


IT 2133 - Income tax : Australia - US double taxation convention 1953 : Article XIII - lecturer

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TAXATION RULING NO. IT 2133

INCOME TAX : AUSTRALIA - US DOUBLE TAXATION CONVENTION
1953 : ARTICLE XIII - LECTURER

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1132050	TEACHERS PROFESSORS AUSTRALIA/US DOUBLE TAX.	INCOME TAX (INTERNATIONAL AGREEMENTS) ACT. SCHEDULE 2, ARTICLE XIII (AS APPLICABLE 1976 AND 1977)

PREAMBLE It has been decided that no appeal will be lodged against a decision of Taxation Board of Review No. 3 dated 12 October 1984 that income derived by a US citizen from lecturing in Australia during the years ended 30 June 1976 and 1977 was exempt from income tax in Australia by virtue of Article XIII of the then applicable Australia - US Double Tax Convention. The decision is reported as Case R106 84 ATC 710 and 27 CTBR (NS) Case 160.

FACTS

2. The taxpayer, a US citizen, arrived in Australia in June 1975 to take up an appointment for an indefinite term as a lecturer at a College of Advanced Education (CAE). He gave no indication in his application for the position, or in any subsequent written correspondence (with the exception of the application for exemption from Australian income tax), of any intention to stay in Australia for a limited period only. The taxpayer entered Australia on a migrant visa - rather than a temporary resident visa - and still resides in Australia. In April 1977 the taxpayer orally advised the principal of the CAE that he intended to resign shortly and return to the USA.

3. At the hearing the taxpayer gave evidence that when he arrived in Australia he intended to stay for only 22 months. He said that he maintained this intention until May 1977 when, following a series of misfortunes, he decided to remain in Australia and not to resign his lecturership.

4. The issue before the Board was whether the income derived by the taxpayer during the 1976 and 1977 income years as a lecturer was exempt from Australian income tax in terms of Article XIII. The majority of the Board, Mr Hogan and Dr Gerber (Dr Beck dissented), held that the income derived by the

taxpayer prior to 15 May 1977 as a lecturer was exempt under Article XIII.

5. The majority held that the word "purpose" in Article XIII refers to the subjective purpose of the taxpayer, not an objectively ascertained purpose. This conclusion was reached by construing the words of the Article and Mr Hogan found some support in the decision of the Canadian Supreme Court in M.N.R. V. Stickel 74 DTC 6268. It was also accepted, on the basis of the taxpayer's oral evidence, that up to mid-May 1977 he had the purpose of limiting the period of his stay in Australia to less than two years.

6. The majority further held, following the decision in Stickel's Case, that the income of a taxpayer who remains in the country "for the purpose of teaching" beyond the stipulated two year period was not necessarily excluded from the exemption provided by the Article. They considered that the words "during a period not exceeding two years" are an integral part of the expression "for the purpose of teaching ... at a university" and do not relate to the length of the visit as revealed by actual events.

RULING

7. It is accepted that the majority's interpretation of Article XIII was correct. Furthermore, the decision reached by the Board was open to it on the evidence adduced at the hearing. To the extent that Canberra Income Tax Circular Memorandum No. 705 at paragraph 113 is inconsistent with the Board's decision, the decision should be applied.

COMMISSIONER OF TAXATION
4 February 1985

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