

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D55/01

Property tax – rental not received by the taxpayer but by third party – whether rental subject to property tax – sections 2, 5, 5B(2) and 60 of the Inland Revenue Ordinance (‘IRO’).

Panel: Ronny Wong Fook Hum SC (chairman), Ng Yook Man and Ronald Tong Wui Tung.

Date of hearing: 9 June 2001.

Date of decision: 17 July 2001.

The taxpayer was the registered owner of the Subject Unit. It was the taxpayer’s case that he obtained the property from his mother. As part of his filial duty, he consented to the letting of the Subject Unit by his mother. He did not receive any of the rental from such letting.

By the tax returns of the taxpayer’s mother, rental income was reported to have been received by her. As a result, the taxpayer was assessed property tax in respect of the Subject Unit on the basis of rental admitted by the taxpayer to have been generated from letting of the same. The taxpayer resisted such assessment on the basis that he did not receive any rental and the Revenue has no authority to levy any assessment against him in view of their assessment against his mother.

Held:

The taxpayer is the owner of the Subject Unit. He is the person chargeable to property tax under section 5 of the IRO. His mother is not the registered owner and has no beneficial interest in the Subject Unit. She is not chargeable to property tax. The Revenue is fully entitled under section 60 to assess the taxpayer for additional tax computed on the basis of section 5B(2).

Appeal dismissed.

Cheung Lai Chun for the Commissioner of Inland Revenue.

Taxpayer in person.

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Decision:

1. The Taxpayer is the registered owner of lot number XXXX in DD 193 (‘ the Lot’) at Address A in District B. Erected on the lot is a house comprising of G/F, 1/F and 2/F. By letter dated 19 September 1997, the Taxpayer informed the Revenue that G/F and 1/F were used by him as from 1987.

2. Ms C is the mother of the Taxpayer.

3. Commencing from about 1 April 1994, Ms C let out 2/F of Address A (‘ the Subject Unit’). It is the Taxpayer’ s case that he obtained the Lot from Ms C. As part of his filial duty, he consented to the letting of the Subject Unit by Ms C. He did not receive any of the rental from such letting. Ms C retained all the rental for her maintenance.

4. By her returns for the years of assessment 1994/95, 1995/96 and 1996/97, Ms C reported to the Revenue the following rental income:

Year of assessment	Rental received
	\$
1994/95	78,000
1995/96	82,000
1996/97	84,000

5. The assessor made the following assessments against Ms C:

Year of assessment	Income	Personal allowance	Assessable income	Tax levied
	\$	\$	\$	\$
1994/95	78,000	72,000	6,000	120
1995/96	82,000	79,000	3,000	60

6. As a result of correspondence between the Revenue and the Taxpayer in 1997, the Revenue became aware of the arrangements between the Taxpayer and Ms C. By notices dated 1 June 1999, the Taxpayer was assessed property tax in respect of the Subject Unit on the basis of rental admitted by the Taxpayer to have been generated from letting of the same. The Taxpayer resisted such assessment on the basis that he did not receive any rental and the Revenue has no authority to levy any assessment against him in view of their assessment against Ms C.

7. Section 5(1) of the IRO provides that:

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‘ Property tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person being the owner of any land or buildings or land and buildings wherever situate in Hong Kong and shall be computed on the standard rate on the net assessable value of such land or buildings or land and buildings for each such year.’

8. Section 5B(2) of the IRO provides that:

‘ The assessable value of land or buildings or land and buildings for each year of assessment shall be the consideration, in money or money’s worth, payable in that year to, to the order of, or for the benefit of, the owner in respect of the right of use of that land or buildings or land and buildings.’

9. The word ‘owner’ is defined by section 2 of the IRO to include *‘ a person holding directly from the Government, a beneficial owner, a tenant for life, a mortgagor, a mortgagee in possession, a person with adverse title to land receiving rent from buildings or other structures erected on that land, a person who is making payments to a co-operative society registered under the Co-operative Societies Ordinance (Cap 33) for the purpose of the purchase thereof, and a person who holds land or buildings or land and buildings subject to a ground rent or other annual charge; and includes an executor of the estate of an owner.’*

10. Section 60(1) of the IRO provides that:

‘ Where it appears to an assessor that for any year of assessment any person chargeable with tax has not been assessed or has been assessed at less than the proper amount, the assessor may, within the year of assessment or within 6 years after the expiration thereof, assess such person at the amount or additional amount at which according to his judgment such person ought to have been assessed ...’

11. The Taxpayer is the owner of the Subject Unit. He is the person chargeable to property tax under section 5 of the IRO. Ms C is not the registered owner and has no beneficial interest in the Subject Unit. She is not chargeable to property tax. The Revenue is fully entitled under section 60 to assess the Taxpayer for additional tax computed on the basis of section 5B(2). There is no question of double taxation as the Revenue fully accepts that Ms C is entitled to a refund of the tax she paid.

12. For these reasons, we dismiss the Appellant’s appeal and confirm the assessment.