


IT 2374 - Income tax : loss from rental property before being leased

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TAXATION RULING NO. IT 2374

INCOME TAX : LOSS FROM RENTAL PROPERTY BEFORE BEING
LEASED

F.O.I. EMBARGO: May be released

REF

H.O. REF: 84/16771-1
84/16772-0

DATE OF EFFECT: Immediate

B.O. REF:

DATE ORIG.

MEMO ISSUED: 22 August 1986

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1206748	RENTAL PROPERTIES	51
	- LOSSES	54
	- INTEREST ETC INCURRED BEFORE DERIVATION OF INCOME	67

PREVIOUS RULING ON TOPIC IT 166

PREAMBLE

No appeal is to be lodged against unreported decisions (Board references : M. 474-475/1984) of Taxation Board of Review No. 2 dated 30 May 1986 that taxpayers were entitled to deductions for expenses incurred in respect of a rental property which was unoccupied for 2 1/2 years before being leased.

FACTS

2. The taxpayers were a married couple and at all relevant times were public servants. In April 1978 they purchased as joint tenants a residential property a few kilometres from their matrimonial home. Although the property was in a suitable condition to lease, the taxpayers decided to do some painting work before making it available to be leased.

3. The house remained vacant for about 2 1/2 years and during that period the taxpayers did some painting work and generally maintained the property. No attempt was made to lease the property during this period. The property was placed in the hands of a real estate agent in October 1980 and leased shortly thereafter.

4. At the hearing the husband gave evidence that the property had been purchased with the intention of leasing it to gain rental income. He also said that the painting work had taken longer than expected because of personal and sporting commitments.

5. The issue before the Board was whether the taxpayers were entitled to deductions for interest, rates, borrowing expenses, depreciation of furnishings, insurance and standing charges for electricity and gas in the years ended 30 June 1979 and 1980. No rental income was derived from the property in

those years by the taxpayers.

6. The Board unanimously decided to allow the taxpayers' objections. It concluded that the husband was a witness of truth and it accepted his evidence that the property in question was acquired with the intention of leasing it for the production of income. The Board relied on the decision of the National Court of Papua New Guinea in *Travelodge Papua New Guinea Ltd v Chief Collector of Taxes* 85 ATC 4432 in finding that the outgoings for interest, rates, insurance and standing charges were deductible under sub-section 51(1) of the Income Tax Assessment Act.

7. The Chariman, who delivered the reasons of the Board at the hearing, noted that the fact that rental income was not derived in the years in issue did not, of itself, prevent the expenses being deductible under sub-section 51(1). He also stated that "we do not see how the length of the period between acquisition of the property and installation of a tenant can, of itself, play a deciding role in our determination especially where the explanations given by the taxpayer appear totally acceptable or in any event were not effectively challenged". The Board also held that the depreciation claim was allowable under section 54 and the borrowing expenses claim was allowable under section 67.

RULING

8. It is accepted that the decision reached by the Board was open to it on the evidence adduced at the hearing. The decision is consistent with Taxation Ruling No. IT 166. It should be applied in similar fact situations where a property is not used for gaining assessable income for a significant period but it is clear that throughout the relevant period the taxpayer's intention was that it would in the future be used exclusively in the production of assessable income.

COMMISSIONER OF TAXATION
26 November 1986