

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D24/87

Board of Review:

Andrew K. N. Li, *Chairman*, Stanley G. Elliott and Stephen M. L. Lau, *Members*.

7 August 1987.

Salaries Tax—Section 12(1)(a) of the Inland Revenue Ordinance—whether the Appellant was entitled to deduct subscription paid to a professional institute.

The Appellant was an employee of the Hong Kong Government and held the position of examiner in the Audit Department. In the year 1984/85 he paid a subscription to the Institute of Chartered Secretaries and Administrators. He was not a full member, but a licentiate having passed all the Institute's examinations. Full membership is given only upon satisfying the requisite working experience. As a matter of law the Appellant was not entitled to deduct the subscription in question from his assessable income. Indeed the Appellant did not challenge this legal position.

As an extra-statutory concession, the Revenue's policy had been to allow a deduction for the subscription to one professional society where the holding of a full professional qualification is a pre-requisite of employment and where the retention of membership and keeping abreast of current developments in the particular profession are of regular use and benefit in the performance of the duties. In the present case the Revenue considered that the Appellant fell outside the scope of the concession since full membership was not a pre-requisite of employment as an examiner in the Audit Department, the passing of the Institute's examinations being sufficient and the Taxpayer was not in any event a full member. The Appellant appealed on grounds that the Board of Review should extend the scope of the concession to cover his subscription as a licentiate.

Held:

The Board of Review could not extend the scope of an extra-statutory concession since it was administrative in nature.

Appeal dismissed.

D. J. Gaskin for the Commissioner of Inland Revenue.

Appellant in person.

Reasons:

This is an appeal by Mr. P ("the Taxpayer") against the 1984/85 salaries tax assessment raised on him.

The Taxpayer is an officer of Hong Kong Government. One of the alternative qualifying entry requirements to the Taxpayer's grade is the passing of all parts of the Institute of Chartered Secretaries and Administrators ("the Institute") examinations or equivalent. At the relevant time, the Taxpayer had passed all such examinations and was a licentiate of the

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Institute. During the relevant year, he paid a subscription of \$419 to the Institute. A licentiate is a person who is not eligible for full membership (associate or fellow membership) solely by reason of his not having had the requisite working experience. A licentiate has the same rights and obligations and is subject to the same disciplinary provisions as if he were a member but is not entitled to attend or vote at general meetings or to describe himself as a chartered secretary.

The only issue is whether the Taxpayer is entitled to deduct his subscription of \$419 paid to the Institute.

The Revenue submits that he is not entitled as a matter of law. Section 12(1)(a) of the Inland Revenue Ordinance allows deductions for 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. The authorities establish that subscriptions paid by employees to professional associations are not expenses wholly exclusively and necessarily incurred in the production of his assessable income, even necessarily incurred in the production of his assessable income, even where the holding of a certain professional status is a pre-requisite of employment. See the Board of Review decision No. 19/73 at HK Inland Revenue Board of Review Decisions Volume I p. 121 and the authorities there cited.

We accept the Revenue's submission that as a matter of law the Taxpayer is not entitled to deduct the subscription in question. Indeed the Taxpayer did not challenge this legal position.

As an extra-statutory concession, the Revenue's policy has been to allow a deduction for the subscription to one professional society where the holding of a full professional qualification is a pre-requisite of employment and where the retention of membership and keeping abreast of current developments in the particular profession are of regular use and benefit in the performance of the duties. In the present case the Revenue considers that the Taxpayer falls outside the scope of the concession since *full* membership is not a pre-requisite of employment in the Taxpayer's Department, the passing of the Institute's examinations being sufficient and the Taxpayer was not in any event a full member.

The Taxpayer requests us to extend the scope of the concession to cover his subscription as a licentiate.

We accept the Revenue's submission that the Board of Review cannot extend the scope of such an extra-statutory concession since it is administrative in nature.

We note that the Revenue may well find it appropriate to review the scope of such extra-statutory concessions from time to time in the light of changing circumstances and conditions.

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We note that in previous years, the Revenue had allowed the Taxpayer to deduct his subscription as a licentiate. This was unfortunate. The Revenue acknowledges this was an error and in view of the small amounts involved, does not intend to reopen past assessments.

Accordingly, we confirm the assessment in question.