

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D139/01

Salaries tax – home loan interest – whether interest on loan utilised to pay premium for the purpose of removing the restriction on alienation entitled to deduction – section 26E of the Inland Revenue Ordinance ('IRO') – Housing Ordinance ('HO').

Panel: Ronny Wong Fook Hum SC (chairman), Roger Leung Wai Man and Stephen Yam Chi Ming.

Date of hearing: 7 December 2001.

Date of decision: 18 January 2002.

The appellant acquired a flat under the Home Ownership Scheme subject to the terms and conditions of the HO which imposed restrictions on the appellant's right to alienate the flat. The appellant applied for a loan of \$600,000 secured by the flat. The loan was utilised to the extent of \$461,261 to pay the premium levied by the Hong Kong Housing Authority for the purpose of removing the restriction on alienation in respect of the flat. There was no evidence as to the manner whereby the appellant utilised the balance of the loan.

The issue before the Board was whether the appellant was entitled to deduct interest in respect of the \$600,000 loan as home loan interest pursuant to section 26E of the IRO.

Held:

The restriction on alienation did not in any way hinder the appellant's use of the flat as his dwelling. The premium paid did not acquire a new dwelling. What the appellant did acquire via the premium was the right to alienate a flat which has always been his dwelling. The premium was the consideration for removal of the restriction over his subsisting dwelling. The appellant was therefore not entitled to deduct interest on the \$600,000 loan.

Appeal dismissed.

Case referred to:

D2/01, IRBRD, vol 16, 121

Chow Chi Leung for the Commissioner of Inland Revenue.

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Taxpayer in person.

Decision:

1. By an agreement dated 11 February 1985, the Appellant acquired a flat at Housing Estate A ('the Flat') for \$182,200. The Flat was erected by the Hong Kong Government under Phase VIIA of the Home Ownership Scheme.

2. By an assignment dated 3 April 1985, the Flat was assigned in favour of the Appellant subject to the terms and conditions of the HO. Paragraph 1 of the Schedule to the HO imposes restrictions on the Appellant's right to alienate the Flat.

3. On 29 April 1985, the Appellant mortgaged the Flat to Bank B in order to raise a loan of \$100,000 to support his acquisition. This loan was fully repaid by the Appellant on or about 26 April 1990.

4. On or about 3 October 1998, the Appellant applied to Bank C for a loan of \$600,000 secured by the Flat. This loan was utilised to the extent of \$461,261 to pay the premium levied by the Hong Kong Housing Authority for the purpose of removing the restriction on alienation in respect of the Flat. There is no evidence as to the manner whereby the Appellant utilised the balance ('the said Balance') of the \$600,000 loan.

5. There is no issue between the parties that at all material times the Flat was the dwelling of the Appellant.

6. The issue before us is whether the Appellant is entitled to deduct interest in respect of the \$600,000 loan from Bank C as home loan interest pursuant to section 26E of the IRO.

7. The Appellant contends that he is entitled to so deduct as the loan in question was used for purposes in connection with the Flat.

8. Quite apart from the total absence of evidence in relation to the destination of the said Balance, we are of the view that this case is no different from D2/01, IRBRD, vol 16, 121 where the Board rejected similar contentions in these terms:

'...The Taxpayer acquired the Flat as his dwelling in 1982. He did use the Flat as his dwelling and would be able to continue such usage without taking any other step. At the price paid, his acquisition was saddled with a restriction on alienation. That restriction does not in any way hinder his use of the Flat as his dwelling. The premium paid did not acquire a new dwelling. What he did acquire via the premium was the right to alienate a flat which has always been

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his dwelling ... The premium was the consideration for removal of the restriction over his subsisting dwelling.'

9. For like reasons, we are of the view that the Appellant is not entitled to deduct interest on the \$600,000 loan from Bank C. We dismiss his appeal.