986 20

- FBTAA 1986 22

Subject references:

- allowances

- ITAA 1936 26(e)

- assessable income

- ITAA 1936 26(eaa)

- hobby v. business

- ITAA 1997 6-5

- sports people

- ITAA 1997 6-5(1)

- travel allowances

- ITAA 1997 6-10

- motor vehicle allowances

- ITAA 1997 8-1

- sporting organisations

- TAA 1953 Part IVAAA

- sport

- TAA 1953 Subdiv 12-B Sch 1

Legislative references:

ATO references

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