

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D33/94

Salaries tax - taxpayer suffering from serious illness - whether medical expenses can be deducted.

Panel: William Turnbull (chairman), Christopher Chan Cheuk and Kenneth Ting Woo Shou.

Date of hearing: 17 June 1994.

Date of decision: 24 August 1994.

The taxpayer was employed by the Hong Kong Government. He suffered from a renal disease which required expensive treatment. Part of the cost of his treatment had to be paid by himself. The taxpayer claimed as a deduction from his taxable income the costs of the medical treatment which he was required to pay.

Held:

Though the Board had sympathy with the taxpayer it had no discretion to allow the expenses claim. The Inland Revenue Ordinance is quite clear that such expenses cannot be deducted.

Appeal dismissed.

So Chau Chuen 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 1992/93. The facts of the appeal are as follows:

1. The Taxpayer was employed by the Hong Kong Government ('the Employer'). The Taxpayer was at all material times suffering from a renal disease which required regular dialysis. It was necessary for the Taxpayer to go to hospital for three hours each day for treatment. Though the treatment was free of charge it was necessary for the Taxpayer to pay certain expenses in relation to the treatment. The expenses incurred by the Taxpayer in respect of the year of assessment 1992/93 was \$2,126.

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2. In his salaries tax return for the year of assessment 1992/93 the Taxpayer claimed as a deduction from his assessable income the sum of \$2,126 being medical expenses.

3. The assessor was of the opinion that the medical expenses were of a private nature and not deductible for salaries tax purposes. He raised on the Taxpayer a salary tax assessment for the year of assessment 1992/93 as follows:

	\$
Assessable Income	133,327
<u>Less: Outgoings</u>	<u>1,200</u>
Net Assessable Income	132,127
<u>Less: Basic Allowance</u>	46,000
Child Allowance	15,500
Dependent Parent Allowance	<u>16,500</u>
Net Chargeable Income	54,127
	===
Tax Payable thereon	4,601
	===

4. By letter dated 7 November 1993 the Taxpayer objected to the salary tax assessment for the year of assessment 1992/93 on the ground that it was unreasonable to disallow the medical expenses because they were incurred according to medical advice and were a heavy financial burden for the Taxpayer.

5. By his determination dated 12 April 1994 the Commissioner decided that the medical expenses were not an allowable deduction against the assessable income of the Taxpayer for salary tax purposes.

6. By two letters dated 29 April 1994 and 6 May 1994 the Taxpayer appealed to this Board of Review against the determination of the Commissioner.

The Taxpayer duly appeared before the Board of Review in person. He explained that he was suffering from renal disease and considered it unfair that he should have to pay tax when he had to incur heavy expenses because of his disease. He explained that the hospital required him to pay part of the expenses. He asked the Board of Review to treat his case with sympathy and flexibility so that he would be able to deduct the expenses from his taxable income.

The representative for the Commissioner said that the Commissioner was fully sympathetic with the Taxpayer and accepted that the sum of \$2,126 had been incurred as an

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expense by the Taxpayer in relation to his medical condition. However no matter how sympathetic the Commissioner might be the case was governed by the Inland Revenue Ordinance (the IRO) which does not give any discretion and therefore it is not possible to treat the case with flexibility. Accordingly the representative for the Commissioner said that the Board was obliged to dismiss the appeal.

This Board also has considerable sympathy for the Taxpayer but has no discretion which it can exercise in favour of the Taxpayer. The IRO is quite clear. Expenses of this nature cannot be deducted against the taxable income of the Taxpayer. The IRO provides for a number of allowances and deductions to be made, for example, personal allowance etc, but does not include personal medical expenses. Unfortunately for the Taxpayer these must be paid out of taxed income. This Board of Review does not have any discretion which it can exercise in favour of the Taxpayer. The Legislative Council creates our laws and unless the IRO either allows medical expenses to be deducted or gives a discretion to either the Commissioner or this Board of Review we have no power to assist the Taxpayer. In the circumstances this Board dismisses the appeal and confirms the assessment against which the Taxpayer has appealed.