IT 180 - Repairs to property carried out after cessation of income production

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This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING NO. IT 180

REPAIRS TO PROPERTY CARRIED OUT AFTER CESSATION OF INCOME PRODUCTION

F.O.I. EMBARGO: May be released

REF N.O. REF: J204/1 P2 F204 DATE OF EFFECT:

B.O. REF: DATE ORIG. MEMO ISSUED: 10.12.64

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
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FACTS In 1952, a number of objections against the disallowance of deductions for repairs to property carried out after the property carried out after the property had ceased to be used in the production of assessable income, were allowed after consideration in Head Office. The cases related to business and rent-producing premises to which repairs were effected in contemplation of sale or of use by the taxpayer as a residence.

2. In a typical case, the then Second Commissioner said:)

> 'The question falling for consideration was whether expenditure incurred by the taxpayer during the year of income for repairs to premises which had been held by her for the purpose of producing assessable income during the year of income constituted an allowable deduction for the purposes of section 53 of the Income Tax Assessment Act 1936-1948. The point taken for the Commissioner was that, a the repairs were effected and paid for after the property had ceased to be rent producing, the expenditure was not to premises "held, occupied or used" for the purposes of producing assessable income. It was thought that the deduction was debarred by the terms of section 53(2).
>
> The view now held is that, providing the necessity for the repairs can be related to the period of time during which the premises were producing assessable income and providing, further, that the premises have produced assessable income during the year in which the expenditure was incurred, the provisions of section 53, in this regard, have been satisfied. A similar attitude has been adopted by this office in other parallel cases.'

3. Attention has now been directed to the subsequent decision of Taxation Board of Review No.1 in 12 TBRD, Case M2; 10 CTBR(NS) Case 24, upholding the disallowance of a deduction claimed under similar circumstances. There were, however,

special features in that case which led to its being sent on to the Board. It was contended on behalf of the Commissioner that the expenditure on repairs was of a capital nature.

RULING

4. It is not desired that the Board's decision should be regarded as overriding the decision outlined at paragraph 2 which produces an equitable result in circumstances where the effect of section 53 is not free from doubt. Accordingly, a deduction may be allowed for the cost of repairs to property providing:-

(a) the necessity for the repairs can be related to a period of time during which the premises have been used to produce assessable income of the taxpayer, and

(b) the premises have been used in the production of such assessable income of the year of income in which the expenditure in incurred.

COMMISSIONER OF TAXATION