

INLAND REVENUE BOARD OF REVIEW DECISIONS

**Case No. D45/04**

**Salaries tax** – section 12(1)(a) of the Inland Revenue Ordinance – whether the item of expenditure qualified as deductible expense.

Panel: Ronny Wong Fook Hum SC (chairman), Tang Chi Chuen and David Yip Sai On.

Date of hearing: 1 June 2004.

Date of decision: 21 September 2004.

Appellant is an employee of Company A. Company A informed the Revenue that their employees may be required to incur traveling expenses in the course of their employment and Company A would reimburse their employees for such expenses.

The present appeal is concerned with the appellant's claim that in computing his liability for salaries tax he should be allowed to deduct petrol tax which he allegedly paid. The petrol tax was paid in respect of petrol for the running of his motor car. He was not on duty when driving his motor vehicle.

**Held:**

1. For an item of expenditure to qualify as deductible expenses, the appellant must prove to this Board that the claim in question satisfies the requirements laid down in section 12(1)(a). If the claim fails to satisfy those requirements or if the claim is in respect of the domestic or private expenses of the appellant, the Legislature has expressly stated in section 12(1) that the same is not deductible.
2. The Board found that all expenses pertaining to that motor car including all sums paid for petrol consumed by that car are not expenditure wholly, exclusively and necessarily incurred in the production of the appellant's assessable income. They are merely private expenses of the appellant. The fact that in incurring these private expenses the appellant had made further contributions to the revenue of the Government is wholly irrelevant to his salaries tax liability.

**Appeal dismissed.**

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Fung Ka Leung for the Commissioner of Inland Revenue.  
Taxpayer in person.

### Decision:

1. The Appellant is an employee of Company A. He sought to effect various deductions including the following from his salaries in computing his liability for salaries tax for the year 2001/02:

- (a) depreciation of vehicle;
- (b) motor vehicle insurance;
- (c) fees paid to the Transport Department for the driving licence;
- (d) fees paid to the Transport Department for transfer of vehicle ownership and
- (e) petrol duties which he allegedly paid to the Government.

2. Company A informed the Revenue that their employees may be required to incur travelling expenses in the course of their employment and Company A would reimburse their employees for such expenses. The Appellant however had not submitted any claim during the relevant year of assessment.

3. The Revenue disallowed all the claims referred to in paragraph 1 above. The present appeal is solely concerned with the Appellant's claim that in computing his liability for salaries tax he should be allowed to deduct petrol tax which he allegedly paid.

4. The Government is empowered by the Legislature to levy salaries tax by virtue of the Inland Revenue Ordinance (Chapter 112). That Ordinance contains express provisions defining the circumstances whereby salaries tax may be imposed and the manner in arriving at the amount of salaries tax to be paid. In the present context, the relevant provision is section 12(1)(a) of that Ordinance which provides that:

*'In ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person ... all outgoings and expenses, **other than expenses of a domestic or private nature** and capital expenditure, wholly, exclusively and necessarily incurred in the production of the assessable income'. (Emphasis supplied)*

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5. For an item of expenditure to qualify as deductible expense, the Appellant must prove to this Board that the claim in question satisfies the requirements laid down in section 12(1)(a). If the claim fails to satisfy those requirements or if the claim is in respect of the domestic or private expense of the Appellant, the Legislature has expressly stated in section 12(1) that the same is not deductible.

6. On the Appellant's case, the petrol tax was paid in respect of petrol for the running of his motor car. He was not on duty when driving his motor vehicle. It is therefore beyond dispute that the motor car was not required in the production of his assessable income. All expenses pertaining to that motor car including all sums paid for petrol consumed by that car are not expenditure wholly, exclusively and necessarily incurred in the production of the Appellant's assessable income. They are merely private expenses of the Appellant. The fact that in incurring these private expenses the Appellant had made further contributions to the revenue of the Government is wholly irrelevant to his salaries tax liability.

7. We dismiss the Appellant's appeal.