

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D61/99

Salaries Tax – taxpayer ordered by Court to make maintenance payments in favour of ex-wife and child – whether allowable deductions to assessable income – section 12(1) of the Inland Revenue Ordinance.

Panel: Ronny Wong Fook Hum SC (chairman), William Cheng Chuk Man and Winnie Lun Pong Hing.

Date of hearing: 17 August 1999.

Date of decision: 2 September 1999.

By a Court Order dated 11 May 1994, the Court ordered the taxpayer, inter alia, to transfer his interest in a flat to his ex-wife (Mrs A) and their children and to make monthly maintenance payments.

The taxpayer asserted that he was not liable to pay tax in respect of his income for the year of assessment 1996/97 as he was entitled to deduct payments that he made in favour of his wife. He also asserted that the same were not personal expenses but were payments made pursuant to the Order.

The Commissioner rejected that contention. By notice, the taxpayer sought to challenge the finding of the Commissioner.

Held by the Board:

The taxpayer had made a wholly frivolous application. The law was clear in that he was only entitled to deduct from his assessable income outgoings and expenses that are wholly, exclusively and necessarily incurred in the production of his assessable income. He was not entitled to deduct therefrom outgoings or expenses that were of a domestic or private nature (section 12(1) of the Inland Revenue Ordinance).

The instant payments were of a domestic and private nature. The fact that they were paid pursuant to a Court Order does not alter their status.

Appeal dismissed.

Pak Wai Man for the Commissioner of Inland Revenue.
Taxpayer in person.

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Decision:

1. This is a frivolous application. We wish to express our disapproval of the Taxpayer's wholly unreasonable attitude in the strongest possible terms.
2. Prior to 1994, the Taxpayer was married to Ms A. They have two children. The marriage was not a happy one. It resulted in their divorce in 1994.
3. On 11 May 1994, His Honour Judge Gill made an order ['the said Order'] in the divorce proceedings between the Taxpayer and Ms A. The Learned Judge ordered the Taxpayer to transfer his interest in a flat to Ms A and the children of that marriage. The Learned Judge further ordered the Taxpayer to pay maintenance in favour of Ms A and their infant daughter.
4. The Taxpayer re-married. He has a son from this new union.
5. The Taxpayer asserted that he is not liable to pay tax in respect of his income for the year of assessment 1996/97 as he is entitled to deduct payments that he made in favour of Ms A as the same are not personal expenses but are payments made pursuant to the said Order.
6. By his determination ['the said Determination'] dated 28 September 1998, the Commissioner rejected the Taxpayer's contention.
7. By notice dated 13 February 1999, the Taxpayer sought to challenge before us the said Determination.
8. We have to decide two issues:
 - a. whether we should allow an extension of time for lodging an appeal before us and
 - b. whether there is any merit in the Taxpayer's appeal.
9. At the hearing before us, the Taxpayer was most evasive in relation to his residential or office address. He explained that he had to give the bulk of his earnings to Ms A and he is left with \$6,000 per month for his new family. He asserted that he derived no personal benefit as a citizen in Hong Kong. He protested against bureaucratic attitude allegedly displayed by staff of the Inland Revenue Department.

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10. There is no justification for us to extend time in order to entertain these wholly unwarranted grievances on the part of the Taxpayer. He gave no explanation for the delay between September 1998 and February 1999.

11. We would point out for the benefit of the Taxpayer that under section 12(1) of the Inland Revenue Ordinance, he is only entitled to deduct from his assessable income outgoings and expenses that are wholly, exclusively and necessarily incurred in the production of his assessable income. He is not entitled to deduct therefrom outgoings or expenses that are of a domestic or private nature. There can be no clearer example of outgoings that are of a domestic or private nature than maintenance paid for one's former wife and one's daughter. The fact that these were paid pursuant to a court order does not alter the status of these payments.

12. For these reasons, we refuse to entertain the Taxpayer's appeal.

13. Had we extended time in favour of the Taxpayer, we would have exercised our power and order the Taxpayer to pay costs in pursuing this groundless appeal.