IT 2385 - Income tax : expenses incurred by beneficiaries of discretionary trusts

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TAXATION RULING NO. IT 2385

INCOME TAX : EXPENSES INCURRED BY BENEFICIARIES OF DISCRETIONARY TRUSTS

F.O.I. EMBARGO: May be released

REF N.O. REF: 87/1554-8 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210584	DISCRETIONARY TRUSTS - EXPENSES INCURRED BY BENEFICIARIES	51(1)

PREAMBLE In a decision handed down by the Administrative Appeals Tribunal, the Tribunal held that a beneficiary of a discretionary trust was not entitled to deductions for expenses said to be incurred in relation to the trust income. AAT reference QT 85/1311.

FACTS 2. The taxpayer was a beneficiary of a discretionary trust, he was not under any legal disability. He was also a director of the corporate trustee of that trust. The only source of income of the taxpayer was trust income.

3. On the 28 June 1983 the trustee of the discretionary trust exercised its discretion in the taxpayer's favour resulting in the taxpayer receiving a distribution from the trust. In the taxpayer's return for the year ended 30 June 1983 he claimed a deduction under sub-section 51 of the Income Tax Assessment Act for motor vehicle expenses, entertainment expenses, stationery, bank interest and telephone expenses. These items were claimed as a deduction against the trust distribution.

4. The Tribunal held that the taxpayer was not entitled to any deduction as the expenditure was not incurred in gaining or producing the taxpayer's assessable income. The taxpayer had not shown that there was a sufficient nexus between the expenditure incurred and the receipt of the income.

5. At its highest the taxpayer had a mere expectancy of receiving income from the trust. The taxpayer was not presently entitled to the income of the trust when the expenditure was incurred.

6. The Tribunal's decision is consistent with an earlier decision of Taxation Board of Review No.3 in Case M36 80 ATC 280 Case 11 24 CTBR (NS).

RULING 7. The decision of the Tribunal is in accordance with the Commissioner's current practice of not allowing deductions under

sub-section 51(1) to beneficiaries of trusts in relation to trust income unless it is established that they were presently entitled to the trust income when the expenditure was incurred. This decision should be applied in all similar cases.

COMMISSIONER OF TAXATION
19 March 1987