

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D105/03

Penalty tax – section 82B(1) of the Inland Revenue Ordinance ('IRO') – whether the Board had jurisdiction to extend time for the lodgment of an appeal against imposition of additional tax.

Panel: Ronny Wong Fook Hum SC (chairman), Anthony Francis Martin Conway and Robert Michael Wilkinson.

Date of hearing: 16 February 2004.

Date of decision: 9 March 2004.

The appellant reported to the Revenue his earnings as program manager from a university in Hong Kong without reporting the gratuity, back pay and leave pay. By notice dated 21 August 2003, an additional tax in the sum of \$2,400 was imposed on the understated income of \$163,346.

The appellant sought to challenge the additional tax so imposed by notice dated 24 September 2003. This notice was not received by this Board until 30 September 2003. The issue before the Board was whether the appeal was properly before the Board under section 82B(1) of the IRO. If so, should the Board interfere with the assessment.

Held:

The one month period for appeal must be strictly adhered to and this Board had no jurisdiction to extend time for the lodgment of an appeal against imposition of additional tax. The Board holds that the appellant is out of time. As the Board has no jurisdiction to extend time, the Board cannot entertain the appellant's appeal (Wong Wing Piu v Commissioner of Inland Revenue 2 HKTC 134 and D98/98, IRBRD, vol 13, 482 followed).

Appeal dismissed.

Cases referred to:

Wong Wing Piu v Commissioner of Inland Revenue 2 HKTC 134
D98/98, IRBRD, vol 13, 482

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Li Mei On Leon for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

Background

1. By a return dated 30 June 2002, the Appellant reported to the Revenue his earnings as Program Manager from a university in Hong Kong [‘the University’] for the period between 1 April 2001 and 31 March 2002 at \$494,300.

2. Employers returns submitted by the University and its continuing education unit indicate that the Appellant received gratuity, back pay and leave pay from both institutions during the said period and his total income during that period amounted to \$657,649.

3. On 5 September 2002, the assessor raised on the Appellant a salaries tax assessment for the year of assessment 2001/02 on the basis of total assessable income at \$657,649. The Appellant lodged an objection against that assessment on 19 September 2002 on the basis that his gratuity should be spread over the duration of his contract. By letter dated 22 October 2002, the Revenue explained to the Appellant that it was not to his advantage to elect for relating back. As a result of this explanation, the Appellant withdrew his objection on 28 December 2002.

4. By notice dated 7 July 2003, the Deputy Commissioner notified the Appellant of his intention to exercise his powers under section 82A(4) of the Inland Revenue Ordinance (Chapter 112) (‘IRO’) to impose additional tax on the basis that he understated his income by \$163,346 for the year of assessment 2001/02. By letter dated 11 July 2003, the Appellant explained that the omission arose because he was not sure as to how his gratuity should be handled. After considering these representations from the Appellant, the Deputy Commissioner by notice dated 21 August 2003 imposed additional tax against the Appellant in the sum of \$2,400.

5. The Appellant sought to challenge the additional tax so imposed by notice dated 24 September 2003. This notice was not received by this Board until 30 September 2003.

6. There are two issues before this Board:

- (a) Whether the Appellant’s appeal is properly before this Board. Section 82B(1) of the IRO provides that:

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'Any person who has been assessed to additional tax under section 82A may, within 1 month after notice of assessment is given to him, give notice of appeal to the Board'

- (b) If so, should this Board interfere with the assessment.

Whether the appeal is properly before this Board

7. The bundles for this appeal were prepared and circulated by the Revenue on 27 January 2004 and 6 February 2004. Included amongst the bundles are two authorities [Wong Wing Piu v Commissioner of Inland Revenue 2 HKTC 134 and Case No. D98/98, IRBRD, vol 13, 482] which indicate that the one month period for appeal must be strictly adhered to and this Board had no jurisdiction to extend time for the lodgement of an appeal against imposition of additional tax. It is obvious that the Appellant did not read any of these authorities prior to the hearing before us.

8. This hearing was convened as there was no prior admission from the Appellant that his notice of appeal was out of time. At the hearing before us, the Appellant made no submission that his notice was within the one month period. He sought to explain his delay on the basis he did not receive his supporting documents from the University until 22 September 2003.

9. Given this stance of the Appellant, we hold that the Appellant is out of time. As we have no jurisdiction to extend time, we cannot entertain the Appellant's appeal.

The propriety of the additional tax imposed

10. As there is no proper appeal before us, we express no view on the propriety of the additional tax imposed.