

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D38/99

Salaries Tax – a sum assessed as a cash allowance – whether it was a refund of rent – appeal lodged outside the prescribed period – section 66 of the Inland Revenue Ordinance.

Panel: Andrew Halkyard (chairman), Robin M Bridge and Thomas Mark Lea.

Date of hearing: 10 June 1999.

Date of decision: 23 July 1999.

The taxpayer appealed against the Commissioner's determination of salaries tax for the year of assessment 1990/91. He claimed that a sum of \$388,800 paid to him by his former employer was a refund of rent and should not be assessed as a cash allowance. In support of his claim, the taxpayer emphasized firstly, that the Inland Revenue Department ('the IRD') had given him a clearance to leave Hong Kong, acknowledging that he owed the IRD no tax, in both October 1996 and March 1997 ('the IRD acknowledgement') and secondly, he was given a discharge of tax for a salaries tax demand for the year of assessment 1992/93. In addition, there was a preliminary matter in respect of the fact that the appeal lodged by the taxpayer was late.

Held:

- (1) The Board found that as the taxpayer was absent from Hong Kong when the determination was delivered to his house, he was prevented under section 66(1A) of the Inland Revenue Ordinance from giving notice of appeal within the one month period referred to in section 66(1). The Board therefore extended the period to lodge a valid appeal under section 66(1A).
- (2) The assessment subject to appeal appears to have been raised on the taxpayer after he left Hong Kong. It was sent to his overseas address. The IRD acknowledgement could not affect tax raised under an assessment issued after his departure from Hong Kong, where the full facts relevant to tax liability only came to the attention of the IRD after his departure. In any event, there was no evidence before the Board that the IRD's demand for the tax in dispute has ever been cancelled or released.
- (3) The discharge of the salaries tax liability for the year of assessment 1992/93 could not affect, and did not purport to effect, the taxpayer's liability to salaries tax for the separate year under appeal for the year of assessment 1990/91.

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- (4) There was no evidence before the Board that the taxpayer paid rent for the property, which he owned jointly with his wife. In this regard, the Board noted that the taxpayer declared on behalf of himself and his wife in the property tax return for the year of assessment 1990/91 issued to them, that no rent was received. In this appeal hearing, the taxpayer has neither challenged nor otherwise dealt with this declaration. In the event, the Board could not classify the amount in dispute as a 'rental refund'. Rather, it was simply an allowance liable to salaries tax in accordance with the normal charging provisions.

Appeal dismissed.

Chiu Kwok Kit for the Commissioner of Inland Revenue.
Taxpayer in absentia.

Decision:

1. The Taxpayer has appealed the Commissioner's determination of salaries tax for the year of assessment 1990/91. He claims that a sum of \$388,800 paid to him by his former employer was a refund of rent and should not be assessed as a cash allowance.
2. The facts, which we so find, are not in dispute. They are contained in the Commissioner's determination dated 24 November 1998.

Preliminary matters

3. The appeal lodged by the Taxpayer was late. The Taxpayer was absent from Hong Kong when the determination was delivered to his house. We find that the Taxpayer was prevented under section 66(1A) of the Inland Revenue Ordinance from giving notice of appeal within the one month period referred to in section 66(1). We therefore extend the period to lodge a valid appeal under section 66(1A).
4. At the Taxpayer's request we agreed to hear this appeal, due to his absence from Hong Kong, under section 68(2D).

Grounds of appeal

5. Apart from being dissatisfied with the Commissioner's determination denying his claim that the amount in dispute was a 'rental refund' the Taxpayer emphasised that:
 1. The Inland Revenue Department ('IRD') had given him a clearance to leave Hong Kong, acknowledging that he owed the department no tax, in both late 1996 (October) and early 1997 (March); and

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2. He was given a discharge of tax for a salaries tax demand for the year of assessment 1992/93.

6. Our comments on these specific matters are as follows:

1. The assessment subject to appeal appears to have been raised on the Taxpayer after he left Hong Kong. It was sent to his overseas address. Whatever the terms of the releases given to the Taxpayer by the IRD (in this regard we note the Taxpayer did not provide us with copies of those releases), they cannot affect tax raised under an assessment issued after his departure from Hong Kong, where the full facts relevant to tax liability only came to the attention of the IRD after that departure. In any event, there is no evidence before us that the IRD's demand for the tax in dispute has ever been cancelled or released; and
2. The discharge of the salaries tax liability for the year of assessment 1992/93 cannot effect, and does not purport to effect, the Taxpayer's liability to salaries tax for the separate year under appeal for the year of assessment 1990/91.

7. Turning now to the substantive issue, we agree with the Commissioner that there is no evidence before us that the Taxpayer paid rent for the property, which he owned jointly with his wife. In this regard, we need go no further than to note that the Taxpayer declared, on behalf of himself and his wife in the property tax return for the year of assessment 1990/91 issued to them, that no rent was received. In none of the papers before us has the Taxpayer challenged or otherwise dealt with this declaration. In the event, we cannot classify the amount in dispute as a 'rental refund'. Rather, it is simply an allowance liable to salaries tax in accordance with the normal charging provisions.

8. In conclusion, we agree with the Commissioner that the additional salaries tax assessment for the year of assessment 1990/91 raised on the Taxpayer was correct. This appeal is hereby dismissed. It also follows that the property tax assessment for the year of assessment 1990/91 raised on the Taxpayer and his wife must be cancelled.