IT 2122 - The deductibility of rental expenditure application of recent court decision

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TAXATION RULING NO. IT 2122

THE DEDUCTIBILITY OF RENTAL EXPENDITURE APPLICATION OF RECENT COURT DECISION

F.O.I. EMBARGO: May be released

REF H.O. REF: J35/194 DATE OF EFFECT: Immediate

B.O. REF: 80/5976 DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1122314	ACCOMMODATION COSTS WHILE WORKING AWAY FROM HOME	51(1)

FACTS In a judgment handed down in the Supreme Court of Victoria, FCT v. Charlton reported at 84 ATC 4415, 15 ATR 711, Crockett J has partly allowed the Commissioner's appeal against the decision of Board of Review No. 2 (Case Q76, 83 ATC 383, 27 CTBR(NS) Case 3) allowing the taxpayer's objection against the disallowance of the rental expenditure.

2. The taxpayer was a pathologist who worked for a number of years for the Commonwealth Health Department at the Bendigo Hospital. He also carried out autopsies for the local coroner for which he received a statutory fee. The taxpayer leased a small flat in Bendigo where he stayed during the week, returning to the family home in Melbourne whenever he could.

3. In late December 1977, the taxpayer went on five months leave prior to his retirement in May 1978. During his leave, the taxpayer continued to perform coronial examinations in Bendigo as and when required. When coronial examinations were performed, he stayed overnight at the flat which he had retained for this purpose. The taxpayer lived at the family home during January - April 1978 and at the Wangaratta Base Hospital while he worked there in May 1978.

4. The Supreme Court (Crockett J) held that the rental expenditure for the months January to April was not incurred in gaining or producing assessable income. The expenditure was dictated by private considerations in that he chose to live so far from Bendigo where he derived the fee income that he was obliged to incur travelling and accommodation expenses (Lunney v. FCT (1957) 100 CLR 478 applied.)

5. In the month of May, the taxpayer was required to work in Wangaratta and Bendigo and his Honour found that the nature and circumstances of that work made the taking of rest necessary at Bendigo. These circumstances were analogous to those noted by Pollock MR in Ricketts v. Colquhoun (1925) 1 KB 725 at page 731 where a nexus was seen between travelling expenses incurred by persons performing itinerant duties and the

derivation of assessable income. The rental expenditure for May was therefore an allowable deduction.

RULING 6. The decision of the Court is seen as one based on its own facts. In the circumstances of this case, it is accepted that the rental expenditure for May is deductible because of the itinerant duties performed by the taxpayer during that month.

7. No appeal has been lodged against the decision of the Supreme Court.

COMMISSIONER OF TAXATION
11 December 1984