

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D139/00

Salaries tax – notice of appeal – extension of time – discretion – section 66(1A) of the Inland Revenue Ordinance (‘IRO’).

Panel: Anna Chow Suk Han (chairman), Francis Lui Yiu Tung and Kenneth Graeme Morrison.

Date of hearing: 22 November 2000.

Date of decision: 8 March 2001.

The taxpayer failed to file her notice of appeal within time. She explained that the delay to lodge appeal was caused by her mistake of sending the notice of appeal to the Inland Revenue Department (‘IRD’) and that by the time she was informed by the Revenue of her mistake, that is, she should lodge her appeal with the Board of Review, the prescribed period had already expired.

She claimed that had the Revenue informed her of the mistake by telephone, she would have been able to lodge her appeal within time and since she was informed by mail, delay was inevitable.

The issue was whether the Board of Review should exercise its discretion under section 66(1A) of the IRO and extend time in favour of the taxpayer for filing her notice of appeal.

Held:

1. The relevant statutory provision on the preliminary issue is section 66(1A) of the IRO which provides that if the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1) (D9/79, IRBRD, vol 1, 354).
2. The Board refused to grant an extension of time to the taxpayer as:
 - (a) There was evidence that the proper procedure and the address of the Clerk to the Board of Review, for filing a notice of appeal, were given to the taxpayer, the mistake so made by the taxpayer could only be one which had been caused by the taxpayer’s failure to exercise due care when she read

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the said letter from the Commissioner, thus resulting in the notice of appeal being sent to a wrong party. The taxpayer is a certified public accountant with working experience since 1994. She ought to realize that matters of this nature should be treated with proper care and attention.

- (b) The Taxpayer took on the first occasion 27 days and on the second occasion eleven days to file her notices of appeal after the assessor's letters to her. Although the taxpayer explained that it was because the determination was sent to her correspondence address other than her residential address, the Board felt that if the taxpayer chose to use an address other than her residential address as her contacting address, she should have organized her affairs in such a manner that matters where time was of the essence would not be neglected.
- (c) Finally, as to the taxpayer's claim that had the Revenue informed her by telephone of her mistake, she could have filed the notice of appeal within time, the taxpayer must realize that the Revenue, having discharged its duties prescribed by law, was under no obligation to perform extra tasks to facilitate each individual taxpayer or its case.

Appeal dismissed.

Case referred to:

D9/79, IRBRD, vol 1, 354

Ma Wai Fong for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

The appeal

1. This is an appeal by Miss A ('the Taxpayer') against the Commissioner's determination dated 30 March 2000 ('the Determination') in respect of the salaries tax assessment for the year of assessment 1996/97 raised on her. The Taxpayer claimed that the income accrued to her from Company B was the income of a company named Company C of which she was a director, and thus she should not be assessed to salaries tax on the income in question.

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The preliminary issue

2. Whether this Board should exercise its discretion under section 66 (1A) of the IRO and extend time in favour of the Taxpayer for filing of her notice of appeal.

The substantive issue

3. If extension of time is granted to the Taxpayer, whether the salaries tax assessment for the year of assessment 1996/97 raised on the Taxpayer is excessive or incorrect.

Our decision

4. A letter by the Commissioner, dated 30 March 2000 together with the Determination was sent to the Taxpayer at her address at Housing Estate D (‘ the Address ’) on 30 March 2000 by registered post. They were returned to the IRD unclaimed by the Taxpayer.

5. The said letter of 30 March 2000 together with the Determination was redirected to the Taxpayer at the Address on 3 May 2000 by ordinary post.

6. By the said letter of 30 March 2000, the Taxpayer was informed of her right to appeal, the procedure for such an appeal, the time within which the notice of appeal should be given and to whom such notice of appeal should be sent. The address of the Clerk to the Board of Review was also stated in the said letter.

7. By a letter of 31 May 2000, the Taxpayer gave notice of her objection to the salaries tax assessment for the year of assessment 1996/97. However, the said letter was addressed to the IRD.

8. By a letter dated 8 June 2000, the assessor informed the Taxpayer that her notice of appeal should be lodged with the Board of Review and repeated the procedure and requirements for an appeal. He also reminded the Taxpayer that such procedure and requirements were also stated in the said letter of 30 March 2000.

9. By a letter dated 19 June 2000, the Taxpayer gave her notice of appeal to the Clerk to the Board of Review. The letter was received by the Board on 21 June 2000. Consequently, the notice of appeal by the Taxpayer was not given within the period prescribed by section 66 (1)(a) of the IRO.

10. By a letter dated 22 June 2000, the Clerk to the Board informed the Taxpayer that her purported notice of appeal was filed out of time. In reply to this letter, the Taxpayer by a letter

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of 27 June 2000 explained that the delay was caused by her mistake of sending the letter of objection to the IRD instead of to the Board of Review.

11. The Taxpayer attended the hearing and gave evidence under oath firstly on the preliminary issue and secondly on the substantive issue.

12. On the preliminary issue, the Taxpayer explained that the delay to lodge the appeal was caused by her mistake of sending the notice of appeal to the IRD and that by the time she was informed by the Revenue of her mistake, the prescribed period had already expired. She claimed that had the Revenue informed her of the mistake by telephone, she would have been able to lodge her appeal within time and since she was informed by mail, a delay was inevitable. On cross-examination as to when she received the redirected mail from the Revenue, she said that she could not recall the exact date but it was probably between the tenth and the middle of May, because the Address to which the Determination was sent was only her correspondence address and not her residential address and she only went to that Address once every one or two weeks to fetch her mail.

13. The relevant statutory provision on the preliminary issue is section 66 (1A) of the IRO which provides that if the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1).

14. The jurisdiction of this Board to extend time for lodging an appeal is closely governed by section 66 (1A) of the IRO. This Board must be satisfied that the Taxpayer ‘ was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with sub-section (1)(a)’ . In reaching our decision, we also bear in mind the principle as stated in D9/79, IRBRD, vol 1, 354:

‘ The word “prevented” is opposed to a situation where an appellant is able to give notice but has failed to do so. In our view, therefore, neither laches nor ignorance of one’s rights or of the steps to be taken is a ground upon which an extension may be granted.’

15. In the present case, the Taxpayer did not dispute that the notice of appeal should have been sent to the Clerk to the Board of Review and that the procedure and the address of the Clerk to the Board were clearly stated in the said letter of 30 March 2000 from the Commissioner to her. The Taxpayer admitted that she made a mistake and the delay in lodging the appeal was caused by her mistake in sending the notice of appeal to the IRD instead of to the Clerk to the Board. Thus, the matter for our consideration is whether the mistake of the Taxpayer which caused the delay amounted to a ‘ reasonable cause’ . Since there was evidence that the proper procedure and the address of the Clerk to the Board of Review, for filing a notice of appeal, were given to the

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Taxpayer, the mistake so made by the Taxpayer could only be one which had been caused by the Taxpayer's failure to exercise due care when she read the said letter from the Commissioner, thus resulting in the notice of appeal being sent to a wrong party. The Taxpayer is a certified public accountant with working experience since 1994. She ought to realize that matters of this nature should be treated with proper care and attention. Thus, we are of the view that a careless mistake cannot possibly constitute 'a reasonable cause' which warrants this Board to exercise its discretion to extend time in favour of the Taxpayer. Furthermore, we note that it took the Taxpayer on the first occasion 27 days and on the second occasion eleven days to file her notices of appeal after the assessor's letters to her. Although the Taxpayer explained that it was because the Determination was sent to her correspondence address and not her residential address, we feel that if the Taxpayer chose to use an address other than her residential address as her contacting address, she should have organized her affairs in such a manner that matters where time was of the essence would not be neglected. Hence, neither the fact that the assessor's letters were sent to the Taxpayer's correspondence address and not her residential address, could constitute a reasonable cause for granting an extension of time in favour of the Taxpayer. Finally, as to the Taxpayer's claim that had the Revenue informed her by telephone of her mistake, she could have filed the notice of appeal within time, the Taxpayer must realize that the Revenue, having discharged its duties prescribed by law, was under no obligation to perform extra tasks to facilitate each individual taxpayer or its case. Thus the Taxpayer's claim that delay could have been avoided if the Revenue had telephoned and informed her of her mistake, should not be entertained.

16. For the aforesaid reasons, we dismiss the Taxpayer's application for extension of time. As there is no proper appeal before us, it is not necessary for us to express our view on the substantive issue. Accordingly, the salaries tax assessment in question stands.