

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D161/01

Salaries tax – married person's allowance – when marriage becoming effective – section 2(1) of the Inland Revenue Ordinance ('IRO').

Panel: Kenneth Kwok Hing Wai SC (chairman), Mohan Bharwaney and Richard S Simmons.

Date of hearing: 1 February 2002.

Date of decision: 25 February 2002.

The appellant was married in Nevada USA. The wedding ceremony was on 1 May 2000 but the appellant claimed that the marriage was, under Nevada law, effective from 1 March 2000 when he registered his marriage. Thus he was entitled to marriage person's allowance thereon.

Held:

1. The Board held that the marriage was effective from 1 May 2000 as certified by the marriage certificate.
2. There was also no evidence that under Nevada law the marriage would have become effective upon registration.

Appeal dismissed.

Chow Cheong Po for the Commissioner of Inland Revenue.
Taxpayer in absentia.

INLAND REVENUE BOARD OF REVIEW DECISIONS

Decision:

1. This is an appeal against the determination of the Commissioner of Inland Revenue dated 22 October 2001 whereby the salaries tax assessment for the year of assessment 1999/2000 under charge number 9-0512979-00-A, dated 14 August 2000, showing net chargeable income of \$657,336 with tax payable thereon of \$101,247 was reduced to net chargeable income of \$597,336 with tax payable thereon of \$91,047.

2. The Appellant appealed on the ground that he should be entitled to married person's allowance.

3. By letter dated 16 December 2001 written on a copy of the letter dated 23 November 2001 from the Clerk to the Board of Review ('the Clerk'), the Appellant said that he no longer lived in Hong Kong; would not be returning to Hong Kong to attend the hearing; did not have a representative to attend on his behalf; and applied to have the appeal heard in his absence.

4. Mr Chow Cheong-po who represented the Respondent at the hearing of the appeal had no objection to the application.

5. We acceded to the Appellant's application and proceeded under section 68(2D) of the IRO in the Appellant's absence.

6. The Appellant did not submit any documentary evidence and did not submit any written submission.

7. Under cover of a letter dated 22 January 2002, Mr Chow Cheong-po sent the Appellant a copy of the Respondent's documents, authorities and written submission.

8. Mr Chow Cheong-po had nothing to add at the hearing of the appeal.

9. In his notice of appeal dated 18 November 2001 and received by the Clerk on 23 November 2001, the Appellant asserted that he was married effective 1 March 2000 (written exactly as it stands in the original):

'... I was married effective March 1st, 2000 ... I agree that the actual date of the wedding ceremony was May 1st, 2000 and correctly reflected on the marriage certificate as a true abstract of marriage record filed. I do not dispute this point, but as I have stated many times before, my wife and I were in Nevada, USA on March 1, 2000 to make the plans/arrangements for our wedding and on that date we registered

INLAND REVENUE BOARD OF REVIEW DECISIONS

our marriage license at Clark County, Nevada. In Nevada, you require a marriage license before you are allowed to perform a wedding ceremony. More important, under Nevada and USA laws, a couple LEGALLY married once they obtain their marriage license. This may be different from Hong Kong laws, but we are legally married as of March 1st, 2000 under USA laws. This license was surrendered to the Reverend when we had our ceremony on May 1st, 2000 under USA laws. Accordingly, I am eligible for the married person's allowance under the law for 1999/2000 tax year.'

10. Section 2(1) of the IRO provides that:

' "marriage" means –

(a) any marriage recognized by the law of Hong Kong; or

(b) any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so,

but shall not, in the case of a marriage which is both potentially and actually polygamous, include marriage between a man and any wife other than the principal wife, and "married" shall be construed accordingly.'

' "year of assessment" means the period of 12 months commencing on 1 April in any year.'

11. Section 29 provides that:

' (1) An allowance ("married person's allowance") shall be granted under this section in any year of assessment if a person is, at any time during that year, married and –

(a) the spouse of that person did not have assessable income in the year of assessment; or

(b) that person and his or her spouse have made, in relation to the year of assessment, an election under section 10(2); or

(c) that person has elected to be assessed under Part VII.

(2) ...

INLAND REVENUE BOARD OF REVIEW DECISIONS

(3) *A married person's allowance grantable under this section is –*

(a) *an allowance of the prescribed amount;*

12. We reject the Appellant's assertion that his marriage was effective from 1 March 2000 and we find against him on this issue.

- (a) The 'marriage certificate' referred to in his notice of appeal certified that the date of marriage was 1 May 2000. If the marriage were effective as from a different date, we would have expected the effective date to have been expressly stated.
- (b) The Appellant has neither produced the 'marriage license' nor a copy thereof. If the 'marriage license' existed, the marriage registry and/or the 'Reverend' should have a copy or a record of the 'marriage license' and its date of issue.
- (c) There is no evidence of Nevada or USA law and we are not satisfied that under Nevada or USA law, a marriage took effect from the date of obtaining of the 'marriage license'.
- (d) In the Appellant's tax returns for individuals dated 25 March 2000, the Appellant reported that 'I am single' and did not complete the column which was to be completed if marital status had changed during the year of assessment.

13. There is no evidence that the Appellant was married at any time between 1 April 1999 and 31 March 2000. The Appellant's claim for married person's allowance fails.

14. The Appellant has failed to discharge the onus under section 68(4) of proving that the assessment appealed against is excessive or incorrect. We dismiss the appeal and confirm the assessment as reduced by the Commissioner.