

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. BR17/76

Board of Review:

Chan Ying-hung, *Chairman*, B. A. Bernacchi, J. H. W. Salmon & R. S. Sheldon, *Members*.

8th December 1976.

Salaries tax – Inland Revenue Ordinance, section 11D(b), proviso (i) – marriage gratuity paid to Government servant – date of last day of employment.

The appellant's wife, who was on permanent and pensionable employment in Government service, was married in November 1973, had her entitlement of vacation leave to 31st December 1973 and then recommenced employment with Government on month-to-month terms. Approval for payment of the marriage gratuity was given by Government on 23rd April 1974. On a claim for the spread of the gratuity for assessment the Commissioner taking the view that employment with Government was never terminated assessed the period of spread to be three years to 23rd April 1974.

The appellant claimed that the period of spread should be the three years to 14th November 1973 (the day before marriage). On appeal.

Decision: That the case be remitted to the Commissioner for the assessment to be varied taking 31st December 1973, the date on which the wife was required to retire from Government service in order to be eligible for the gratuity, as the last day of the employment for the purposes of section 11D(b), proviso (i).

Appellant in person.

Lau Wing-kit for the Commissioner of Inland Revenue.

Reasons:

On this Appeal the taxpayer appellant appeared in person and the Commissioner of Inland Revenue was represented by Mr. LAU Wing-kit.

The taxpayer agrees with the facts stated in the Commissioner's Determination.

There is no dispute between the parties except as to the date of termination of the appellant's wife's contract of employment with the Government. The appellant argued that it was the day before the marriage, namely, the 14th day of November 1973, being the date the wife stopped work, having given due notice in accordance with the relevant Establishment Regulations. However, he admits she had 1½ months vacation leave that she

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was permitted to take after they were married and that she was paid up to the 31st day of December 1973. He also admits that his wife commenced her month-to-month employment with the Government as from the 1st day of January 1974.

However, Mr. Lau argued that the appellant's wife's government service has never been terminated because she continued in government service without a break from the expiration of her leave. He has in particular directed our attention to the relevant Establishment Regulations 343 and 344, dealing with the termination of government service.

We hold against the taxpayer on the facts of this case when he puts the date of her termination of government service as the 14th day of November 1973. We consider that Regulation 343(2) makes it quite clear that there is now no automatic termination on marriage. We note in particular the words "may, if she wishes, elect to retire". We therefore hold that her permanent pensionable employment with the Government only finished after the 1½ months vacation leave, i.e. on the 31st day of December 1973.

The next question is whether Mr. Lau is right when he says that there was no termination of her employment with the Government, within the meaning of those words as used in proviso (i) to section 11D(b) of the Inland Revenue Ordinance. We cannot accept this contention. Regulation 343(2) speaks of a "*re-employment* on a temporary month-to-month (non-pensionable) terms". Regulation 344 provides for *entry* at the same point in and continuing on the same salary scale as before her marriage, if "she is re-appointed without a break of service". The whole of Regulation 344 is headed "Re-employment on Temporary Terms". In our opinion what has happened is that she has retired at the termination of the 1½ months leave on the 31st day of December 1973 and thereafter she was immediately re-appointed, i.e. reengaged, on less favourable terms and on a month-to-month basis. We, therefore, hold that for the purposes of section 11D the last day of employment was the 31st day of December 1973.

We would also call attention to regulation 6 made under the Pensions Ordinance (*Cap.* 89) dealing with the gratuity that the Commissioner held to have matured on the 23rd day of April 1974. Under that regulation the gratuity only arises "where a female officer who ... *retires* from public service for the reason that she has married or is about to marry".

We, therefore, rule that under section 11D(b) proviso (i) the said gratuity relates back to the last date of employment, namely, the 31st day of December 1973, and that the fact that the wife was immediately re-employed by the Government on very different terms is not relevant to the appellant's tax assessment. We note that the grounds of the appeal themselves do not have, as an alternative date, the 31st day of December 1973. Nevertheless, this case has been argued by both appellant and Mr. Lau as leaving it entirely open to the Board to decide the date of the termination of Government Service, if termination there was. We direct, therefore, that the case be remitted to the Commissioner for the assessment to be varied in accordance with our finding as to the last date of employment, i.e. the 31st day of December 1973, which appears to be the only point at issue.

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The assessment is, therefore, varied accordingly.