IT 2199 - Income tax : allowable deductions : travelling expenses between place(s) of employment and/or place(s) of business

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TAXATION RULING NO. IT 2199

INCOME TAX : ALLOWABLE DEDUCTIONS : TRAVELLING EXPENSES BETWEEN PLACE(S) OF EMPLOYMENT AND/OR PLACE(S) OF BUSINESS

F.O.I. EMBARGO: May be released

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I 1199486	TRAVELLING EXPENSES TRAVEL BETWEEN PLACES OF EMPLOYMENT AND/OR BUSINESS	51(1)

PREAMBLE In recent times some inconsistency appears to have arisen in the application of sub-section 51(1) to expenses incurred in travelling between two places of employment, two places of business or a place of employment and a place of business. The purpose of this Ruling is to restate the approach to be adopted in these cases.

2. The most recent judicial consideration of this topic occurred in the New South Wales Supreme Court in Garrett v. F.C. of T. 82 ATC 4060 : 12 ATR 688. The Court in that case surveyed the authorities relevant to this question. It is not necessary to repeat them. For present purposes the operation of sub-section 51(1) in this area was described in the decision in the following terms:-

> "On the other hand, where the travelling expenditure is incurred on journeys between different places of business or employment, the expenditure can be regarded as being a deduction within the sub-section and this can be so even though one of the places of business may also be the home of the taxpayer, or the home can be so construed: Re The Income Tax Acts (1903) 29 VLR 298; (1970) 16 CTBR(NS) Case 30; Case B81, 70 ATC 375; (1952) 2 CTBR(NS) Case 59; Case B107 (1952) 2 TBRD 536; FCT v. Green (1950) 4 AITR 471; 81 CLR 313; FCT v. Collings (1976) 6 ATR 476; 76 ATC 4,254 (Rath J); Owen v. Pook (Insp of Taxes) [1969] 2 All ER 1; [1970] AC 244; Taylor v. Provan (Insp of Taxes) [1975] AC 194 at 215 and 225."

3. The extract from the decision needs to be expanded in one respect which arises out of the factual situation before the Court and which is inherent in the extract. It is that the travel between the two places of employment or business must be for the purpose of engaging in the income producing activities. This is of particular importance where one of the places of employment or business is the home of the taxpayer.

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4. Claims for income tax deduction for expenses incurred in travelling directly between two places of employment, two places of business or a place of employment and a place of business should be allowed where the taxpayer does not live at either of the places and the travel has been undertaken for the purpose of enabling the taxpayer to engage in income producing activities.

5. Difficulty may arise where a taxpayer lives at one of the places of employment or business because it is not in all cases of this nature that an income tax deduction is allowable for the costs of travel between the employment or business carried on at his home and another employment or business elsewhere. It is not practicable to lay down a rule which is capable of application in all cases. At best some general propositions can be made as a framework within which individual cases may be determined.

6. It is necessary that the income producing activity carried on at the taxpayer's home should constitute an employment or a business. It is not sufficient that a room in the home is used in association with an employment or business conducted elsewhere. It is rare for a home to represent a place of employment. The more usual situation is for a self-employed person to use his home or part thereof as a base of business operations. Examples which come to mind are house painters, plumbers, electricians, etc. Furthermore, it is not uncommon for traders to live on the same premises as their stores and it is frequently the case that medical practitioners will conduct their practices from surgeries located at their homes.

7. In many instances it will be readily apparent that the cost of travel between the home based employment or business and an employment or business located elsewhere is part and parcel of the income producing activities and allowable as an income tax deduction. In the Garrett case, for instance, the taxpayer lived at A where he conducted both a medical practice and a farm. He also conducted medical practices in other centres from which he derived significant amounts of income. The Court found that travel between the various centres was part of the operations by which the taxpayer produced his assessable income and its cost was an allowable deduction.

8. Other situations come to mind where travel is of the same nature, e.g. the doctor who conducts his practice from his home and who has to travel to a hospital to carry out duties associated with an appointment at the hospital; a primary producer who may contract with a local council to provide labour and equipment to the council and who has to travel between his home based farm and the site of operations; a taxpayer who carries on business at his home and who has business interests interstate.

9. By way of contrast situations may arise where a taxpayer has full-time employment or carries on a business away from his home and also conducts a part-time income producing

activity from his home which he attends to in the evening or at weekends or, perhaps, at various times during the year. A number of cases of this nature have come before Taxation Boards of Review and the Boards have denied deduction for the cost of travel between the taxpayer's home and his place of full-time employment or business on the basis the travel is more in the nature of travel between home and place of employment or business than travel between two places of employment or business. Income tax deductions for the cost of travel in these situations should be resisted unless there is some other particular aspect of the travel which makes its cost an allowable deduction, e.g. if the home based part-time activity was an orchard, the cost of delivering fruit to market would be an allowable deduction notwithstanding that delivery may be effected during the course of the journey to the full-time employment or business.

10. Similarly, a taxpayer who carries on business from his home may engage part-time in employment or other business activity outside the normal hours of the business carried on at his home, e.g. the house painter operating from his home may be employed in the evenings as a theatre attendant or a steward in a club. The cost of travel between home and the place of the after hours activity should not be allowed as an income tax deduction.

11. Examples of the situations referred to in the preceding paragraphs may be found in decisions of Taxation Boards of Review reported as Case F43, 74 ATC 245, 19 CTBR(NS) Case 61; Case N35, 81 ATC 186, 24 CTBR(NS) Case 107; Case N44, 81 ATC 216, 24 CTBR(NS) Case 114.

COMMISSIONER OF TAXATION
27 September 1985