

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D62/92

Salaries tax – housing allowance – whether refund of rent – section 9(1A) of the Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Cheung Wai Hing and Eleanor Wong.

Date of hearing: 7 January 1993.

Date of decision: 16 March 1993.

The taxpayer was paid a fixed lump sum of \$7,000 by way of housing allowance. He expended \$4,500 on monthly rent and submitted that the rent allowance in whole or in part should not be taxable.

Held:

Section 9(1A) of the Inland Revenue Ordinance provides that where an employer refunds all or part of the rent paid by an employee such refund shall be deemed not to be the income of the employee. In the present case the taxpayer received a rental allowance and not a refund of rent. A housing allowance as such is subject to salaries tax.

Appeal dismissed.

Cases referred to:

D8/82, IRBRD, vol 2, 8
D16/83, IRBRD, vol 2, 54

Wong Kuen Fai for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

This is an appeal by a taxpayer against a salaries tax assessment for the year of assessment 1989/90 on the ground that the Taxpayer had been paid a refund of rent by his employer which should not have been assessed to salaries tax. The facts relevant to this appeal are as follows:

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1. During part of the year ended 31 March 1990 the Taxpayer was employed by X Ltd. The terms of employment of the Taxpayer provided that he would be paid a monthly salary and in addition a fixed sum of \$7,000 per month by way of housing allowance.
2. The Taxpayer rented on his own behalf and in his own name one room in a residential apartment together with the use in common with the landlady of other areas of the apartment. The Taxpayer paid to the landlady monthly rent of \$4,500 and in addition the management fee, rates, utilities were split on a 50/50 basis between the Taxpayer and the landlady.
3. The monthly housing allowance of \$7,000 was paid to the Taxpayer as a cash allowance without reference to the amount of rent actually paid by the Taxpayer to the landlady and the monthly housing allowance of \$7,000 was paid together with the Taxpayer's monthly salary of \$10,000 into his bank account.
4. An assessment for the year of assessment 1989/90 was raised on the Taxpayer showing assessable income of \$163,671 and tax payable thereon of \$23,817.
5. The Taxpayer lodged an objection to this assessment on the grounds that a housing allowance deduction had not been taken into consideration when computing the assessment and that his income had been wrongly stated.
6. By his determination dated 30 September 1992 the Commissioner rejected the objection made by the Taxpayer and increased the assessment against which the Taxpayer had appealed by increasing the assessable income of \$163,671 to assessable income of \$218,792 with tax payable thereon of \$32,818.
7. The Taxpayer appealed against the determination of the Deputy Commissioner dated 30 September 1992.

At the hearing of the appeal the Taxpayer duly appeared and represented himself. He informed the Board that he accepted that his income had been correctly stated but maintained that he was entitled to a housing allowance deduction. He submitted that if a place of residence was not provided by his employer or an associated company of his employer, then he should be entitled to tax relief if he could show that the sum which he received from his employer was paid to him wholly or in part as a refund of rent. He submitted that what he had received was in fact a refund of rent and that he was entitled to a tax benefit with regard thereto.

The representative for the Commissioner submitted that the monthly payment of \$7,000 per month was housing allowance and not refunds of rent because the sum of \$7,000 far exceeded the rent of \$4,500 paid by the Taxpayer and was paid to the Taxpayer by his employer as a lump sum and without reference to whether or not the Taxpayer spent the same on renting accommodation. The representative for the Commissioner submitted that there was no link between the quantum of the monthly payment paid to the Taxpayer as a rental allowance and the amount of rent actually paid by him. The representative for the

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Commissioner referred us to two Board of Review decisions namely case D8/82, IRBRD, vol 2, 8 and D16/83, IRBRD, vol 2, 54.

The concession granted by the Inland Revenue Ordinance is set out in section 9(1A) of the Inland Revenue Ordinance which provides that where an employer refunds all or part of the rent paid by an employee such refund shall be deemed not to be the income of the employee.

It is well known that there is no equity in taxation matters. The strict wording of the law must be applied and it is immaterial whether the result is fair or unfair. In the present case the Taxpayer has negotiated with his employer that the employer would remunerate him with a package of benefits or emoluments which included a rental allowance of \$7,000 per month. In fact the Taxpayer only incurred \$4,500 per month by way of rent. It is clear that the housing allowance was no more and no less than what it was stated to be. It was a sum of money paid to the Taxpayer as a housing allowance but which the Taxpayer could spend as he wished. He was under no obligation to spend it on the cost of housing and in fact he did not do so. It is of no assistance to the Taxpayer that he could have negotiated a different agreement with his employer which would have given him a more beneficial tax treatment. We have to look at the facts as they are. Unfortunately for the Taxpayer the full amount of \$7,000 per month is assessable to salaries tax and he is not entitled to claim a deduction of \$4,500 or any other amount as being a refund of rent.

For the reasons given the appeal is dismissed and the decision of the Commissioner is affirmed.