

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D17/91

Salaries tax – Government servant – whether fee paid to professional body can be deducted as an expense – section 12(1)(a) of the Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Cheung Wing In and Kenneth Ting Woo Shou.

Date of hearing: 17 April 1991.

Date of decision: 6 June 1991.

The taxpayer was employed by the Hong Kong Government. He paid a fee to a professional institution. Membership of the professional institution was not a requirement of his employment but the employer encouraged its officers to be members of recognised institutions or societies by granting them a salary increase if they were members of such an institution. The taxpayer claimed that the entrance fee and membership fee paid by him to the professional institution should be deductible from his income subject to salaries tax. The Deputy Commissioner rejected this claim.

Held:

The expense claimed by the taxpayer did not come within section 12(1)(a) of the Inland Revenue Ordinance.

Appeal dismissed.

Cases referred to:

CIR v Humphrey 1 HKTC 451
Lomax v Newton 34 TC 558
Brown v Bullock 40 TC 1
Simpson v Tate 9 TC 314
CIR v SIN Chun-wah 2 HKTC 364
BR 19/73, IRBRD, vol 1, 121

Iris NG Yuk Chun for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

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This is an appeal by a taxpayer against a salaries tax assessment for the year of assessment 1988/89 in which the assessor refused to grant a deduction of an expense being the entrance fee and subscription fee which the Taxpayer paid to a professional institution ('the professional institution').

The facts are as follows:

1. The Taxpayer was employed by the Hong Kong Government.
2. In respect of the year of assessment 1988/89 the Taxpayer claimed as a deduction from his assessable income the sum which he paid to be a member of the professional institution. The assessor when assessing the Taxpayer to tax rejected this claimed expense.
3. It was not a requirement for an officer [of that field of work] in the Taxpayer's department to be a member of the professional institution before he could be employed. However the Hong Kong Government encouraged its officers [of that field of work] to be members of recognised institutions or societies by granting an increase in salary equal to one increment if the employee was a member of a recognised institution or society. The professional institution cited was such a recognised institution.
4. The Taxpayer paid to the professional institution for the year of assessment 1988/89 a membership fee of \$250 and an entrance fee of \$250.
5. The Taxpayer objected to the tax assessment. By his determination dated 9 May 1990 the Deputy Commissioner of Inland Revenue upheld the assessment and rejected the Taxpayer's objection. The Taxpayer duly appealed to this Board.

At the hearing of the appeal the Taxpayer represented himself and complained that the Commissioner had not treated him fairly. He said that one of his colleagues had been allowed to deduct his membership fee from his taxable income. He submitted that because he could not earn the additional increment without being a member of the professional institution he should either be allowed to deduct the membership fee or alternatively the additional increment should not be taxable.

The representative for the Commissioner addressed us at some length and referred us to the following cases:

CIR v Humphrey 1 HKTC 451

Lomax v Newton 34 TC 558

Brown v Bullock 40 TC 1

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Though we have sympathy for the Taxpayer it does not help him in his appeal. Only expenses which come within section 12(1) of the Inland Revenue Ordinance can be deducted from the taxable income for salaries tax purposes. The relevant sub-paragraph is section 12(1)(a) which reads as follows:

- ‘ 12(1) In ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person –
- (a) all outgoings and expenses, other than expenses of a domestic or private nature and capital expenditure, wholly, exclusively, and necessarily incurred in the production of the assessable income;
- ...’

These words are notoriously limited. Though the employer encourages its employees to be members of a professional institution by granting a salary increment this does not bring the expense within the wording of the Ordinance. Accordingly we uphold the determination of the Deputy Commissioner and dismiss this appeal.