

INLAND REVENUE BOARD OF REVIEW DECISIONS

**Case No. D72/02**

**Salaries tax** – section 12(1)(a) of the Inland Revenue Ordinance ('IRO') – whether medical expenses incurred in the course of producing income or for the purpose of producing income.

Panel: Ronny Tong Ka Wah SC (chairman), Vernon F Moore and Christopher John Weir.

Date of hearing: 16 September 2002.

Date of decision: 25 October 2002.

The taxpayer suffered from Stage IV metastatic carcinoma of rectum, a form of liver cancer. The assessor raised on the taxpayer a salaries tax assessment for the year of assessment 1999/2000. The taxpayer objected on the ground that the medical expenses claimed by him relating to his cancer treatment should be deductible because if he did not incur these expenses he could not possibly be able to continue to work and earn salaries which were subject to tax.

The only issue on this appeal was whether the medical expenses claimed by the taxpayer were 'outgoings and expenses, other than expenses of a domestic or private nature ... wholly, exclusively and necessarily incurred in the production of the assessable income' within the meaning of section 12(1)(a) of the IRO.

**Held:**

1. There is a fundamental distinction between expenses incurred in the course of producing income and those incurred for the purpose of producing income. Whilst the former are deductible, the latter are not (CIR v Robert P Burns 1 HKTC 1181 and D54/94, IRBRD, vol 9, 324 followed).
2. If the taxpayer's contention were right, expenses incurred for everyday meals or clothes or other daily necessities without which a man cannot live and work would all be deductible. Medical expenses do not go to a man's ability to work alone. They also go to a man's health and well being. Even if he does not work, he will still have to take care of his health. The Board considered that the expenses claimed were necessarily of a personal or private nature and were not 'wholly, exclusively or necessarily incurred in the production of the assessable income' within the meaning of section 12(1)(a) of the IRO (D33/94, IRBRD, vol 9, 201, Ricketts v Colquhoun [1926] AC 1 and Lomax v Newton [1953] 2 All ER 801 followed).

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### Appeal dismissed.

Cases referred to:

CIR v Robert P Burns 1 HKTC 1181  
D54/94, IRBRD, vol 9, 324  
D33/94, IRBRD, vol 9, 201  
Ricketts v Colquhoun [1926] AC 1  
Lomax v Newton [1953] 2 All ER 801

Wong Kai Cheong for the Commissioner of Inland Revenue.  
Taxpayer in absentia.

### Decision:

### Background facts

1. This was an appeal by the Taxpayer against the salaries tax assessment for the year of assessment 1999/2000 raised on him on the basis, *inter alia*, that certain medical expenses incurred by him should be deducted from the taxable amount of the salaries received by him.
2. The assessor was of the view that the medical expenses claimed were of a private nature and not deductible for salaries tax purposes. On 8 September 2000, the assessor raised on the Taxpayer the following salaries tax assessment for the year of assessment 1999/2000:

	\$	\$
Income		1,051,825
<u>Add:</u> Quarters value		<u>93,089</u>
		1,144,914
<u>Less:</u> Self-education expenses	5,514	
Home loan interest	<u>77,710</u>	<u>83,224</u>
		1,061,690
<u>Less:</u> Married person's allowance	108,000	
Dependent parent allowance and additional dependent parent allowance	<u>60,000</u>	<u>168,000</u>
Net chargeable income		<u>893,690</u>
Tax payable thereon		<u>141,427</u>

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3. By a notice dated 15 September 2000, the Taxpayer objected to the above assessment on various grounds including the ground that the medical expenses claimed by him should be deductible because they were necessary for his employment.
4. The objection was rejected by the Commissioner on 24 December 2001 from which decision this appeal lied.
5. The only issue before us was whether the medical expenses claimed by the Taxpayer were ‘outgoings and expenses, other than expenses of a domestic or private nature ... wholly, exclusively and necessarily incurred *in the production of* the assessable income’ (emphasis added) within the meaning of section 12(1)(a) of the IRO.
6. At the hearing, we received a message from the family of the Taxpayer that he was taken into hospital but it was his wish that the appeal should proceed in his absence.
7. We acceded to his request on the basis that the appeal involved a very simple point and all relevant materials were before us none of which was in dispute between the parties.

### **The Taxpayer’s case**

8. The Taxpayer’s case was a very simple one. He suffered from Stage IV metastatic carcinoma of rectum, a form of liver cancer. The medical expenses he claimed deductible related to his cancer treatment. His case was if he did not incur these expenses he could not possibly be able to continue to work and earn salaries which were subject to tax.

### **Whether deductible**

9. We have great sympathy for the Taxpayer. But we do not think the law is on his side. There is a fundamental distinction between expenses incurred *in the course of* producing income and those incurred *for the purpose of* producing income. Whilst the former are deductible, the latter are not; see CIR v Robert P Burns 1 HKTC 1181; Board of Review decision D54/94, IRBRD, vol 9, 324.
10. Similar claims have been rejected by this Board in D33/94, IRBRD, vol 9, 201. If the Taxpayer’s contention were right, expenses incurred for everyday meals or clothes or other daily necessities without which a man cannot live and work would all be deductible.
11. In Ricketts v Colquhoun [1926] AC 1 at page 6, Viscount Cave, LC said:

*‘A man must eat and sleep somewhere, whether he has or has not been engaged in the administration of justice. Normally he performs those operations in his own home, and if he elects to live away from his work so that he must find*

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*board and lodging away from home, that is by his own choice, and not by reason of any necessity arising out of his employment; nor does he, as a rule, eat or sleep in the course of performing his duties, but either before or after their performance.'*

12. In Lomax v Newton [1953] 2 All ER 801 at page 822, Vaisey J said:

*'An expenditure may be "necessary" for the holder of an office without being necessary to him in the performance of the duties of that office. It may be necessary in the performance of those duties without being exclusively referable to those duties. It may, perhaps be both necessarily and exclusively, but still not wholly, so referable. The words are, indeed, stringent and exacting. Compliance with each and every one of them is obligatory if the benefit of the rule is to be claimed successfully. They are, to my mind, deceptive words in the sense that, when examined, they are found to come to nearly nothing at all.'*

13. Medical expenses do not go to a man's ability to work alone. They also go to a man's health and well being. Even if he does not work, he will still have to take care of his health.

14. In our view, the expenses claimed are necessarily of a personal or private nature and are not 'wholly, exclusively or necessarily incurred in the production of the assessable income' within the meaning of section 12(1)(a) of the IRO.

15. We feel we have no alternative but to dismiss the appeal and we so order.