

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D17/02

Property tax – net assessable value – management fee – section 5(1A) of the Inland Revenue Ordinance ('IRO').

Panel: Ronny Wong Fook Hum SC (chairman), Paul Mok Yun Lee and Peter Ngai Kwok Hung.

Date of hearing: 4 March 2002.

Date of decision: 7 June 2002.

The only issue is whether the appellant was entitled to deduct the management fee which she paid in respect of the rentals she received in computing her liability for property tax.

Held:

1. The only items deductible from the rents the appellant received are rates and statutory allowance.
2. The appellant was not entitled to any other deduction in computing her liability.

Appeal dismissed.

Yeung Siu Fai for the Commissioner of Inland Revenue.

Taxpayer in person.

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Decision:

1. On 4 September 1996, the Appellant entered into a tenancy agreement to let out Shop 1 for two years with rental at \$7,350 per month with the Appellant being responsible for the rates in respect of Shop 1. This tenancy was early terminated on 21 July 1997.

2. By a tenancy agreement dated 21 July 1997, the Appellant let out Shop 1 for two years from 27 July 1997 at a monthly rent of \$8,500 with the Appellant being responsible for the rates and management fees in respect of Shop 1.

3. By a tenancy dated 3 March 1997, the Appellant let out Shop 2 for two years commencing from 15 March 1997 at a monthly rent of 2,800. The Appellant was responsible for the rates and management fees in respect of Shop 2.

4. On 24 March 1999, the Appellant entered into another tenancy letting out Shop 2 for two years commencing from 15 March 1999 at a monthly rental of \$2,500 with the Appellant being responsible for rates and management fees in respect of that premises.

5. The issue before us is whether in computing her liability for property tax the Appellant is entitled to deduct the management fees which she paid in respect of Shop 1 and Shop 2 from the rentals she received under the four tenancies outlined above.

6. The position is governed by sections 5 and 5B of the IRO.

7. Section 5(1) of the IRO provides that:

‘Property tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person being the owner of any land or buildings or land and buildings wherever situate in Hong Kong and shall be computed at the standard rate on the net assessable value of such land or buildings or land and buildings for each such year’.

8. Section 5(1A) of the IRO defines ‘net assessable value’ to mean the assessable value of land or buildings or land and buildings ascertained in accordance with section 5B less:

- (a) where the owner agrees to pay the rates in respect of the land or buildings or land and buildings, the rates paid by him; and
- (b) an allowance for repairs and outgoings of 20% of that assessable value after deduction of the rates.

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9. Section 5B of the IRO provides that ‘The assessable value of land or buildings or land and buildings’ shall be the consideration, in money or money’s worth, payable to the owner in respect of the right of use of that land or buildings or land and buildings.

10. We are of the view that these statutory provisions are clear. In computing her liability for property tax, the Appellant is only entitled to deduct two items from the rents which she received in respect of Shop 1 and Shop 2. The first item of deduction is the rates in respect of those premises. The second item of deduction is the statutory allowance at 20% of the rental after deduction of the rates. She is not entitled to any other deduction in computing her liability.

11. The Revenue had afforded the Appellant the deductions referred to in paragraph 10 above. The Appellant’s additional claim for deduction of management fees has no merit and her appeal is hereby dismissed.