

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D113/95

Penalty tax – filing incorrect salaries tax return – section 82A of Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Sydney Leong Siu Wing and So Kai Ming.

Date of hearing: 10 January 1996.

Date of decision: 14 February 1996.

The taxpayer was a salesman. He filed his salaries tax returns. After investigation of the taxpayer's tax affairs, the assessor discovered that the total income submitted by the taxpayer each year was lowered than the assessed value. Furthermore, it was also discovered that the taxpayer had not filed his salaries tax return for about 3 years. The Commissioner imposed a penalty of 74% of the tax involved upon the taxpayer. The taxpayer appealed.

Held:

The Inland Revenue Ordinance is quite clear and precise that it requires all persons liable to make true and correct returns of their taxable income.

After all of the circumstances were taken into account, the Board considered that the penalties imposed upon the taxpayer were high but not excessive.

Appeal dismissed.

Ng Hu Mei Yu for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

This is an appeal by a salaries Taxpayer against certain additional assessments to tax imposed upon him under section 82A of the Inland Revenue Ordinance (the Ordinance). The facts are as follows:

1. The Taxpayer returned to Hong Kong from an overseas country in 1986. During the material periods, he was engaged in the following employments:

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Name of the Employer	Period	Capacity in which employed
(Employer S)	1-4-1987 to 31-3-1991	Salesman
(Employer F)	1-4-1991 to 31-12-1991	Salesman

Employer S was a partnership owned by the Taxpayer's mother and brother whereas Employer F was a partnership owned by the Taxpayer's two elder brothers. The Taxpayer's emoluments included basic salary, allowance, double pay the commission.

2. On divers dates, the Taxpayer filed salaries tax returns for the years of assessment 1990/91 and 1991/92 showing the following income:

Year of Assessment	Period	Total Income \$
1990/91	1-4-1990 to 31-3-1991	68,400
1991/92	1-4-1991 to 31-12-1991	55,000

The returned income agreed with the employer's returns filed by Employer S and Employer F respectively. The Taxpayer did not object to the salaries tax assessments for the years of assessment 1990/91 and 1991/92 raised per returns.

3. Following an investigation on the tax affairs of the employers, Employer S and Employer F informed the Commissioner that the correct income of the Taxpayer was as follows:

Employer S

Year of Assessment	Emoluments Paid to the Taxpayer \$
1987/88	130,000
1988/89	157,070
1989/90	198,655
1990/91	158,420

Employer F

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Year of Assessment	Emoluments Paid to the Taxpayer \$
1991/92	69,620

4. The assessor commenced an investigation into the tax affairs of the Taxpayer. On 25 March 1994, the assessor raised on the Taxpayer the following salaries tax assessment for the year of assessment 1987/88 under section 59(1) proviso and section 59(3) of the Ordinance in the absence of a salaries tax return:

Year of Assessment	Assessable Income \$
1987/88	130,000 =====

A salaries tax return for the same year was enclosed with the notice of assessment for the Taxpayer's completion. The Taxpayer did not object to the above assessment and did not submit the salaries tax return for the said year of assessment.

5. On 7 October 1994, the assessor issued to the Taxpayer salaries tax returns for the years of assessment 1988/89 and 1989/90.
6. On 19 October 1994, the Taxpayer attended an interview with the assessors. The assessors informed the Taxpayer of the revised income reported by Employer S and Employer F. The Taxpayer requested time to cross check the amounts with his banking records. The assessors explained the penalty provisions under the Ordinance.
7. On 3 November 1994, the assessor raised on the Taxpayer the following salaries tax assessments for the years of assessment 1988/89 and 1989/90 under section 59(1) proviso and section 59(3) of the Ordinance and additional salaries tax assessments for the years of assessment 1990/91 and 1991/92 in accordance with the information provided by the employers:

Year of Assessment	Assessable Income \$
1988/89	157,070
1989/90	198,655
1990/91	90,020 (Additional)

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1991/92

14,620 (Additional)

The Taxpayer did not object to the above assessments.

8. On 10 November 1994, the Taxpayer attended another interview with the assessors. He advised that having cross checked with the bank statements of his payroll bank account, he agreed to the revised income reported by the employers. He submitted salaries tax returns for the years of assessment 1987/88 to 1989/90 showing the following particulars of income from Employer S:

Year of Assessment	Period	Total Income \$
1987/88	1-4-1987 to 31-3-1988	130,000
1988/89	1-4-1988 to 31-3-1989	157,070
1989/90	1-4-1989 to 31-3-1990	198,655

9. The following is a comparative table of the Taxpayer's assessable income before and after investigation and the amount of tax undercharged in consequence of the Taxpayer's failure to inform the Commissioner of his chargeability to tax and submitting incorrect salaries tax returns:

Year of Assessment	Income Before Investigation \$	Income After Investigation \$	Income Understated \$	Percentage of Income Understated	Tax Undercharge \$
1987/88	0	130,000	130,000	100%	18,750
1988/89	0	157,070	157,070	100%	22,917
1989/90	0	198,655	198,655	100%	29,798
1990/91	68,400	158,420	90,020	57%	19,009
1991/92	55,000	69,620	14,620	21%	895

10. By a notice dated 3 March 1995, the Commissioner of Inland Revenue (the Commissioner) gave notice to the Taxpayer under the terms of section 82A(4) of the Ordinance that he proposed to assess the Taxpayer to additional tax in respect of the years of assessment 1987/88 to 1991/92.

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11. By letter dated 11 April 1995, the Taxpayer submitted written representations to the Commissioner pursuant to section 82A(a)(iii).
12. Having considered and taken into account the Taxpayer's representations, the Commissioner, on 5 June 1995, issued notices of assessment and demand for additional tax under section 82A for the years of assessment 1987/88 to 1991/92 to the Taxpayer. The following is a summary of the amounts of additional tax assessed on the Taxpayer:

Year of Assessment	Tax Undercharged \$	Section 82A Additional Tax \$	Additional Tax as percentage of Tax Undercharged
1987/88	18,750	14,000	75%
1988/89	22,917	17,000	74%
1989/90	29,798	22,200	75%
1990/91	19,009	13,800	73%
1991/92	<u>895</u>	<u>500</u>	56%
	91,369 =====	67,500 =====	74%

13. By letter dated 12 June 1995, the Taxpayer gave notice of appeal to the Board of Review against the above assessments to additional tax.

At the hearing of appeal the Taxpayer duly appeared in person and made submissions to the Board. He submitted that he had been working for his brothers in the family company as requested by his mother. He said that he had acted as he had been told by his brother. Because he was the youngest son he had to be obedient to his elder brother who had said that he would take care of tax matters. He said that he now was unemployed and that his brother had refused to help him.

The representative for the Revenue submitted that in all of the circumstances the penalties imposed were not excessive and asked the Board to confirm the same.

The Board has much sympathy for the Taxpayer in this case. It fully understands the obligations and duties placed upon him as the youngest son of a family. However that does not excuse what he did or failed to do. The Inland Revenue Ordinance is quite clear and precise. It requires all persons liable to be assessed to salaries tax to make true and correct returns of their taxable income. This the Taxpayer failed to do. Indeed in three years in question he failed to file any tax returns at all.

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Taking into account all of the circumstances we consider that the penalties imposed upon the Taxpayer are high but not excessive. Accordingly we dismiss this appeal and confirm the assessments against which the Taxpayer has appealed.