


CR 2004/88 - Income tax: assessable income: volunteers: Trinity College Gawler Incorporated

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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

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Preamble

*The number, subject heading, **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.*

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

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' 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 paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936).

Class of persons

3. The class of persons to which this Ruling applies are volunteers who assist the Trinity College Gawler Incorporated ('the College').

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 20.

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. This description is based on the following documents which are attached to the file record maintained by the Australian Tax Office for this ruling. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Class Ruling dated 3 May 2004;

- Tax Office record of telephone conversations between a representative of the applicant and a taxation officer; and
- E-mail received on 7 July 2004 from a representative of the applicant.

10. Volunteers to the College assist in a range of activities, ranging from ground duties, administration, preparation of learning materials to helping with excursions and school camps.

11. Volunteers are parents and/or relatives of children attending the College.

12. Regular volunteers and the College enter into a written agreement contained in a Volunteer Agreements and Details Form.

13. This agreement confirms the nature of the agreement between the parties, allows for character references and allows the College to conduct police checks.

14. The agreement is not a contract of service and as such, does not give the volunteer any right or priority to employment at the College.

15. The volunteers each wear a name tag identifying them as a volunteer to the College.

16. There is no requirement that the volunteers must assist the College.

17. Volunteers can nominate what task they would like to undertake within the College.

18. Regular volunteers would assist for no more than three days per week each school term.

19. Regular volunteers are paid a flat rate of \$33 per day when they work as a volunteer for a full day. Volunteers that work part of a day do not receive any payment.

20. The fees paid by the College to the volunteers are intended to cover expenses, such as attending the school, meals and personal presentation. The amount is not any way related to the duties the volunteer performs or the competency of the volunteers as they perform their duties.

Ruling

21. The payments made to volunteers carrying out duties under the direction of the College are not assessable income under either section 6-5 of the ITAA 1997 or paragraph 26(e) of the ITAA 1936.

22. Losses and outgoings incurred deriving the payments described in paragraph 19 of this ruling, can not be claimed as a deduction under section 8-1 of the ITAA 1997 or any other provision.

Explanation

23. 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

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

25. 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.

26. 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.

27. It is necessary to look at these factors in the context of the volunteer's circumstances. Whether the payments that have been received by the volunteer were for services rendered must be examined. Paragraph 3 of Taxation Ruling IT 2639 looks at the meaning of 'income from personal services' and states that:

'income from personal services' is income that an individual taxpayer earns predominantly as a direct reward for his or her personal efforts by, for example, the provision of services, exercise of skills or the application of labour. The inclusion of predominantly in this definition allows for the situation where personal services involve the use of some equipment, for example the drawing board of an architect.

28. The volunteer is not paid any amount for their time or to reward them for any services they provide for the college. They are volunteering their time without any expectation of any monetary reward.

29. The payments the volunteers receive are intended to defray some of the costs they have incurred in helping at the College. The quality and character of the payment in the hands of the volunteer is that of reimbursement of the out of pocket expenses they have incurred.

30. Given the discussion in paragraphs 24 to 29 it is considered that the payments received by the volunteer do not possess the characteristics of ordinary income. They are not payments for services rendered rather they are more in the nature of a reimbursement received for the amounts expended in acting as a volunteer for the college. The payments received are not incurred according to ordinary concepts and therefore are not assessable as ordinary income under section 6-5 of the ITAA 1997.

31. In forming the opinion that the volunteers who comprise the class of persons to whom this Ruling applies are engaged in a non-assessable activity, we have taken into account the number of days the volunteers assist, the links they have with the school, the social benefits of participation, the regularity of the payments received and the quantum of the payments that they can receive.

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. Paragraph 26(e) of the ITAA 1936 is the relevant statutory income provision that may have application to the circumstances here. This provision 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 ...

34. The main issue to consider with respect to paragraph 26(e) of the ITAA 1936 is whether the payment is '*... given or granted to him in respect of ... any employment of or services rendered ...*'. Whilst the volunteers are not considered 'employees', paragraph 26(e) of the ITAA 1936 also includes in assessable income those allowances etc. which are paid in respect of 'services rendered'.

35. The fees of the volunteers are considered to be reimbursement of out of pocket expenses. As such, the payments are not assessable under paragraph 26(e) of the ITAA 1936 because the volunteers are not considered to be employees, nor are they 'rendering services'.

General deductions

36. As the payments received by the volunteers 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 of the ITAA 1997 or any other provision of the ITAA 1997.

Pay As You Go (PAYG) withholding

37. As explained above, payments made to volunteers are not assessable income. The payments are not regarded as withholding payments under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*. An entity making such payments to the volunteers who are in the class of persons to which this Ruling applies will not be required to withhold amounts from these payments.

Detailed contents list

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

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Commissioner of Taxation18 August 2004

Previous draft:

Not previously issued as a draft

*Related Rulings/Determinations:*CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; IT 2639*Legislative references:*

- Copyright Act 1968
 - ITAA 1936 26(e)
 - ITAA 1997 6-5
 - ITAA 1997 6-5(1)
 - ITAA 1997 6-10
 - ITAA 1997 8-1
 - TAA 1953 Pt IVAAA
 - TAA 1953 Sch 1 Div 12
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ATO references

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