

INLAND REVENUE BOARD OF REVIEW DECISIONS

**Case No. D16/83**

*Board of Review:*

William Turnbull, *Chairman*; R. J. McAulay & Kenneth T. C. Lo, *Members*.

**14 November 1983.**

Salaries tax—section 9(1A)(a)—whether allowance refund of rent.

The appellants were a husband and wife. The wife received certain sums as allowances from her employer which were assessed to Salaries Tax. The appellants appealed on the ground that the allowances were refunds of rent.

*Held:*

There was no evidence to link the payment of the allowances to the payment of an equivalent amount of rent.

Appeals dismissed.

So Chau-chuen for the Commissioner of Inland Revenue.  
The appellants in person.

*Reasons:*

With the agreement of all parties Appeals Nos. B/R 36/80 and B/R 37/80 were heard together.

The two taxpayers are now husband and wife having been married in the course of the first tax year in question, namely 1974/1975.

The Appeals arise out of determinations by the Commissioner of Inland Revenue assessing to tax certain allowances paid to A by her previous employer and which she and her husband, B claimed were in the nature of refunds of rent.

The two taxpayers jointly addressed the Board of Review and explained the background of the Appeals. Apparently an unhappy state of affairs arose between A and her previous employer culminating in a series of actions being taken by the employer which at best can be described as unfriendly and which the taxpayers alleged were of a hostile nature.

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One of the actions taken by the employer was to inform the Inland Revenue Department that the allowances paid to A which had previously been stated by the employer and the taxpayers to be refund of rent or the provision of quarters were in fact a taxable allowance.

The unhappy relationship which now exists between the taxpayers and the previous employer of A is fully understood and appreciated by the Board of Review. Fortunately it has no bearing on the decision which we have reached in this case and which we are able to reach on the facts before us.

The case is quite simple. A received certain sums of money from her employer in the form of an allowance. In the tax year 1974/1975 the amount was HK\$12,000.00. This was increased in the next year to HK\$12,400.00 and in the next two subsequent years to HK\$24,000.00 in each year. These sums paid to A are part of her or her husband's taxable emoluments unless it can be shown that they were in the nature of refunds of rent as provided by section 9(1A)(a) of the Inland Revenue Ordinance. The Board of Review finds as a fact that these allowances were not refunds of all or part of the rent paid by the employee and accordingly are not exempted from the charge to salaries tax.

It was apparent from what A and her husband told the Board of Review that it has been her intention that the allowances should have been refunds of rent but it was also apparent that the taxpayers did not understand the technical nature of the exemption granted by the Inland Revenue Ordinance for such refunds of rent. To be exempt from salaries tax a payment must be in fact a refund of rent and not some other form of allowance. Neither of the taxpayers was able to clearly link the payments of the allowances to payments of an equivalent amount of rent. Indeed the opposite was the situation. At all material times the allowances would have appeared to have been considerably in excess of the amount of rent paid. During the period 1st April 1974 to 6th October 1974 A occupied premises which she shared with her sister. Although she said that she contributed to the rent of her sister we were given no indication of the amount of the rent nor details of the tenancy agreement nor any other details. B and not A was the tenant of the premises in respect of which A claims to have paid the rent. No evidence was produced that in fact A did pay the rent and no rent receipts were produced in her name. No satisfactory explanation could be given as to why the allowance payable had been increased from HK\$12,000 per annum to HK\$12,400 per annum and then to HK\$24,000 per annum. The rent of the premises occupied was HK\$800 per month throughout the period in question except for the period prior to the taxpayers being married when A was contributing to the rent for the premises occupied by her and her sister.

All of the facts before the Board of Review show that this was not a refund of rent and accordingly this Board of Review rejects both Appeals and confirms the assessments appealed against by both A and B in both Appeals Nos. 36 of 1980 and 37 of 1980.