

IT 2135 - Income tax : home office expenses application of recent court decision

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TAXATION RULING NO. IT 2135

INCOME TAX : HOME OFFICE EXPENSES
APPLICATION OF RECENT COURT DECISION

F.O.I. EMBARGO: May be released

REF H.O. REF: 83/5832 DATE OF EFFECT: Immediate

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

F.O.I. INDEX DETAIL

REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

I 1121997 HOME OFFICE 51(1)
EXPENSES
- SELF EMPLOYED
SCRIPTWRITER

OTHER RULINGS ON TOPIC IT 140, IT 191, IT 192, IT 193, IT 194.

PREAMBLE In a judgement handed down in the Supreme Court of New South Wales, Swinford v. FCT reported at 84 ATC 4803, 15 ATR 1154, Hunt J. allowed the taxpayer's appeal against the decision of Board of Review No. 1 (Case R 33, 84 ATC 312, Case 85, 27 CTBR (N.S.) 709) upholding the Commissioner's decision in disallowing a claim for home office expenses.

FACTS 2. The taxpayer, a self-employed script writer, claimed a proportionate deduction for rent referable to a room in her private residence which she used as the sole base for her writing activities. The taxpayer's home consisted of a two-bedroom unit of which the second bedroom was converted for use as an office. The taxpayer was not provided working accommodation by the organisations she wrote for and inherent in her decision to lease the unit was the availability of the second bedroom in which she could carry out her writing activities. The evidence adduced before the Court established that the room was the only place where the taxpayer physically did her writing and was used almost exclusively for that purpose.

3. The room was furnished with a large writing desk, chairs, storage chests (used for storing scripts), telephone and answering machine and a typewriter. The taxpayer invariably worked at her desk from 10 a.m. to 6 p.m. four days a week and from 10 a.m. to 1 p.m. on the fifth day. Whilst writing a serial for the then Australian Broadcasting Commission the taxpayer frequently met with an employee of that organisation at her unit to discuss various aspects of the scripts.

4. In finding for the taxpayer, Hunt J. said that the High Court decisions in Handley v. FCT 81 ATC 4165, 11 ATR 644 and FCT v. Forsyth 81 ATC 4157, 11 ATR 657 were distinguishable on the basis that those cases dealt with a study in the taxpayer's home which the taxpayer used for professional work of a type which could be done at home rather than in

Chambers, only as a matter of convenience. His Honour found that in the present appeal the home office was the taxpayer's sole base of operations. The taxpayer did not work at home rather than elsewhere merely as a matter of convenience.

5. His Honour sought to distinguish between payments of interest upon money borrowed to purchase premises (where the essential character of the payments of interest usually relate back to the character of the expenditure upon the purchase of the premises) and the payments of rent for those premises (where the essential character of those payments of rent may be more readily related to the use of the premises at the time of each such payment). Hunt J. concluded that the essential character of the expenditure, so far as it related to the additional room which the taxpayer rented to carry out her writing activities, was for the purpose of producing assessable income and was not of a capital, private or domestic nature.

6. In arriving at this conclusion, Hunt J. said that the use to which premises are to be put is not an irrelevant consideration in determining the essential character of the expenditure for the purposes of sub-section 51(1).

RULING

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

8. The decision of the Court follows the principles outlined in previous Taxation Rulings on the subject. The decision may be applied to similar situations where self-employed taxpayers derive assessable income from business activities carried on from a room within the home which is maintained for that purpose.

9. The decision is not seen as extending the ambit of deductions for home office expenses to the class of taxpayers considered in the Handley and Forsyth cases.

COMMISSIONER OF TAXATION

11 February 1985

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