IT 105 - Payments by oil companies to service station proprietors

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TAXATION RULING NO. IT 105

PAYMENTS BY OIL COMPANIES TO SERVICE STATION PROPRIETORS

F.O.I. EMBARGO: May be released

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I 1070729	SERVICE STATION PROPRIETORS PAYMENTS BY OIL COMPANIES REBATES AND DISCOUNTS GALLONAGE ALLOWANCE	25(1)

PREAMBLE The following advice issued subsequent to a decision by a Board of Review in relation to the assessment of payments by oil companies to service station proprietors.

FACTS 2. In the case reported as 70 ATC Case B63, 16 CTBR(NS) Case 11, the Board considered the question of payments made by way of "gallonage allowances" by an oil company to which the appellant taxpayer was tied by a one brand petrol agreement. The payments were made under the terms of agreements entered into with the oil company which, briefly stated, provided for repayment of a loan to the taxpayer company to be made by way of rebate allowances in respect of each gallon of petrol purchased from the oil company. After repayment of the loan, the rebates were credited monthly by the oil company to the goods account of the taxpayer.

3. The Board held that in the circumstances, all rebates payments applied by the oil company to both the retailer's loan acccount or goods account were receipts of an income nature in the hands of the taxpayer.

4. In the hearing before the Board the case of Dickenson v FC of T (1958) 98 CLR 460 was strongly argued on behalf of the taxpayer company in support of the contention that the rebates were of a capital nature. In rejecting this claim, the Board distinguished Dickenson's case, where the taxpayer concerned was committing himself for the first time to the restriction of one brand trading, from the case under consideration which concerned payments in respect of the extension of an existing one brand tie. However, the Chairman of the Board expresssed doubts as to the validity of this distinction. He considered the transaction retained the
essential restrictive features to the taxpayer's business as were present in the Dickenson case. His opinion was that had the payments been made in a lump sum they would have been regarded as capital receipts to the taxpayer.

RULING 5. It is clear that the Board's decision to confirm the

assessment to tax of the gallonage rebate paid to the retailer, was made on the basis of the generally accepted tests as to what constitutes assessable income; - the payment being of a periodic type and directly linked with the gallonage of motor spirit sold by the taxpayer. The rebate payments were thus identified as having their origin in the current business operations of the taxpayer company.

6. While the decision given by the Board in this case confirms the departmental practice of regarding lump sum inducement payments to secure one brand ties as receipts of a capital nature, it supports the stand that periodical payments to a taxpayer which can be linked with his business operations are to be regarded as assessable income to the taxpayer. This decision is to apply regardless of the reasons which may be advanced by a taxpayer to explain periodic rebate receipts from an oil company i.e. repayment of loans, offsets against site improvement costs or others of this type which may broadly be described as tie payments either as an initial commitment to a one branch tie or an extension of an existing tie.

COMMISSIONER OF TAXATION