

IT 2404 - Income tax : expenditure incurred by air traffic controllers in obtaining and maintaining a pilot's licence

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TAXATION RULING NO. IT 2404

INCOME TAX : EXPENDITURE INCURRED BY AIR TRAFFIC
CONTROLLERS IN OBTAINING AND MAINTAINING A PILOT'S
LICENCE

F.O.I. EMBARGO: May be released

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I 1210941 SELF-EDUCATION EXPENSES 51(1)
 AIR TRAFFIC CONTROLLERS
 FLYING LESSONS

OTHER RULINGS ON TOPIC IT 271, IT 285, IT 2198, IT 2290

PREAMBLE

In FCT v. Wilkinson 83 ATC 4295; 14 ATR 218, the Supreme Court of Queensland held that an air traffic controller was entitled to an income tax deduction for expenditure incurred on flying lessons. The question has arisen of the extent to which the decision applies to other air traffic controllers who incur expenditure on flying lessons.

2. In a pamphlet entitled "Careers" published on behalf of the Department of Aviation it is stated that air traffic controllers direct air traffic throughout Australia's main air routes. They are responsible for the orderly flow of traffic, with minimum delay and maximum safety. Controllers work at airports in capital cities and in the larger country centres throughout Australia and its territories.

3. The pamphlet goes on to say that there are two training courses offered by the Department:-

A short-term direct entry training course for candidates with previous aeronautical experience.

A long term training course for candidates with little or no previous aeronautical experience.
This course is primarily designed for school leavers with passes in four approved subjects at final year high school.

Selection for both courses is competitive, based on qualifications, experience and performance in an aptitude test and interview.

4. The Department of Aviation has indicated that the career structure for a qualified air traffic controller begins at Air Traffic Controller, Class 1. It proceeds through 12 ranges to Air Traffic Controller, Class 7 and then to

Superintendent.

5. Promotion within the various grades is based on efficiency. The Department has stated that air traffic controllers who obtain and maintain a pilot's licence would thereby increase their knowledge and efficiency in relation to the duties and responsibilities required of them by the Department and, as a general proposition, would make their advancement more certain.

6. In the Wilkinson case the taxpayer, at his own expense, obtained a student pilot licence on 19 January 1979, a restricted pilot's licence by 20 January 1980 and in June 1982 he obtained an unrestricted licence. He outlaid \$2000 for flying lessons during the year ended 1979 and was allowed a self-education rebate of \$250 in relation thereto. He claimed an income tax deduction under sub-section 51(1) for the balance, namely \$1750. The Supreme Court of Queensland upheld his claim.

7. After examination of the duties of employment of an air traffic controller and the range of previous decisions of courts which touched on this question, Williams J concluded:

"In this case the respondent incurred the expenditure in question in order to better equip himself to fulfil his responsibilities as an air traffic controller. One of his main motives (if not the sole motive) was to improve his prospects of promotion and advancement in grade and salary. He became better equipped to carry out the duties of his employment. It is indisputable on the evidence that the obtaining of flying qualifications and experience, the consequential greater appreciation of the responsibility of an air traffic controller, and the consequential increase in efficiency, made advancement in the service more certain; such factors are often decisive in relation thereto. The responsibilities of an air traffic controller in an age of changing technology demand a progressive acquaintance with all aspects of aviation and there is an implied obligation incidental to the position that an air traffic controller will avail himself of opportunities to maintain and improve his efficiency. Departmental heads, and those responsible for determining promotions, treat flying qualifications as a matter of distinct advantage. Promotion in fact followed quickly upon the respondent's obtaining his student pilot's licence, and that (on the balance of probabilities) was a material, if not decisive, consideration; that promotion carried with it an increase in salary. The respondent spent money to make it more certain that he would earn more. The obtaining of a pilot's licence went beyond 'improving mind and body'; there was a 'perceived connection' between the outgoing and obtaining assessable income, in that the obtaining of the licence made it 'inherently likely' that the respondent would be promoted and receive a higher salary. Further, the conduct and expenditure was reasonably calculated to produce that result. Each of these matters taken in conjunction provides a foundation for, and leads inevitably to, the conclusion that the expenditure was incurred in

gaining assessable income as an air traffic controller."

RULING

8. The approach taken by this office to income tax deductions for self-education expenses is set out in Taxation Ruling No. IT 285. The decision in the Wilkinson case does not warrant any fundamental alteration to what is stated in the Ruling. Rather, the decision amounts to an application of the Ruling to a proper understanding of what is involved in the duties of employment of an air traffic controller.

9. Taxation Ruling No. IT 285 traces the development of the operation of sub-section 51(1) to expenses of self-education. Paragraphs 3-10 deal with income tax deductions allowable for self-education expenses to persons who are already qualified or skilled in a particular profession and who incur expenses in pursuing further courses. Air traffic controllers who have completed and passed their departmental training courses come within the category of persons already qualified or skilled in a particular profession.

10. The effect of paragraphs 3-10 of Taxation Ruling No. IT 285 is that where a course of study is undertaken by an already qualified or skilled person for the purpose of maintaining or increasing the person's knowledge or ability in an existing occupation or employment and is not undertaken for the purposes of opening up new income earning activities, expenditure incurred in connection therewith is allowable as an income tax deduction under sub-section 51(1).

11. In the case of air traffic controllers it is undeniable that expenditure on flying lessons increases their efficiency in the performance of their duties of employment and, in addition, makes their advancement in their chosen career more certain. As is recognised in paragraph 10 of Taxation Ruling No. IT 285 it is not sufficient to say that the cost of flying lessons might open up new income earning activities - that could be said of most, if not all, further studies. The question is whether the flying lessons are undertaken for that purpose and, in the final analysis, the answer to it will depend upon the examination of all the circumstances including the taxpayer's motives in undertaking the flying lessons.

12. In practice this means air traffic controllers who are diligently pursuing flying lessons and demonstrate that they are so doing for the purposes of making themselves more efficient in the performance of their duties and thereby enhance their prospects of promotion will be entitled to income tax deductions for the cost of the flying lessons.

13. Situations may arise where an air traffic controller may not be entitled to an income tax deduction for the cost of flying lessons. Where, for example, flying lessons are undertaken on an occasional or sporadic basis, the connection between the lessons and the performance of the duties of employment would seem to be too remote to warrant an allowance of an income tax deduction for the expenditure on the flying lessons.

14. Taxation Board of Review decision Case R108 84 ATC; 27 CTBR (NS) Case 166 is another illustration of a situation where an income tax deduction would not be allowable for the cost of flying lessons undertaken by an air traffic controller. The taxpayer in that case held a commercial pilot's licence. In the year under review he undertook a course of instruction to obtain a flight instructor's rating. His primary reason for undertaking the course was to obtain employment as a commercial pilot, i.e. his motive was to open up new income earning activities. For this reason, the Board concluded that the expenditure on the flight instructor's rating course was incurred at a point too soon to be accepted as incurred in gaining assessable income as a commercial pilot. As a secondary argument the taxpayer sought to establish that it was necessary for him, in order to obtain promotion, to hold qualifications over and above other possible applicants. He did not produce any evidence in support of his contention and, in the result, was unable to satisfy the Board that he was entitled to a deduction on this ground.

15. Where the expenditure on flying lessons is allowable as an income tax deduction to an air traffic controller sub-section 82A(2) limits the deduction allowable under sub-section 51(1) to the excess of the expenditure over \$250. It should also be remembered that, as from the year commencing 1 July 1986, income tax deductions will be only allowable where an air traffic controller can substantiate the expenditure claimed as an income tax deduction.

COMMISSIONER OF TAXATION
28 May 1987