TD 93/D128 - Income tax: is expenditure incurred by an employee in applying for a promotion deductible under subsection 51(1) of the Income Tax Assessment Act 1936 ?

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Draft Taxation Determination

Income tax: is expenditure incurred by an employee in applying for a promotion deductible under subsection 51(1) of the *Income Tax Assessment Act 1936*?

1. Generally yes. If the expenditure will objectively lead to, or will be likely to lead to, an increase in the employee's assessable income without effecting a change in the employee's current income-earning activities, it will be deductible under subsection 51(1).

2. However, we consider that if the expenditure is incurred in applying for a promotion which will involve a change in the employee's current income-earning activities, it will not be deductible. This proposition is supported by the joint consideration of the decisions in *Case Z1* 92 ATC 101; 22 ATR 3549 and *FC of T v Maddalena* 71 ATC 4161; 2 ATR 541. Specifically, it is considered that if the promotion will result in the opening up of a new income-producing activity for the employee, the expenditure is not deductible because, "it would come at a point too soon to be properly regarded as incurred in gaining assessable income." *FC of T v Maddalena* 71 ATC 4161 at 4163; 2 ATR 541 at 549.

Example 1

A school teacher applies for three Deputy Principal positions during an income year which requires the following expenditure to be incurred :

Typing of Applications	*$ 60*
Travel to Interviews (Motor Vehicle Expenses)	*$ 480*
Accommodation	*$ 152*

The expenditure is considered to be deductible under subsection 51(1) because it will objectively lead to, or will be likely to lead to, an increase in the taxpayer's assessable income without causing a change in his/her current income-producing activities.

Example 2

After completing a law degree through part-time study, a clerk in the public service applies for a position as a solicitor with another government department. Expenditure similar to that which is contained in Example 1 is incurred as a result of the successful application.

We consider that the expenditure is not deductible under subsection 51(1) because it is incurred in opening up a new income-earning activity for the taxpayer, and consequently, "...would come at a point too soon to be properly regarded as incurred in gaining assessable income."

Commissioner of Taxation
27/5/93

FOI INDEX DETAIL: Reference No.
Related Determinations:
Related Rulings:
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