


CR 2007/82 - Income tax: subscriptions paid by employees of Queensland Ambulance Service to the Emergency Medical Service Protection Association Incorporated

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Class Ruling

Income tax: subscriptions paid by employees of Queensland Ambulance Service to the Emergency Medical Service Protection Association Incorporated

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❗ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

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

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provision dealt with in this Ruling is:

- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is members of the Emergency Medical Service Protection Association Incorporated (the EMSPA) who are employed by the Queensland Ambulance Service (QAS).

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 27 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme 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 3 May 2007.

9. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The following description of the scheme is based on information provided by the applicant.

14. The EMSPA is a not-for-profit incorporated association whose membership is made up of QAS officers.

15. The EMSPA was formed primarily to provide financial assistance for legal representation to fee-paying members in relation to employment-based matters.

16. QAS officers can potentially be the subject of disciplinary investigations. Such investigations can have significant impact on the officers concerned. The penalties can include suspension (with or without pay), demotion, and prohibition on promotion, pecuniary penalties or other departmental sanctions. Legal representation ensures member's rights are not infringed and that inquiries are conducted in a timely and professional manner.

17. The EMSPA's objects as stated in the Model Rules are:

- (a) to provide legal and other assistance as required for employment-based reasons for all members; and
- (b) for members to support their fellow members and improve their working environment through the sharing of knowledge, time and resources for employment-based matters.

18. Financial assistance is for legal representation for fee-paying members who are implicated or charged with an offence. An offence can include, but is not limited to:

- grievances, charges and inquiries placed against members from any party including parties outside the QAS;

- breach of any legislation, policy or procedure by another person or party against any member(s) of the EMSPA; and
- one member placing any action or grievance against another member where the EMSPA can adequately represent all parties on a fair and equitable basis.

19. The EMSPA can not financially assist any member in respect of any matter relating to libel and/or defamation or equal opportunity and/or sexual harassment whether such claim arises out of, or in the course of his/her employment or otherwise.

20. The EMSPA does not assist members in relation to criminal charges which arise outside of the normal course of their duties even where the charge may impact on their employment activity, for example, a drink driving charge.

21. The EMSPA does not provide assistance in relation to any personal legal affairs of members.

22. If any member is implicated or charged with any offence arising out of or in the course of his/her employment that member shall immediately advise the EMSPA in full the following:

- (i) the nature of the injury, implication or charge;
- (ii) the date of the alleged offence;
- (iii) the location of the alleged offence; and
- (iv) any other material fact related to the alleged offence.

23. Initial approval for the provision of legal assistance is at the discretion of the EMSPA Executive Committee. The Executive Committee are the persons at any given time holding the position of EMSPA President, EMSPA Vice-President, EMSPA Secretary and EMSPA Treasurer.

24. Legal assistance is only provided if the alleged offence is as a consequence of the member acting reasonably and in good faith in the performance of their duties.

25. The EMSPA has an agreement with a legal firm to provide legal representation for its members.

26. Membership fees are decided by the members from time to time at a general meeting and are payable when and in the way the management committee decides. Currently full membership fees are set at \$15 and are required to be paid to the EMSPA bank account on a fortnightly basis. Casual/student members currently pay \$15 only on the fortnights they perform paid shifts for the QAS. This fee structure ensures that the EMSPA's casual/student members have access to full financial assistance if required.

27. Members approved for financial assistance are entitled to all funds held by the EMSPA at the time of approval, but no more.

Ruling

28. The membership fees paid by QAS officers to the EMSPA are deductible under section 8-1.

Commissioner of Taxation

29 August 2007

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

29. Subsection 8-1(1) allows a deduction for all losses and outgoings to the extent to which they are incurred in gaining or producing assessable income.

30. However, subsection 8-1(2) provides that where the outgoings are of a capital, private or domestic nature, or relate to the earning of exempt income no deduction is allowable.

31. Broadly the test for deductibility under subsection 8-1(1) is whether the payment to EMSPA is an outgoing which is incidental and relevant to the derivation of the member's assessable income.

32. In *FC of T v. Rowe* (1995) 60 FCR 99; (1995) 31 ATR 392; 95 ATC 4691, the court accepted that legal expenses incurred in defending the manner in which a taxpayer performed his employment duties were allowable. The activities which produced the taxpayer's income were what exposed them to the liability against which they were defending themselves.

33. In this case, QAS officers can be the subject of disciplinary investigations. Such investigations can have significant impact on the officers concerned. The membership fees paid by QAS officers to EMSPA arise out of a need for the officers to have some form of financial assistance in the event that they are accused of acting inappropriately whilst they are performing the work by which they earn assessable income. There is sufficient connection between the expense and the earning of assessable income for a deduction to be allowed under section 8-1.

34. Where the outgoing has been voluntarily incurred the member's purpose in incurring that expenditure may constitute an element of its essential character, stamping it as expenditure of a business or income earning kind: *Magna Alloys & Research Pty Ltd v. FC of T* (1980) 11 ATR 276; 80 ATC 4542.

35. In determining the purpose of the members in incurring the expense, it is necessary to have regard to the objects and activities of the EMSPA: *FC of T v. Gordon* (1930) 43 CLR 456.

36. The purpose of the EMSPA is to provide QAS officers with assistance where they are required to defend themselves in relation to a grievance, charge or inquiry arising out of, or in the course of their employment. EMSPA will not provide financial assistance in all cases as explained in paragraphs 19 to 21 of this Ruling. The purpose of the EMSPA is consistent with the members purpose of incurring the expenditure being primarily to ensure that they are able to if the need arises defend the way in which they have carried out their income earning activities.

37. Section 8-1 does not require that the purpose of the expenditure shall be the gaining of the income of that year so long as it was made in the given year and is incidental and relevant to the operations and activities regularly carried on for the production of income: *FC of T v. Smith* (1981) 147 CLR 578; 11 ATR 538; 81 ATC 4114. The payment of membership fees to the EMSPA may not directly result in the production of any assessable income in the relevant year. However, the purpose of the expenditure is incidental and relevant to the income producing activities regularly carried on by QAS officers.

38. The outgoing does not involve the acquisition of any enduring or tangible asset and therefore is not capital in nature and precluded from deductibility by subsection 8-1(2). In an indirect way the incurring of the expense may in the future protect the member's job as a QAS officer. However, this is only an indirect consequence that may or may not happen.

39. The membership fees are paid fortnightly. The periodic nature of the payment also points towards the characterisation of the payments being revenue rather than capital in nature.

40. The occasion of the expense arises from the income earning activities of the member. Membership of the EMSPA is not associated with the personal legal affairs of the member. The expense is therefore, neither private nor domestic in nature for the purpose of subsection 8-1(2).

Appendix 2 – Detailed contents list

41. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Subject references:

- allowable deductions
- association and membership expenses
- work related expenses

Legislative references:

- ITAA 1997 8-1
- ITAA 1997 8-1(1)
- ITAA 1997 8-1(2)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Case references:

- FC of T v. Gordon (1930) 43 CLR 456
- FC of T v. Rowe (1995) 60 FCR 99; 31 ATR 392; 95 ATC 4691
- FC of T v. Smith (1981) 147 CLR 578; 11 ATR 538; 81 ATC 4114
- Magna Alloys & Research Pty Ltd v. FC of T (1980) 11 ATR 276; 80 ATC 4542

ATO references

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