

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D60/94

**Salaries tax** – notice of appeal lodged out of time – whether extension of time should be granted – section 66(1A) of the Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Christopher Chan Cheuk and Raphael Chan Cheuk Yuen.

Dates of hearing: 1, 3 June and 22 November 1994.

Date of decision: 8 December 1994.

The taxpayer wished to appeal against a salaries tax assessment but failed to lodge notice of appeal within the time specified by the Ordinance. The taxpayer applied for an extension of time but at the hearing of the appeal failed to support his application. Instead he dealt with the merits of his appeal.

Held:

The Board is bound by the provisions of section 66(1A) of the Inland Revenue Ordinance which gives power to the Board to grant an extension of time for the giving of the notice of appeal only if the Board is satisfied that the taxpayer was prevented by illness or absence from Hong Kong or other reasonable cause from giving timely notice. The taxpayer had failed to satisfy the Board and accordingly no extension of time could be granted.

**Appeal dismissed.**

Ng Kwok Yin for the Commissioner of Inland Revenue.

Taxpayer in person.

**Decision:**

This is an appeal by a taxpayer against a salaries tax assessment for the year of assessment 1991/92. The Taxpayer claimed that he was self-employed and should pay profits tax and not salaries tax.

The appeal falls into two clear and distinct parts.

The first part is an application by the Taxpayer for an extension of time for lodging his notice of appeal with the Board of Review under section 66(1A) of the Inland Revenue Ordinance (the IRO).

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The second part of the appeal relates to the substantive question as to whether the Taxpayer was correctly assessed to salaries tax. However the substantive part of the appeal only becomes material in the event that the Board finds in favour of the Taxpayer with regard to the first procedural question.

The appeal was set down for hearing on two afternoons namely 1 June 1994 and 3 June 1994.

The Taxpayer duly appeared before the Board on 1 June 1994 and was informed that there were two matters before the Board namely the question of the extension of time and, subject thereto, the merits of the substantive case.

The Taxpayer addressed the Board at great length, placed before the Board various papers and documents and elected to give evidence. The Taxpayer concentrated his efforts on the second question relating to whether or not the Taxpayer was subject to salaries tax. The Taxpayer did not address the Board with regard to the first procedural question and gave no explanation as to why he was late in filing his notice of appeal.

At the end of the hearing on the first half day the Board of Review drew the attention of the Taxpayer to the fact that he had not addressed the question of late filing of his appeal. The Taxpayer was warned that he was likely to lose his appeal on this technical ground. The Board of Review is bound by the provisions of section 66(1A) of the IRO which provides that if the Board is satisfied that the Taxpayer was prevented by illness or absence from Hong Kong or other reasonable cause from giving timely notice of appeal, the Board may grant an extension of time for the giving of the notice of appeal.

When the Board reconvened on 3 June 1994 the Taxpayer was reminded of his position and invited to give evidence. As mentioned above the Taxpayer chose to give evidence but in his evidence failed to address the question of why he had failed to file his appeal in time. The representative for the Commissioner in his cross examination of the Taxpayer asked him for the reason for his failing to give notice of appeal within the time stipulated. The evidence given by the Taxpayer was wholly unsatisfactory in this regard. He said that he had contacted the staff of the Revenue and written to the Revenue but he was not able to give any precise details with regard thereto. In particular he could not say when he had contacted the Revenue nor produce a copy of the letter which he said he had sent to the Revenue.

The representative for the Commissioner addressed the Board on both of the questions arising in this appeal. With regard to the first question he said that the Commissioner objected to the late filing of the notice of appeal. He submitted that the Taxpayer had not been prevented by illness, absence from Hong Kong or other reasonable cause from filing his notice of appeal and accordingly the appeal should be dismissed.

At the end of the second half day of the hearing the Taxpayer indicated that he wished the case to be adjourned to enable him to make a final submission in reply to that made by the Commissioner's representative. The Board adjourned the appeal for this purpose and indicated that a long adjournment would not be acceptable. On 6 June 1994 the

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Board of Review contacted the Taxpayer and proposed that the hearing be resumed in July but the Taxpayer said this was not acceptable and asked for a date to be fixed in August.

The Taxpayer by letter dated 7 June 1994 wrote to the Board of Review requesting an extended adjournment. In accordance with the wishes of the Taxpayer the afternoon of 11 August 1994 was set for the resumed hearing and due notice thereof was given to the Taxpayer.

By letter dated 1 August 1994 the Taxpayer informed the Board that due to unforeseen events he needed a further adjournment of more than 2 months. To accord with this request the date fixed for the resumed hearing, namely 11 August 1994 was vacated. The Board informed the Taxpayer of this by letter dated 8 August 1994 and told the Taxpayer then when the next hearing date had been fixed no further adjournment would be granted.

The morning of 22 November 1994 was then fixed for the resumed hearing and due notice thereof was given to the Taxpayer by letter dated 15 September 1994. In this letter the Taxpayer was reminded that no further adjournment would be considered.

By letter dated 20 November 1994 the Taxpayer informed the Board that due to unforeseen events he would be absent from Hong Kong from 20 November 1994 to 23 November 1994 and requested a further adjournment.

At the time fixed on 22 November 1994 for the resumed hearing the Board was duly convened but the Taxpayer failed to appear before the Board either in person or by a representative.

The Board took time to consider what action was appropriate in the circumstances. The Board noted that proper notice of the resumed hearing date had been given to the Taxpayer and that he had been informed in writing on two separate occasions that no further adjournment would be granted. The Board noted that it is considered undesirable that a partly heard case should be adjourned for any long period of time and that a period of over 5 months had already elapsed since the original hearing of the appeal. The Board further noted that the appeal had been adjourned after the Taxpayer had concluded his case including the giving of oral evidence and the submission of documentary evidence and the Commissioner had concluded his case. The appeal had been adjourned solely to enable the Taxpayer to address the Board in reply to anything which the representative for the Commissioner had said when addressing the Board. The Board considered that the interests of justice would not be served by granting a further indefinite adjournment. Accordingly when the Board duly convened in the presence of the representative for the Commissioner and in the absence of the Taxpayer, the Board informed those present that the request made by the Taxpayer by letter dated 20 November 1994 (referred to above) was refused and that the Board would deliver its decision in writing in due course.

As stated above there are two matters before the Board but the second only becomes relevant if the Board finds in favour of the Taxpayer on the first.

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At the beginning of and during the course of the hearing the Board drew the attention of the Taxpayer to the necessity of his satisfying the Board in the terms of section 66(1A) of the IRO. It was pointed out to him that this was a prerequisite for the Board to consider the second substantive question. The Taxpayer chose to disregard what the Board had said and to concentrate his efforts on the second matter. It was not necessary for the representative for the Commissioner to cross examine the Taxpayer with regard to the first procedural matter but he chose to do so. This gave the Taxpayer another opportunity to explain to the Board why he had not filed his notice of appeal in time but he decided not to do so.

In the circumstances the Board is not able to grant an extension of time under section 66(1A) of the IRO. The Board is not satisfied that the Taxpayer was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with the terms of section 66(1) of the IRO. This being the case the second question does not fall to be considered or decided by the Board and is not relevant.

For the reasons given this Board dismisses this appeal and confirms the assessment against which the Taxpayer has appealed.