

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. BR 13/73

Board of Review :

S. V. Gittins, Q.C., *Chairman*, Hon. Oswald Cheung, Q.C., D. Barrett & John MacKenzie, *Members*.

11th November 1973.

Property tax—domestic premises occupied by taxpayer's representative—question whether taxpayer liable for property tax in respect of these premises—Inland Revenue Ordinance, s. 5(3)(a).

The taxpayer was a foreign company not carrying on business in Hong Kong. It has, however, controlling interests in two Hong Kong companies and was the registered owner of a flat in which its Hong Kong representative resided. The taxpayer was assessed for property tax in respect of the flat. On appeal against this assessment it was conceded that the premises were owned by a sole owner and that the premises were occupied by the owner's local representative exclusively for residential premises. The taxpayer claimed to be exempt from property tax by virtue of section 5(3)(a) of the Inland Revenue Ordinance. On appeal.

Decision: Appeal dismissed and assessment, as upheld by the Commissioner's Determination, confirmed.

H. G. King of John B. P. Byrue & Co. for the taxpayer.

Benjamin Shih, Chief Assessor, for the Commissioner of Inland Revenue.

Cases referred to:—

1. Reed v. Cattermole, 21 T.C. 35.
2. Bent v. Roberts, 1 T.C. 199.
3. Tennant v. Smith, 3 T.C. 158.
4. Gray v. Holmes, 30 T.C. 467.

Reasons :

The Taxpayer is a foreign corporation incorporated in LIECHTENSTEIN. It is not carrying on business in Hong Kong but it has controlling interests in two trading companies incorporated in Hong Kong. It is the registered owner of a flat in Magazine Gap Road, Hong Kong. The flat is occupied rent-free by the Taxpayer's local representative.

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The Taxpayer's objection to assessment for property tax on the ground that it was entitled to exemption therefrom under section 5(3)(a) of the Inland Revenue Ordinance (*Cap.* 112) was disallowed by the Commissioner. It has appealed to the Board of Review from the Commissioner's Determination.

The grounds of appeal are : —

- (1) The premises concerned were owned by a sole owner.
- (2) The said premises were occupied by the owner's local representative exclusively for residential purposes.
- (3) The Commissioner has wrongly held that a corporation cannot occupy residential premises in the person of its representative or employee.

The material parts of section 5 are as follows : —

“5. (1) Property tax shall ... be charged for each year of assessment on the owner of any land or buildings ... wherever situate in the Colony ...

(2) ...

(3) Notwithstanding subsection (1) ... —

(a) in the case of any building or any part thereof owned by a sole owner and occupied solely by him exclusively for residential purposes throughout the whole of any year of assessment, property tax shall not be charged in respect thereof for that year of assessment, and any tax paid shall be refunded;

(b) ...

(c) ...”

Grounds (1) and (2) of the Appeal conceded. For the Taxpayer it was argued that section 5(3)(a) is satisfied by it being the occupier of the flat, and the flat being occupied by its representative exclusively for residential purposes.

The Taxpayer's representative cited the case of **Reed v. Cattermole**¹, where it was held that the Methodist Minister, who lived in the manse supplied by his employers and required by them to live therein was not the occupier under Schedule E of the U.K. Income Tax Act 1918. Other similar cases are **Rent v. Roberts**²; **Tennant v. Smith**³; and **Gray v. Holmes**⁴.

These cases are distinguishable in that in each case the taxpayer was required by his employer to live in the residences supplied, and also the residences were to all intents parts

¹ 21 T.C. 35.

² 1 T.C. 199.

³ 3 T.C. 158.

⁴ 30 T.C. 467.

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of the property on which the employers' businesses were conducted in connection with which the employee was employed.

However, for the purposes of this appeal it is unnecessary for us to come to a firm decision as to whether the Taxpayer or its local representative is the "occupier" of the flat for the purposes of section 5(3)(a).

In our view, for the Taxpayer to succeed it must establish that it occupied the flat exclusively for residential purposes.

Nothing has been advanced in argument on behalf of the Taxpayer to convince us that the occupation for residential purposes by an employee of a corporation constitutes occupation for residential purposes by the corporation.

We hold that the flat was occupied by the Taxpayer's representative exclusively for residential purposes (being the Taxpayer's own averment in its 2nd ground of appeal), and not by the Taxpayer.

This Appeal is therefore dismissed, and the assessment, as upheld by the Commissioner's Determination, is confirmed.