IT 2273 - Income tax: allowable deductions: travelling expenses incurred by shearers between home and employment

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Generated on: 19 November 2026, 09:39:52 PM

TAXATION RULING NO. IT 2273

INCOME TAX: ALLOWABLE DEDUCTIONS: TRAVELLING EXPENSES INCURRED BY SHEARERS BETWEEN HOME AND EMPLOYMENT

F.O.I. EMBARGO: May be released

REF H.O. REF: 84/16233-7 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1077762	TRAVELLING EXPENSES - BETWEEN HOME AND EMPLOYMENT : SHEARERS	51(1)

OTHER RULINGS ON TOPIC IT 112, IT 113, IT 117, IT 2199

PREAMBLE Over the years this office has accepted that shearers are entitled to income tax deductions under sub-section 51(1) of the Income Tax Assessment Act 1936 for the cost of travel between point of assembly and first shearing shed, between shearing sheds and between last shearing shed and point of dispersal. The cost of travel between home and assembly point, between home and first shed, if that is the case, and between dispersal point or last shed and home has not been allowed as an income tax deduction. This practice was supported by a decision of a Taxation Board of Review in 1967 reported as Case T42, 18 TBRD 203: Case 91, 13 CTBR(NS) 616.

2. A recent decision of a Taxation Board of Review reported as Case S29, 85 ATC 276 : Case 34, 28 CTBR(NS) 269, has necessitated a review of the long standing practice. The decision concerned claims by two shearers for motor vehicle expenses incurred in travelling between home and the various shearing sheds where they were engaged. At the hearing the taxpayers gave evidence that they carried combs, cutters and other equipment weighing in the order of 18kgs in their vehicles. Evidence was also given that each shearer used his home not only as a residence but as a base of operations where he sharpens, cleans and maintains his equipment. Each shearer used his telephone to arrange engagements from home and to get a team of shearers or hands together.

3. The Board of Review allowed the claims on the grounds that the taxpayer's homes constituted their bases of operations, the taxpayers were independent contractors rather than employees and that travelling was inseparable from the "inherently itinerant" nature of a shearer's employment.

4. There can be little doubt that the decision of the Board of Review was open to it. The income tax law in relation to cost of travel between a home and places of employment or

business has developed since the decision of the Taxation Board of Review in 1967. The authorities referred to in the recent Taxation Board of Review decision afford some illustration of the development that has taken place.

5. There are two general propositions of law which may be said to apply to travelling expenses incurred by shearers. To some extent they overlap. In the first place it is established that where an independent contractor's base of operations is his home, i.e., contracts are made from his home and tools and books of account are kept there, travelling expenses incurred between the home base and the site on which the contracts are carried out are an allowable deduction for income tax purposes. The decision of the UK Court of Appeal in Horton v Young (1971) 3 A11 ER 412 is an illustration of this situation. In the second place it is also well established that, where the activities by which assessable income is produced are of an itinerant nature, travelling expenses from home and to home necessary to carry out the activities will also qualify as an allowable income tax deduction. The decision of the Supreme Court of Western Australia in FCT v Wiener, 78 ATC 4006 : 8 ATR 335, is an example of this situation.

RULING 6. Expenses incurred by shearers in travelling between home and places where they exercise their trade or between home and place of assembly for a shearing tour and on return travel to home may be allowed as income tax deductions under sub-section 51(1). Any outstanding objections or appeals should be determined in accordance with this Ruling. If any case arises where there is doubt whether this Ruling applies it should be referred to this office for consideration.

COMMISSIONER OF TAXATION
29 March 1986

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