

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D99/00

Salaries tax – allowable deductions – expenses of self-education – section 12(1)(c) of the Inland Revenue Ordinance (‘ IRO’).

Panel: Ronny Wong Fook Hum SC (chairman), Cheung Wai Hing and Edmund Leung Kwong Ho.

Date of hearing: 5 September 2000.

Date of decision: 29 November 2000.

The taxpayer in her tax return for the year of assessment 1998/99 claimed for a deduction for expenses of self-education paid by the taxpayer on 25 March 1998 for the period between 1 March 1998 and 31 August 1998. The Revenue rejected this claim of deduction. The taxpayer appealed and submitted that the sum in question should be apportioned and that she should be treated as having paid an aliquot portion of that sum within each month of the year of assessment.

Held:

The position of the taxpayer was governed by section 12(1)(c) of the IRO. The sum in question was obviously not paid within the year of assessment. There is no provision in the IRO which permits such apportionment. There is no justification to distort the meaning of the section to cater for her position.

Appeal dismissed.

Leung Wing Chi for the Commissioner of Inland Revenue.

INLAND REVENUE BOARD OF REVIEW DECISIONS

Taxpayer in person.

Decision:

1. Commencing from 1 April 1988, the Taxpayer worked as a part-time demonstrator in a university in Hong Kong [‘ the University’].
2. The Taxpayer started her post-graduate studies with the University on 1 September 1996.
3. On 25 March 1998, the Taxpayer paid the University \$21,050. This was her ‘ Composition fee’ for the period between 1 March 1998 and 31 August 1998.
4. The Taxpayer ceased working with the University on 25 October 1998. She began working as a health inspector on 26 October 1998.
5. In her tax return for the year of assessment 1998/99, the Taxpayer declared the following income from her employments:

Source	Amount \$
Income derived from the University	99,180.00
Income derived from the Hong Kong Government	98,963.06
	198,143.06

6. In the same return, the Taxpayer claimed the following deductions:

Nature	Amount \$
Laundry allowance	2,550
Expenses of self-education	26,300
	28,850

7. The claim for \$26,300 includes the sum of \$21,050 paid by the Taxpayer on 25 March 1998 in respect of her ‘ Composition fee’ for the period between 1 March 1998 and 31 August 1998.
8. By a determination dated 30 March 2000, the Revenue rejected the Taxpayer’ s claim.

INLAND REVENUE BOARD OF REVIEW DECISIONS

9. By a notice of appeal dated 28 April 2000, the Taxpayer sought to challenge against that determination. This notice was only received by this Board on 6 May 2000.

10. The Taxpayer submitted that she did appeal within the time limit prescribed by the IRO (Chapter 112). Her notice was delayed by the course of post. With this explanation, we are prepared to entertain her appeal.

11. The Taxpayer's position is governed by section 12(1)(c) of the IRO which provides that:

' In ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person –

(a) ...

(b) ...

(c) ...

(d) ...

(e) the amount of the expenses of self-education paid in the year of assessment not exceeding the amount prescribed in subsection (6).'

12. We are of the view that this section is clear and unambiguous. The sum in question was obviously not paid within the year of assessment. That sum was paid on 25 March 1998. The Taxpayer submitted that the sum in question should be apportioned and that she should be treated as having paid an aliquot portion of that sum within each month of the year of assessment. The short answer to this argument is that there is no provision in the IRO which permits such apportionment. There is no justification to distort the meaning of the section to cater for her position.

13. For these reasons, we dismiss the Taxpayer's appeal.