

**Case No. D75/06**

**Penalty tax** – fail to attend hearing without written application – sections 68, 82A(4) and 82B of the Inland Revenue Ordinance ('IRO').

Panel: Kenneth Kwok Hing Wai SC (chairman), Adrian Wong Koon Man and Lily Yew.

Date of hearing: 29 November 2006.

Date of decision: 5 January 2007.

The appellant objected to being assessed to additional tax and gave notice of appeal. The Clerk informed the appellant that the notice of appeal was prima facie invalid as it fell outside the statutory one month period. The case was set down for hearing and the appellant was notified accordingly. A few days prior to the scheduled hearing date the appellant informed the Clerk by phone that he would not be able to attend the scheduled hearing as he was a pilot and had been assigned to fly overseas on the scheduled hearing date. The Clerk asked the appellant to write to the Board about his absence with supporting document and to apply for an adjournment. At the time of hearing the Clerk's office had not received any written communication from the appellant and the appellant failed to attend the hearing, either in person or by his authorised representative.

**Held:**

1. The Board was not satisfied that the appellant's failure to attend was due to sickness. If the appellant had wished to invoke 'other reasonable cause', the onus to satisfy the Board was on him. There was no evidence on the steps, if any, taken by the appellant to ensure attendance at the hearing. There was no written application and the assertions made to the Clerk were not supported by any or any cogent evidence. The Board was not satisfied that his failure to attend was due to 'other reasonable cause'. There was no application under sub-section (2D) to hear the appeal in his absence and sub-section (2B)(b) did not apply. The appeal was dismissed under section 68(2B)(c).

**Appeal dismissed.**

Taxpayer in absentia.

Lai Au Che Chun and Chu Hui Fun for the Commissioner of Inland Revenue.

(2007-08) VOLUME 22 INLAND REVENUE BOARD OF REVIEW DECISIONS

**Decision:**

1. By an assessment dated 26 June 2006, the Deputy Commissioner of Inland Revenue assessed the appellant to additional tax under section 82A of the Inland Revenue Ordinance, Chapter 112, in the following sum:

<b>Year of assessment</b>	<b>Additional tax</b>	<b>Charge no</b>
2004/05	\$5,100	9-1933099-05-8

2. By a notice of appeal dated 4 July 2006 received by the Clerk to the Board of Review on 28 July 2006, the appellant gave notice of appeal.

3. By letter dated 28 July 2006, the Clerk drew the appellant's attention to the fact that the appellant had not complied with the requirement under section 82B to furnish a copy of the notice of intention to assess additional tax given under section 82A(4), if any such notice had been given.

4. The required document was not received by the Clerk until 12 September 2006.

5. By letter dated 13 September 2006, the Clerk informed the appellant that the notice of appeal was prima facie invalid as it fell outside the statutory one month period and that the appellant would be notified to attend a hearing to decide whether to extend time for appeal.

6. By letter dated 5 October 2006, the Clerk informed the appellant that his case was scheduled to be heard on 29 November 2006.

7. On 27 November 2006, we were informed by the Clerk that on 23 November 2006, he received a phone call from the appellant saying that he would not be able to attend the scheduled hearing as he was a pilot and had been assigned to fly overseas on 29 November 2006; that the Clerk had asked the appellant to write to the Board about his absence with supporting document and to apply for an adjournment; that the Clerk's assistant called the appellant on 24 November 2006 and the appellant assured the assistant that he would write to the Board as soon as possible.

8. At the hearing on 29 November 2006, the appellant failed to attend, either in person or by his authorised representative.

9. As at the time of hearing on 29 November 2006, the Clerk's Office had not received any written communication from the appellant.

(2007-08) VOLUME 22 INLAND REVENUE BOARD OF REVIEW DECISIONS

10. Section 68(2), (2B), (2C) and (2D) provide that:

*‘(2) Subject to subsection (2B), an appellant shall attend at the meeting of the Board at which the appeal is heard in person or by an authorized representative.’*

*‘(2B) If, on the date fixed for the hearing of an appeal, the appellant fails to attend at the meeting of the Board either in person or by his authorized representative the Board may-*

*(a) if satisfied that the appellant’s failure to attend was due to sickness or other reasonable cause, postpone or adjourn the hearing for such period as it thinks fit;*

*(b) proceed to hear the appeal under subsection (2D); or*

*(c) dismiss the appeal.’*

*‘(2C) If an appeal has been dismissed by the Board under subsection (2B)(c) the appellant may, within 30 days after the making of the order for dismissal by notice in writing addressed to the clerk to the Board, apply to the Board to review its order and the Board may, if satisfied that the appellant’s failure to attend at the meeting of the Board for the hearing of the appeal was due to sickness or any other reasonable cause, set aside the order for dismissal and proceed to hear the appeal.’*

*‘(2D) The Board may, if satisfied that an appellant will be or is outside Hong Kong on the date fixed for the hearing of the appeal and is unlikely to be in Hong Kong within such period thereafter as the Board considers reasonable on the application of the appellant made by notice in writing addressed to the clerk to the Board and received by him at least 7 days prior to the date fixed for the hearing of the appeal, proceed to hear the appeal in the absence of the appellant or his authorized representative.’*

11. We are not satisfied that the appellant’s failure to attend was due to sickness.

12. If the appellant had wished to invoke ‘other reasonable cause’, the onus was on him to satisfy us that his failure to attend was due to ‘other reasonable cause’. He is a pilot and he knows it. There is no evidence on the steps, if any, taken by him to ensure attendance at the hearing. There is no evidence or details of his assignment. There is no written application and the assertions made to the Clerk are not supported by any or any cogent evidence. We are not satisfied that his failure to attend was due to ‘other reasonable cause’.

(2007-08) VOLUME 22 INLAND REVENUE BOARD OF REVIEW DECISIONS

13. Thus, sub-section (2B)(a) does not apply.
14. There is no application by the appellant under sub-section (2D) to hear the appeal in his absence and sub-section (2B)(b) does not apply.
15. Since neither paragraph (a) nor paragraph (b) applies, paragraph (c) in sub-section (2B) applies and the appeal must be dismissed.
16. We dismiss the appeal under section 68(2B)(c).