

CR 2005/43 - Income tax: assessable income: football umpires: North Eastern Football League Inc. 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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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: North Eastern Football League Inc. receipts

Contents	Para
What this Class Ruling is about	1
Date of effect	8
Arrangement	9
Ruling	20
Explanation	22
Detailed contents list	44

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.*

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 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 receive payments for umpiring matches for the North Eastern Football League Inc. (NEFL) in the mid north area of South Australia.

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 2004. 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 and telephone records which are attached to the file record maintained by the 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 part of documents incorporated into this description of the arrangement are:

- Application for Class Ruling (dated 9 March 2005) received 11 March 2005; and
- information provided in a telephone conversation by the Tax Agent on 28 April 2005.

10. NEFL administers Australian Rules Football matches in the mid north area of South Australia. On behalf of eight participating clubs, it is responsible for the payment of match fees to umpires who are members of the North Eastern Umpires Panel (NEUP).
11. NEFL currently pays umpires within seven days of matches by cheque and are recompensed by member clubs weekly.
12. Umpires are paid a match fee for each match umpired. A Grade umpires are paid \$110, B Grade \$70 and Senior Colts \$50. Current fees are such that the maximum any umpire would receive in a season would be \$3000 to \$3500.
13. On a limited number of occasions (one to two per season) umpires may officiate in neighbouring leagues. Arrangements are made between respective leagues for umpires to be swapped for a particular match so that the players have exposure to unfamiliar umpires.
14. Some umpires may umpire more than one match per week due to shortages, however no umpire would officiate at more than 30 matches per season.
15. Members of the NEUP consist of registered umpires. No subscriptions are payable. Membership consists of only central umpires. Boundary and goal umpires are provided by the clubs.
16. Umpire appointments are based on merit with the more capable officiating at higher level matches. The NEFL has no influence over these appointments which are made by the NEUP.
17. Umpires are required to provide their own match uniforms, boots and training gear except for shirts which are provided by a NEFL sponsor.
18. Umpires provide their own transport to matches and to regular training sessions (usually twice monthly). Distances within the league vary from 20km to 200km. Umpires receive a travel allowance for travel to matches which is paid at the following rates: 0-50km nil, 50-100km \$20, 100km or greater \$40. No allowance is paid to cover travel to training.
19. 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 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 provided 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 travel allowance paid to umpires who officiate at matches for the NEFL in the mid north area of South Australia are not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

21. Losses and outgoings incurred deriving the match fees, cannot be claimed as a deduction under section 8-1 of the ITAA 1997 or any other provision of the ITAA 1997.

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 umpires appointed to umpire NEFL matches 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 the costs associated with that participation.

30. In forming the opinion that umpires 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 the football leagues and the links with the community, 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 reimbursement of an umpire's expenditure in regard to 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. A list of the statutory income provisions can be found in section 10-5 of the ITAA 1997. That list includes references to paragraphs 26(e) and 26(eaa) of the ITAA 1936.

33. Paragraph 26(e) of the ITAA 1936, 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. Paragraph 26(eaa) of the ITAA 1936, provides that the assessable income shall include:

... a benefit that, but for section 22 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA), would be an expense payment fringe benefit within the meaning of that Act the amount of the reimbursement referred it in that section...

Match fees

35. 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 umpires 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'.

36. The match fees of umpires are considered to be 'receipts incidental to a pastime' (refer to paragraphs 28 to 30). As such, the match fees are not assessable under paragraph 26(e) of the ITAA 1936 because the umpires are not considered to be employees, nor are they 'rendering services'.

Travel allowance

37. Both paragraphs 26(e) and 26(eaa) of the ITAA 1936 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.

38. Paragraph 26(eaa) of the ITAA 1936 specifically includes car expense reimbursements that would be expense payment fringe benefits under the FBTAA but for the exemption contained in section 22 of that Act. The 'allowance' received by the umpires does not constitute an 'expense payment benefit' under section 20 of the FBTAA as there is no employer/employee relationship, the prerequisite that characterises a fringe benefit.

39. 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 umpires 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'.

40. Given the match fees of umpires are considered to be 'receipts incidental to a pastime' (refer to paragraphs 28 to 30), the related 'travel allowance' is not assessable under paragraph 26(e) of the ITAA 1936 because the umpires are not considered to be employees, nor are they 'rendering services'.

General deductions

41. As the match fees 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 of the ITAA 1997 or any other provision of the ITAA 1997.

Umpires who officiate in other leagues

42. Where umpires officiate in competitions other than the NEFL and those neighbouring leagues as outlined in paragraph 13, 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 Tax Office.

Pay As You Go (PAYG) withholding

43. As explained above, match payments paid to an umpire who is engaged in a hobby or pastime 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 match payments to umpires who are in the class of persons to which this Ruling applies will not be required to withhold amounts from these payments nor would they have any other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, payment summaries, annual reporting.

Detailed contents list

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

	Paragraph
What this Class Ruling is about	1
Tax law(s)	2

Class of persons	3
Qualifications	4
Date of effect	8
Arrangement	9
Ruling	20
Explanation	22
Ordinary income	23
<i>Match fees</i>	28
<i>Travel allowance</i>	31
Statutory income	32
<i>Match fees</i>	35
<i>Travel allowance</i>	37
General deductions	41
Umpires who officiate in other leagues	42
Pay As You Go (PAYG) withholding	43
Detailed contents list	44

Commissioner of Taxation

1 June 2005

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Not previously issued as a draft

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

- allowances
- assessable income
- hobby vs business
- motor vehicle allowances
- sport
- sporting organisations
- sports people
- travel allowances

Legislative references:

- 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
- ITAA 1997 10-5
- FBTAA 1986 20
- FBTAA 1986 22
- TAA 1953 Pt IVAAA
- TAA 1953 Sch 1 Div 12
- Copyright Act 1968

ATO references

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