

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D 12/81

Board of Review:

L. J. D'Almada Remedios, J.P. *Chairman*; Charles A. Ching; N. D. Dicker; J. H. W. Salmon, *Members*.

25 November 1981.

Salaries Tax – furniture allowance – whether taxable.

The appellant was a government employee. He was housed in accommodation which did not include furniture. He was therefore given a \$30.00 per month furniture allowance. The question before the board was whether this was subject to tax.

Held: The allowance is a perquisite and forms part of the appellant's emoluments and therefore must be included for salaries tax purposes.

A. K. Gill for the Commissioner of Inland Revenue.
Appellant in person.

Reasons:

The Taxpayer, who is employed by the Hong Kong Government, claims that the Salaries Tax Assessment raised on him for the year of assessment 1979/80 is excessive as it includes, as assessable income, a 'furniture allowance' received from his employer. This allowance was paid monthly in cash to the Taxpayer because the quarters provided to him by Government were unfurnished. During the 1979/80 year the Taxpayer received a total of \$359.00 as 'furniture allowance'. In his Salaries Tax return, the Taxpayer included this sum as income and against it claimed a deduction of \$1,808.00 being the total allowance received in the period from the 16 March 1975 to the 31 March 1980. In raising the assessment, the assessor included as assessable income the \$359.00 received by the Taxpayer but allowed no deduction in respect of this item. The Taxpayer objected to the assessment on the grounds that the furniture allowance was a reimbursement for either the hire or purchase of furniture and should not be subject to tax.

In the reference before us, the Taxpayer's case is that officers housed in government quarters have to pay 7½% of their salary as rent. He says that quarters provided by government normally include furniture and domestic appliances. If they are not included in the tenancy, the officer is eligible for an additional allowance of \$30.00 a month. In the

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circumstances, the Taxpayer contends that as he is not provided with furniture he is made to suffer the payment of additional tax which would not otherwise be exigible if his quarters included furniture. The Taxpayer further contends that the allowance of \$30.00 a month paid to him is in a nature of a reimbursement or refund of an expense he must incur for the supply of furniture. For this reason he submits this sum cannot be included for salaries tax purposes.

Although his argument illustrates a situation which, in his case, produces an inequitable result, we are constrained, in deciding the matter, to look to whether the allowance is taxable under the Inland Revenue Ordinance. If it is, then whether it is equitable or not is irrelevant.

We do not find it possible to treat such sum paid as a refund or reimbursement of any disbursement. In any event, any reimbursement of a private or domestic expense is not an allowable deduction and is not a refund of rent in respect of which the Taxpayer can invoke section 9(1A)(a) of the Ordinance.

The \$30.00 a month paid to the Taxpayer is a cash allowance. It is a perquisite. The Taxpayer is not accountable to government for the sum paid. He can do what he likes with it. As the cash allowance received by the Taxpayer forms part of his emoluments it must be included for salaries tax purposes. The assessment must, therefore, be confirmed.