


IT 2440 - Income tax : individuals : release from payment of tax on grounds of serious hardship : guidelines for determining the existence of serious hardship

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TAXATION RULING NO.IT 2440

INCOME TAX : INDIVIDUALS : RELEASE FROM PAYMENT OF TAX
ON GROUNDS OF SERIOUS HARDSHIP : GUIDELINES FOR
DETERMINING THE EXISTENCE OF SERIOUS HARDSHIP

F.O.I. EMBARGO: May be released

REF

N.O. REF: 87/345-4

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1218717	HARDSHIP RELEASE FROM PAYMENT OF TAX RELIEF BOARD	265

PREAMBLE

Sub-section 265(1) of the Income Tax Assessment Act establishes a Board (known as the Relief Board) which may release a taxpayer from all or part of a tax liability if it is satisfied that exaction of the tax will entail serious hardship. Release on grounds of serious hardship may be granted:-

- (a) to an individual taxpayer in relation to his or her own liability; or
- (b) to the trustee of the estate of a deceased person in respect of a liability of the estate, where the hardship would be suffered by a person who would have been a dependant of the deceased had the latter lived.

2. The purpose of this Ruling is to set out guidelines which the Relief Board generally follows in determining whether or not serious hardship exists in particular cases. Although issued in the name of the Commissioner of Taxation, the Ruling has been prepared in consultation with the statutory members of the Relief Board.

RULING

3. Income Tax, in the terms of the law providing for its assessment and collection, is an imposition. As such, it is likely to fall with some impact on those liable to pay it.

4. While the payment of tax may involve some measure of restraint in other directions, the impact of tax assessed at prescribed rates on stated income levels will fall short of hardship in the typical situations encountered in the tax-paying community. However, financial losses or other adverse factors arising in individual cases may result in the taxpayer's capacity to pay becoming limited to such an extent that the impact of payment will amount to serious hardship.

5. The term serious hardship is not defined in the law and must be given its ordinary meaning. This Ruling does not attempt to provide an exhaustive definition of the term but rather to identify circumstances which may or may not indicate the existence of serious hardship and to outline the tests applied by the Relief Board in arriving at its decisions.

6. The several tests applied by the Relief Board follow from a conceptual position that the term serious hardship has connotations of unduly burdensome consequences, the magnitude of which would be likely to lead to persons being deprived of necessities according to normal community standards. Thus, serious hardship would be seen to exist where payment of a tax liability would result in the taxpayer being left without the means to achieve reasonable acquisitions of food, clothing, medical supplies, accommodation, education for children and other basic requirements.

7. On the other hand, elements of hardship may be regarded as marginal or minor rather than serious if the consequences of payment of tax are seen, for example, as limitation of social activities or entertainment, or loss of access to goods or services of a more luxurious nature or standard.

8. As a first step in considering an application for relief, the Relief Board must determine the person or persons to be included in its assessment of hardship factors. Although hardship will be largely personal to the taxpayer, or the dependant of a deceased taxpayer, it is not limited to the immediate state of that person. Rather, the prospect of inability to provide food, clothing, etc., for family members or others for whom the person has responsibility will also constitute a hardship faced by the person.

9. Conversely, although a taxpayer's immediate situation may suggest inability to meet the combined total of the tax debt and family expenditures, that factor will not indicate hardship if the income or asset positions of other members of the family are such as to suggest that the taxpayer cannot reasonably be regarded as responsible for all relevant outgoings. For example, the separate earnings, allowances or benefits received by other family members will be relevant to an assessment of the taxpayer's overall financial circumstances.

10. Subject to the general considerations above, the steps by which the Relief Board evaluates the merits of individual cases can be addressed in three segments:-

- (1) Income/Outgoings Tests
- (2) Assets/Liabilities Tests
- (3) Other Factors

Income/Outgoings Tests

11. The tests under this heading are concerned with

quantifying the taxpayer's capacity to meet the tax liability from his or her current income. The tests in sequence are:-

- Firstly, what is the taxpayer's capacity to pay, as measured by the income and outgoings stated in the application or supporting documents. i.e., what net income remains after deducting total outgoings from total income?
- Secondly, does the Board accept that the income and outgoings stated are accurate and that the outgoings are necessary, or is there scope to increase the net income available to meet the tax debt without serious detriment to living standards?
- Thirdly, if there is a margin by which available income exceeds reasonable outgoings, is it sufficient to allow the liability to be met within an acceptable time scale?

12. In relation to the second test above, the appearance of claims that a person incurs above average expenditure on food, clothing or services, a high level of private travel or entertainment expenses, or payments for leisure goods such as caravans, boats, higher-priced motor vehicles, etc would usually lead the Board to a conclusion that capacity to pay exists. Within this test, the Board also seeks to determine whether there are optional expenditures which could be reduced or deferred to improve capacity to pay the tax debt.

13. For the purposes of the third test, the Board generally takes a two to three year payment span as an initial yardstick. Capacity to pay at a limited rate which would not see the debt cleared in two to three years would be a factor indicating that granting of partial relief may be appropriate.

Assets/Liabilities Tests

14. The tests within this segment are concerned primarily with determining whether the taxpayer's store of assets, or equity in assets, is indicative of capacity to pay the tax debt. As a secondary consideration, the Board may also need to address whether the acquisition of assets has unreasonably been put ahead of meeting tax liabilities.

15. There are several types of assets which Boards have generally regarded as normal and reasonable possessions, and which would not be expected to be surrendered or sold to meet revenue debts. Subject to the proviso that values are modest rather than extravagant, those assets include:

- . ownership of, or equity in, a residential property which is the taxpayer's home
- . motor vehicle

- . furniture and household goods
- . tools of trade
- . cash on hand or bank balance, etc., sufficient to meet outgoings for necessities or other reasonable expenditures, e.g., funds put aside by aged persons to cover funeral expenses.

16. Other assets such as caravans (except where a caravan serves as the taxpayer's residence), holiday homes, luxury motor vehicles, boats, substantial life assurance or annuity entitlements, shares and other investments will generally be regarded by the Board as indicating capacity to pay, through either disposal or use as security for borrowings, without involving serious hardship.

17. As a general proposition, the Board would also seek to reach conclusions as to whether assets have been valued realistically, and liabilities are accurately recorded. Where doubts arise in relation to these aspects, the Board may seek clarification of the basis of valuation, or of other information. However, certified valuations from professional valuers will not normally be required.

18. In relation to liabilities, the Board's evaluation of the circumstances of the taxpayer may in some cases require it to consider whether deferment or rescheduling of commitments is a viable option. Where a taxpayer's asset position indicates untapped borrowing capacity, the likely quantum of repayments arising will in turn have a bearing on the outcome of the income/outgoings tests discussed earlier.

Other Factors

19. Apart from the financial factors discussed in preceding paragraphs, various additional factors may require consideration during the Board's evaluation of cases. Some have a bearing on the Board's decision while others, though put as grounds warranting relief, are not relevant to the Board's function. The following points illustrate some of the factors which arise for consideration from time to time:-

- (1) The Board's role is limited to evaluating hardship implications. It has no authority to address allegations of unfairness or inequity in the law, matters of conscientious objection, or whether assessed liabilities are correct in law.
- (2) The law provides that the Board "may", not "shall", grant relief once it recognises the existence of serious hardship. Nevertheless it is clear that the Board is obliged to act reasonably and responsibly, and should not act arbitrarily or capriciously. Examples of situations in which the Board may decide against granting relief, even though implications of

serious hardship may be drawn, are:-

- (a) where it appears that the taxpayer has, questionably or otherwise, disposed of funds or assets without making proper provision to meet tax liabilities;
- (b) where the granting of relief would not result in reduction of hardship, such as where there is current or prospective bankruptcy action, so that granting of relief would do no more than increase the amount, if any, available for distribution to other creditors;
- (c) where the taxpayer, for less than adequate reasons, has failed to pursue debts due to him or her, or to seek possible contributions from insurers, persons with joint responsibilities for debts, etc.; and
- (d) where serious hardship is associated with a single event or short term outcome, such as might be encountered in the more speculative or seasonal business undertakings, the effects of which can be expected to abate within a short term, i.e., on the longer view any hardship will be less than serious.

The Board's Decisions

20. The tests and procedures outlined above usually enable the Board to determine whether or not it can be satisfied that serious hardship is in prospect and the extent, if any, to which it should grant relief.

21. As can be seen, the key requirement of the law is that the Board be "satisfied" on the serious hardship question. While its state of satisfaction might be more clear-cut in some cases than in others, it cannot operate simply on a "benefit-of-the-doubt basis". Where doubts arise, the Board may:-

- (a) defer its decision, which is the usual approach, where:-
 - (i) unresolved insurance, compensation or damages claims make it impossible to properly evaluate the taxpayer's true longer term position;
 - (ii) the assessment or assessments involved are disputed, so that the final liability of the taxpayer is not clear, and consequential hardship implications can be no more than speculation;

- (iii) it is considered appropriate to obtain further information from the taxpayer or elsewhere to clarify aspects in doubt; or
- (b) decide against granting relief, which is usually limited to cases in which the taxpayer has failed to provide relevant information within a reasonable period after being asked to do so, or has failed to attend for examination where required in terms of sub-section 265(3) of the Income Tax Assessment Act.

COMMISSIONER OF TAXATION
13 AUGUST 1987