

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D48/93

Penalty tax – salaries tax – change of employment – mistake made by the taxpayer in tax return – quantum of penalty – section 82A of Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Benjamin Kwok Chi Bun and Maxine Kwok Li Yuen Kwan.

Date of hearing: 4 November 1993.

Date of decision: 29 December 1993.

The taxpayer was an employee whose employment had changed in the course of the year of assessment. The taxpayer admitted that he had made a mistake and said that he did not realize he had made a mistake until he was assessed by the Inland Revenue Department. He placed the blame for the mistake upon his change of employment.

Held:

A penalty of 10% of the tax involved is not excessive in the circumstances.

Appeal dismissed.

Tang Chan Wai Yee for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

This is an appeal by a taxpayer against an assessment to penalty tax under section 82A of the Inland Revenue Ordinance. The facts are as follows:

1. The Taxpayer was an employee and in respect of the year of assessment 1991/92 he filed his salaries tax return showing taxable emoluments of \$443,364 plus quarters provided by the employer.
2. During the year in question the name of the employer and the terms of employment had changed because in December 1991 the previous employment of the Taxpayer terminated when he joined the service of his new office. The income declared by the Taxpayer was that which he received from his original employer and he totally omitted

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to include any reference to his new office or the income which he received from his new office.

3. The actual taxable emoluments of the Taxpayer for the year in question were \$692,852.76 plus the quarters which had only been provided for part of the year.

4. On 10 August 1992 the assessor raised a salaries tax assessment on the Taxpayer in respect of his taxable emoluments of \$704,312 in accordance with two employers' tax returns which had been filed by the two employers of the Taxpayer.

5. On 20 May 1993 the Deputy Commissioner gave notice to the Taxpayer that he proposed to assess the Taxpayer to additional tax in respect of the year of assessment 1991/92 under section 82A of the Inland Revenue Ordinance. On 29 June 1993 the Taxpayer made representations to the Commissioner.

6. On 5 August 1993 the Deputy Commissioner having taken into account the representations of the Taxpayer assessed the Taxpayer to additional tax by way of penalty under section 82A of the Inland Revenue Ordinance in respect of the year of assessment 1991/92 in the sum of \$3,700.

7. On 17 August 1993 the Taxpayer gave notice of appeal against this penalty tax assessment.

At the hearing of the appeal the Taxpayer represented himself and explained that when filing his tax return he had made a mistake. He said that he did not realise that he had made this mistake until he was assessed by the Inland Revenue Department. He said that the mistake had been caused because of the change in his employment which had taken place in the course of the year. He had previously been employed by his former office where he worked and in December 1991 this office had changed to a new office under a new employer. He had received the employer's tax return from his former office which he had used when completing his tax return and had accidentally omitted the moneys received from his new office.

The representative for the Commissioner said that the Commissioner had already been lenient in this case and that the quantum of the additional tax imposed was only 10% of the tax which would have been undercharged if the return which he had filed had been accepted. She said that the amount of the penalty was not unreasonable.

Cases of this nature are always difficult because it is natural for the Board to have considerable sympathy for a taxpayer who has made a genuine mistake and openly admits that he has done so. On the other hand, as has been pointed out in the past, our system of taxation is simple and relies upon taxpayers in Hong Kong filing true and correct tax returns. It behoves all of us to take care when completing our tax returns, and if we are careless then we must expect to be penalised. The amount of the penalty depends upon the quantum of the amount involved and this is as specified in the Inland Revenue Ordinance.

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The Commissioner and his Deputy are empowered under the Ordinance to assess additional tax by way of penalty if in their discretion they think it appropriate so to do. This Board does not have the function of deciding whether or not the Commissioner or his Deputy should or should not impose a penalty. That discretion is not given to the Board. The function of this Board as laid down in the Inland Revenue Ordinance is to decide whether or not the Commissioner or his Deputy have such a power and if they have whether the quantum of the penalty is excessive.

In the case before us it is quite clear that the Taxpayer failed in his obligations under the Inland Revenue Ordinance, albeit negligently. Clearly the Commissioner and his Deputy have a power to impose a penalty.

With regard to the quantum of the penalty the sum of \$3,700 is substantial but is only 10% of the tax involved and we cannot say that this is excessive in the circumstances.

For the reasons given this appeal is dismissed.