

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D84/02

Salaries tax – home loan deduction – attorney of estate – mortgage repayment – whether home loan interest – section 26E of the Inland Revenue Ordinance ('IRO').

Panel: Ronny Wong Fook Hum SC (chairman), Charles Chiu Chung Yee and David Li Ka Fai.

Date of hearing: 7 October 2002.

Date of decision: 12 November 2002.

The appellant's sister passed away. The appellant's father was the administrator of the estate including a flat under mortgage. The appellant was then appointed as the attorney.

The appellant seeks to deduct 'home loan interest' from the income arising from his own employment as he kept up mortgage repayment of the flat.

Held:

As the appellant was not the sole owner nor was a joint tenant or tenant in common of the flat, the mortgage loan was not a 'home loan' as defined by section 26E(9) of the IRO. The repayment was therefore not home loan interest.

Appeal dismissed.

Cheung Mei Fan for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

1. Mr A is the father of the Appellant and his sister Ms B ('the Deceased').
2. The Deceased passed away on 30 October 1999. Her estate included a flat at Housing Estate C ('the Deceased's Flat'). The Deceased's Flat was hitherto pledged in favour of Bank D to secure a mortgage loan ('the Loan') extended in favour of the Deceased.

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3. Letters of administration in respect of the Deceased's estate were granted in favour of Mr A on 14 February 2000 and the Deceased's Flat became vested in him in such capacity.
4. By a power of attorney dated 26 February 2000, Mr A appointed the Appellant as his attorney to discharge his duties as administrator of the Deceased's estate.
5. The Deceased's Flat was eventually sold on 25 September 2000 and the Loan redeemed the following day.
6. The Appellant asserts that prior to the sale of the Deceased's Flat, he kept up the repayment of the Loan. He now seeks to deduct 'Home Loan Interest' in the sum of \$100,000 from income arising from his employment with Authority E.
7. The sum in question obviously does not qualify for deduction under section 12(1) of the IRO. It is not a sum incurred wholly, exclusively and necessarily in the production of the Appellant's assessable income from Authority E.
8. The sum is also not within the provisions of section 26E of the IRO which regulates the deduction of home loan interest. A 'home loan' is defined by section 26E(9) as being a loan of money which has been applied wholly or partly for the acquisition of a dwelling which is held at any time during the year of assessment by the person as a sole owner, joint tenant or tenant in common. The Appellant is not the sole owner nor is he a joint tenant or tenant in common in respect of the Deceased's Flat.
9. At the hearing before us, the Appellant asserted that he was forced to adopt the present stance by virtue of representations made to him by officers of the Revenue. It was his intention to claim home loan interest on behalf of the Deceased in respect of interest which he paid on behalf of the estate of the Deceased after the Deceased's death on 30 October 1999. He was asked by the Revenue to put forward the present claim because of closure of the Deceased's file.
10. We are not satisfied that there was any misrepresentation on the part of the Revenue. By their letter dated 20 August 2001, the Revenue informed the Appellant as administrator of the Deceased's estate that 'Home loan interest in the amount of \$100,000 for each year had been granted for the Years of Assessment 1998/99 and 1999/2000 (up to the date of death) to your late sister [Ms B]. The tax affairs of your late sister had all been finalized and the file is regarded as closed'. Given the death of the Deceased on 30 October 1999, she did not earn any income in the year of assessment 2000/01. In respect of that year of assessment, there is no question of the Deceased being chargeable to salaries tax under Part III of the IRO. There is therefore no entitlement for the deduction of home loan interest under section 26E in Part IVA of the IRO.
11. For these reasons, we dismiss the Appellant's appeal.