IT 2258 - Income tax : election expenses: deductibility of expenditure incurred and effect of public funding of elections.

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This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

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TAXATION RULING NO. IT 2258

INCOME TAX : ELECTION EXPENSES: DEDUCTIBILITY OF EXPENDITURE INCURRED AND EFFECT OF PUBLIC FUNDING OF ELECTIONS.

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1205969	ELECTION EXPENSES	74(1)
	REIMBURSEMENT OF ELECTION EXPENSES	74A 74(2) 74A(2)

PREAMBLE The purpose of this Ruling is to set out guidelines to be followed in determining the extent to which income tax deductions are allowable in terms of sub-sections 74(1) and 74A(2) for expenditure incurred in being elected as a member, or in contesting an election for membership, of the Federal or a State Parliament, of the Legislative Assembly of the Northern Territory, of the Australian Capital Territory House of Assembly or of a local governing body. The Ruling also examines the implications for income tax purposes of the introduction of public funding of Federal and New South Wales elections.

PART 1 : ELECTION EXPENSES

FACTS 2. The decision of the Federal Court of Australia in Federal Commissioner of Taxation v Wilcox 82 ATC 4411; 13 ATR 395 has necessitated a review of the manner in which claims for deductions under sub-section 74(1) of the Income Tax Assessment Act 1936 should be treated. The Wilcox case was an appeal by the Commissioner from the decision of Sheahan J. in the Supreme Court of Queensland (13 ATR at 396). The Supreme Court had dismissed the Commissioner's appeal from a decision of Taxation Board of Review No. 3 (reported as Case N80 81 ATC 408, 25 CTBR(NS) Case 35).

3. At issue before the Federal Court was the extent to which expenditure of $1185 incurred by the taxpayer was allowable as an income tax deduction under sub-section 74(1). The expenditure was incurred by the taxpayer during the year ended 30 June 1979 following his pre-selection on 28 September 1978 as his political party's candidate for the next State Parliament general election due to be held before the end of 1980. Issue of the writ for the election occurred on 27 October 1980 and the taxpayer submitted his nomination on 3 November 1980. The polling date was 29 November 1980 which was more than

two years after the date of the endorsement of the taxpayer. In the event the taxpayer was unsuccessful in his bid for election.

4. Up until the Wilcox case it had been the official practice to restrict claims for income tax deductions for election expenses to expenditure incurred after the issue of election writs. The Federal Court held, however, that section 74 operated to allow the taxpayer income tax deductions for expenses incurred subsequent to his endorsement some two years prior to the actual election date. All judges agreed that the phrase "in contesting an election" in sub-section 74(1) could be referable to events prior to the commencement of the formal election process.

5. Since the Wilcox case, another claim under section 74 has been reviewed by a Taxation Board of Review. It is reported as Case S23 85 ATC 253; 28 CTBR(NS) 169 Case 22. A sitting member of a State Parliament claimed as a deduction under section 74 expenditure incurred some time after she had been elected to Parliament and almost two years before the next election took place. The taxpayer was not endorsed as her party's candidate for the next election at the time the expenditure was incurred.

6. The Board of Review did not allow the taxpayer a deduction under section 74. The Board observed that, although the decision in the Wilcox case provides authority for the view that campaign expenses incurred prior to the official commencement of the election may in certain circumstances qualify for deduction in terms of section 74, the precise parameters of time are not clearly defined. In the case before it, the Board decided that, having regard to all the circumstances, and particularly the absence of party endorsement, the taxpayer was not engaged in contesting an election at the relevant time. Even if she was, there was not sufficient connection between the expenditure and the contesting of an election for a deduction to be allowable.

RULING

7. In practice the decision in the Wilcox case means that provided expenditure can be characterised as a type that would be incurred by a candidate to further his or her chances of being elected to a Parliament, the expenditure will qualify for deduction under section 74.

8. Election expenses incurred by an endorsed candidate will qualify for deduction notwithstanding that endorsement, which may not always be a very formal process, may be given two or three years prior to the relevant election. Expenditure incurred in gaining pre-selection is not seen as coming within the scope of section 74.

9. Sitting members representing a political party may be endorsed for the next election at any time between elections or they may fail to obtain endorsement and still attempt to be re-elected. Whether expenditure incurred by them should be accepted as election expenses or whether it is incurred in the course of undertaking duties as the sitting member will

sometimes require close scrutiny. It will be a matter of being satisfied that the expenditure is directly related to the next election. A similar approach would need to be followed with independent sitting members.

10. In the case of independent candidates, again it will be a question in each case of determining whether particular expenses can be said to be incurred in being elected as a Member or in contesting an election for membership of a Parliament. Expenditure incurred by independent candidates close to the date of an election should present little problem. Where the expenditure is incurred some time before the writs for an election are issued, however, regard may need to be had not only to the precise nature of the expenditure but also to the background activities of the taxpayer relevant to his claims, his or her declared political intentions and whether the activities giving rise to the expenditure could be regarded as representing those of a person attempting to be elected.

11. Similar considerations will apply to election expenses of candidates for local governments or the ACT House of Assembly. Section 74A follows closely section 74, i.e. it relates to expenditure incurred in being elected as a member, or in contesting an election for membership.

12. Following the recent introduction of Subdivision F of Division 3 of part III of the Income Tax Assessment Act, i.e. the substantiation provisions, income tax deductions will not be allowed for unvouched expenditure incurred after 1 July 1986 in contesting an election. Expenditure in respect of which a deduction would otherwise be allowable under section 74 or 74A is specifically included in the definition of "employment-related expenses" to which the substantiation provisions apply. As a result, candidates for election in Federal, State and local government elections will be required to substantiate all such expenses incurred after 1 July 1986.

13. In addition recently enacted section 74B specifically excludes, subject to the following exceptions, expenditure incurred after 19 September 1985 in respect of entertainment expenses. The exceptions relate to entertainment that is available to the public generally and to expenditure on meals while travelling in the course of a campaign provided that the expenditure was not incurred in the course of entertaining another person.

14. Instructions contained in CITCM 692 and in the Business Assessing Handbook, Vol. 2, paragraphs 2.10.74 to 2.10.78 are modified in accordance with this ruling.

PART 2 : PUBLIC FUNDING OF ELECTIONS

FACTS

15. Public funding of elections has been introduced by the Australian and New South Wales Governments. The relevant legislation permits reimbursement of certain campaign expenses

incurred by candidates. The payments are made under Division 3, Part XVI of the Commonwealth Electoral Act 1918 (as amended) and the New South Wales Election Funding Act 1981, as the case may be. Under the Commonwealth scheme a candidate must receive 4% of the total number of formal first preference votes in an election before an entitlement to public funding arises. The New South Wales legislation provides, as a general rule, that an entitlement to public funding arises if a candidate is entitled to a refund of his or her election deposit. Payment is made either to the candidate or the political party which he represents, depending on the circumstances. The important features of each scheme are outlined below.

Commonwealth

16. The election funding scheme is administered by the Electoral Commission which determines in each particular case whether an item of expenditure is 'election-related'. The Commission must be satisfied that the electoral expenditure was expenditure incurred or authorised by a candidate or a political party and specifically related to an election. The electoral expenditure eligible for reimbursement is the total expenditure incurred on certain items, being goods and services provided between the issue of the writ for an election and the end of polling day in the election, irrespective of when the expenditure on the items was actually incurred. The Electoral Commission has indicated that the following types of expenditure will prima facie be accepted as "election-related":

- any item included in the return of electoral expenditure e.g. electoral advertising expenses, expenses of printing electoral material that is used in the electoral period, costs of conducting during the election period an opinion poll or other research relating to the election;

- interest paid on money borrowed to finance the election campaign

- travel and accommodation costs associated with the campaign

- salaries paid to persons employed for campaign purposes

- auditing costs to provide an audit certificate to support the claim

- costs of production of campaign novelty items - car stickers, T-shirts, lapel buttons or badges, pens pencils or balloons

- costs of insurance policies specifically to cover volunteer workers for the campaign

- additional expenditure on postage and telecommunications generated by an election for the period from the announcement of the election until

polling day

- running costs for vehicles used during the campaign period
- expenditure on the holding of campaign rallies and meetings
- expenditure for the purpose of conveying voters to the polls
- payment to scrutineers

17. Expenditures of the kinds listed in the preceding paragraph would generally be allowed as income tax deductions under sub-section 74(1) or section 74A of the Income Tax Assessment Act. For the purposes of sub-section 74(1) and section 74A the list is not exhaustive. Expenditure which prima facie will not be approved to support a claim for public funding may, nevertheless, qualify as election expenses, e.g. ex-gratia payments to volunteer workers, nomination deposits or costs involved in raffles or other fundraising activities.

18. When the Electoral Commission is satisfied that an amount is payable to a candidate or a political party the payment will be made to the agent of the candidate or political party. In the case of political parties the agents will generally comprise the national secretary and the secretaries of the State and Territory branches of the party.

19. Candidates endorsed by registered political parties may not claim public funding on an individual basis. It is the party which will lodge a claim. The party may distribute any public funding payment as it sees fit. Expenditure incurred by an endorsed party candidate is deemed for the purposes of the Electoral Act to be incurred by the State Branch of the party.

20. To be eligible for public funding an independent candidate must be registered in the Register of Candidates with the Electoral Commission. A candidate may appoint an agent. If there is no appointment of an agent, the candidate is taken to be his/her own agent. A claim by a registered candidate may be submitted only by the agent of the candidate.

New South Wales

21. Under the New South Wales Election Funding Act 1981 public funding of election expenditure is available to a sitting member or unsuccessful candidate in respect of expenditure incurred from the day following the polling day of the previous election until polling day of the current election. A new candidate is eligible for reimbursement of election expenditure incurred 12 months before the day on which the candidate was nominated until polling day of the current election. For income tax purposes the new candidate may be entitled to a deduction for electoral expenditure incurred prior to 12 months before the nomination date even though the expenditure cannot be used to

support a claim for public funding.

22. Election expenditure which has to be disclosed is expenditure for or in connection with promoting or opposing directly or indirectly a party or the election of candidates or for the purpose of influencing directly or indirectly the voting at an election. As with the Commonwealth legislation public finding payments are made directly to an independent candidate or his agent and to the agents of political parties for appropriate distribution.

RULING

23. Sub-section 74(2) provides that, where an income tax deduction has been allowed or is allowable under sub-section 74(1) in respect of any election expenditure and the expenditure or any part of it is reimbursed to the taxpayer or paid for him by any other person or by any organisation, the assessable income of the taxpayer of the year in which the amount is so reimbursed or paid shall include the amount. A similar provision, sub-section 74A(4), applies in case of election expenses of candidates seeking election to local government bodies and the Australian Capital Territory House of Assembly.

24. In the case of an endorsed candidate who is a member of a political party claims for public funding, as has been stated earlier, are made by the agent of the political party and any funding is paid to the party. Where public funding is paid to a political party the candidate is not required to include any part of the funding in his assessable income, unless and until the party in turn either reimburses, or pays on behalf of the candidate, expenses allowed or allowable under sub-section 74(1). Any reimbursement for election expenses received by the candidate from the political party or the amount of any expenses paid by the party on behalf of the candidate constitute assessable income of the candidate in terms of sub-section 74(2) or sub-section 74A(4)

25. In the case of an independent candidate, a claim for public funding is made by or on behalf of the candidate and payments are made directly to him or his agent. In these circumstances, any public funding payments would be required to be included in the candidate's assessable income.

COMMISSIONER OF TAXATION
30 June 1986

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