


***IT 2118 - Whether resident of zone area. - resident of zone B present in zone A for less than 6 months of the year. - work in off-shore area - whether entitled to zone rebate.***

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TAXATION RULING NO. IT 2118

- WHETHER RESIDENT OF ZONE AREA.
- RESIDENT OF ZONE B PRESENT IN ZONE A FOR LESS THAN 6 MONTHS OF THE YEAR.
- WORK IN OFF-SHORE AREA - WHETHER ENTITLED TO ZONE REBATE.

F.O.I. EMBARGO: May be released

REF

H.O. REF: J199/22 P5

DATE OF EFFECT:

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SUBJECT REFS:

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ZONE ALLOWANCE  
REBATES - ZONE

79A

OTHER RULINGS ON TOPIC CITCM 495

PREAMBLE

Two decisions of Taxation Board of Review No. 3, Cases P82 and P83, 82 ATC 399 and 407; Cases 14 and 15, 26 CTBR(NS) 111 and 118 involved consideration of the provisions of the Income Tax Assessment Act relating to rebates for residents of isolated areas, i.e. zone rebates. Although the decisions relate to the operation of section 79A as it existed in the 1979 year, they have continuing application to the existing provisions of the Income Tax Assessment Act relating to zone rebates.

RULING

2. Entitlement to a zone rebate depends upon residency in the prescribed area which is determined by reference to specific provisions in sub-section 79A(3B). A person is regarded as a resident of a prescribed area if he or she has resided in the area or actually been in the area, whether continuously or not, for more than one-half of the year of income or, in some circumstances, more than 182 days in two years of income. The question of whether or not a person resided in a prescribed area for the required period can only be determined on the facts of a particular case and the comments appearing in paragraph 85 of CITCM 495 in relation to the former section 79A are still applicable in determining the question of residency.

3. Once the question of residency is determined sub-section 79A(2) operates to fix the rebate allowable. It does so by reference to a number of situations referred to in paragraphs 79A(2)(a-e) inclusive. In paragraph 79A(2)(f) there is a discretion available to the Commissioner to allow whatever rebate he considers reasonable in situations not covered by paragraphs 79A(2)(a-e) inclusive. The procedures to be generally followed in the application of paragraph 79A(2)(f) are

outlined in paragraph 88 of CITCM 495 in relation to the former counterpart of paragraph 79A(2)(f), i.e. paragraph 79A(2)(c).

4. The first of the Taxation Board of Review decisions referred to above involved the determination of the place of residence of the taxpayer. The evidence disclosed that the taxpayer was a deckhand on a fishing vessel operating out of Groote Eylandt. Throughout the year the taxpayer lived on board the boat and did not own, rent or maintain a house or other form of residence on the island or on the mainland. The evidence further disclosed that, throughout the year under review, the boat was at sea for approximately six days to each one spent in port.

5. A majority of the Board considered the trawler to be the taxpayer's place of residence. Since the trawler was at sea for more than one-half of the year of income and, therefore outside the zone area, the taxpayer could not be said to be a resident of a prescribed area as defined in former sub-section 79A(4). In the result no rebate was allowable.

6. The second of the Taxation Board of Review decisions referred to involved the exercise of the discretion under the former counterpart to paragraph 79A(2)(f), i.e. 79A(2)(c).

7. The taxpayer was a resident of a town in Zone B. He spent five months of the year under review there. For the remainder of the year he operated a trawler out of ports situated within Zone A visiting the ports only to unload, to take on provisions and to refuel. Time in port was estimated to be one month. In accordance with the general procedures outlined in paragraph 88 of CITCM 495 a rebate was allowed of an amount representing 5/6ths of Zone B rebate and 1/6th Zone A rebate.

8. In exercising the discretion under paragraph 79A(2)(c) the Board of Review decided that the taxpayer should receive the full Zone A rebate. Notwithstanding that the taxpayer was physically present in Zone A for only 1 month the Board was influenced by the fact that he had been exposed for more than six months to the uncongenial climatic conditions and isolation of Zone A areas but, more importantly, to the high cost of living in Zone A. In this context the factual situation is not markedly different to that of a fisherman who is a resident of a zone but spends, perhaps, more than half of the year at sea in pursuit of his occupation. Despite the absence at sea he is still faced with the disadvantages attached to the particular zone by reason of his residence there.

9. The decisions of Taxation Board of Review No. 3 should be followed in comparable circumstances.

COMMISSIONER OF TAXATION  
30 November 1984

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