IT 2198 - Income tax : allowable deductions : expenditure voluntarily incurred by employee taxpayers

TAXATION RULING NO. IT 2198

INCOME TAX : ALLOWABLE DEDUCTIONS : EXPENDITURE VOLUNTARILY INCURRED BY EMPLOYEE TAXPAYERS

F.O.I. EMBARGO: May be released

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FACTS In a decision given on 10 July 1985, which is not to be reported, Taxation Board of Review No. 3 allowed to a school teacher income tax deductions for part of the depreciation on certain items of equipment used in carrying out his teaching duties, e.g., library, tape recorder, computer, etc., and for the cost of repairs to one of the items of equipment.

2. The taxpayer established in evidence before the Board that the items of equipment were used in varying degrees in connection with his teaching duties, i.e., writing up school notes, preparing material for students, etc.

3. In reaching its decision the Board had regard to the admitted private use of the items of equipment and apportioned the annual depreciation accordingly. The claim for repairs was allowed in full because, at the time the expenditure was incurred, section 53 of the Income Tax Assessment Act did not permit apportionment of the cost of repairs where the repaired property was used for private as well as income producing purposes.

4. The Board stated during the course of its decision that the fact that the taxpayer was not required under the terms of his employment to acquire the various items of equipment was not decisive of whether or not income tax deductions were allowable in respect of depreciation and repairs.

RULING 5. It is opportune to make it clear that this office accepts the approach of the Board stated in the preceding paragraph to be correct and it should be followed in all comparable situations. In this regard the Board was doing no more than following decisions of the High Court and Supreme Court.

6. In FCT v. Finn, (1961) 106 CLR 60, for example, the High Court allowed to an employee architect an income tax deduction for the cost of an overseas trip undertaken voluntarily by the architect to study modern developments in

architecture. The fact that the expenditure was incurred voluntarily did not affect the taxpayer's right to a deduction under sub-section 51(1).

7. Reference may also be made to FCT v. Faichney 72 ATC 4245 : 3 ATR 435. The decision involved an employee research scientist's right to income tax deductions for certain expenses attributable to a room in his home which he used as a study to carry out activities associated with his employment, e.g., preparing papers, compiling reports, reading scientific journals, etc. The taxpayer was not required by the terms of his employment to work at home - there were facilities at his place of employment to which he could have returned each night to prepare papers etc. It was a matter of convenience to the taxpayer that he chose to work at home. An initial point was taken on behalf of the Commissioner that because the expenses arose out of the taxpayer's convenience, they were essentially of a private nature. The Court expressed the view that there was no relevance in this argument.

8. The Faichney case also involved claims for depreciation on furniture and furnishings in the study, i.e., desk, bookshelves, carpets and curtains. On this question the Court said that it is enough if a taxpayer could establish that the furniture and furnishings were used for the purpose of producing assessable income. The precise amount of depreciation allowable as an income tax deduction will depend upon the extent to which it has been used for other purposes and the resultant apportionment which section 61 authorises.

9. In the area of expenditure voluntarily incurred by employee taxpayers the approach which should be followed is that, while a requirement upon an employee in the terms of employment to incur expenditure would establish a right to income tax deduction other than for capital, private or domestic expenditure, the absence of such a requirement does not mean that the expenditure does not qualify for income tax deduction.

10. Where an employee taxpayer incurs expenditure voluntarily in carrying out the duties of his employment and it is not disqualified from deduction because it is of a capital, private or domestic nature, what is decisive in determining claims for income tax deductions under sections 51, 53 and 54 is whether the expenditure has been incurred on the plant or articles or property used in gaining or producing assessable income. The requirement for deduction will be satisfied if the occasion of the expenditure or the use of the plant or articles or property is within the scope of the particular duties of employment, i.e., if it can be recognised as part and parcel of the duties of employment. To put it another way, the requirement will be satisfied if the subject of the claim for income tax deduction is something that might ordinarily be expected to occur in carrying out the duties of the employment.

11. Two categories of expenditure which do not arise out of carrying out the duties of an employment, and are not, therefore, allowable income tax deductions, come readily to

mind. The first is expenditure on ordinary clothing. The second is illustrated by the home office cases, of which the Faichney case is an example. Interest on money borrowed to acquire a home does not arise out of carrying out the duties of an employment even though a room in the home may be used exclusively for activities associated with the employment. The same may be said of rent paid for a home, municipal rates and taxes and insurance on a home. It arises out of the acquisition and use of the house as a home and is of a capital, private or domestic nature.

12. The teaching profession may be used to illustrate expenditures which might ordinarily occur in carrying out the duties of an employment. Preparation for classes, correction and grading of material handed in by students are undeniably incidents of the duties of employment of a teacher. The use of plant or articles in these activities, whether at school or at home, is a use for the purpose of producing assessable income. Employment as a teacher also involves the incurring of a variety of expenditures, e.g., notebooks, pens, pencils, teaching aids, travelling expenses on inter-school activities, etc. All of these expenditures are the sorts of expenditures which a teacher may be called upon to incur - they are allowable as income tax deductions.

13. By way of contrast recent years have seen a number of references to Taxation Boards of Review by teachers seeking income tax deductions for overseas travelling expenses. Most of the claims have been rejected by the Boards because the teachers have not been able to establish a positive connection between the overseas travel and the performance of their duties of employment as teachers. In the ultimate the claims have been based on a general proposition that the overseas travel has made the taxpayers better able to carry out their duties which, of itself, is not sufficient to enable the expenditure to be allowed as an income tax deduction.

14. Inevitably the application of the relevant provisions of the income tax law in this area will depend upon the circumstances of particular cases. It is reiterated that expenditure is not debarred from income tax deduction because it is incurred voluntarily.

COMMISSIONER OF TAXATION
26 September 1985

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