


IT 2279 - Income Tax : address of commissioner for posting or lodging objections against assessments

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TAXATION RULING NO. IT 2279

INCOME TAX : ADDRESS OF COMMISSIONER FOR POSTING OR
LODGING OBJECTIONS AGAINST ASSESSMENTS

F.O.I. EMBARGO: May be released

REF H.O. REF: 85/16945-9 DATE OF EFFECT: Immediate

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

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1077880	OBJECTIONS - ADDRESS FOR POSTING OR LODGING WITH COMMISSIONER OBJECTIONS - VALIDITY	185 Reg. 34(2)

PREAMBLE By section 185 of the Income Tax Assessment Act a taxpayer may post to, or lodge with the Commissioner an objection in writing against an income tax assessment within 60 days after service of the notice of assessment. No particular address for the Commissioner is specified in the section. However, sub-regulation 34(2) of the Income Tax Regulations provides that such an objection shall be posted to, or lodged with, the Commissioner at the address from which the notice of assessment objected to was issued.

2. This office recently considered a situation where an objection was lodged within the statutory 60 day period at the address of one Deputy Commissioner, thus satisfying the requirements of section 185 of the Act but, because the notice of assessment had been issued by another Deputy Commissioner from an address in a different State, the address specified in sub-regulation 34(2) as the appropriate address for lodging objections was not adopted. The objection was not received in the office of the Deputy Commissioner from which the notice of assessment objected to was issued until after the expiration of the statutory 60 day period. The question was raised whether the objection lodged was valid.

RULING 3. The essential matter for consideration is the meaning to be given to the word "shall" in sub-regulation 34(2). If it is interpreted as meaning "must", then a failure to comply with the sub-regulation might well render invalid what could otherwise be a valid objection. On the other hand, if it is to be considered as "should be" or "may be" a failure to comply with the sub-regulation would not render an objection invalid. The word "shall" does not always impose an absolute and imperative duty to do or omit the act prescribed: Re Davis (1947) 75 CLR 409 per Starke J. at p.418. Stroud's Judicial Dictionary, 4th ed., vol. 5, pp.2514-251, cites a range of cases or situations in which the word is used in its different meanings. Broadly it may be said, as presently relevant, that

where a statute declares that a thing "shall" be done, the proper meaning is that a peremptory mandate is intended but that where the thing has reference to the time or formality of completing some public act (not being a step in litigation) the statute will generally be regarded as merely directory, unless there are words in the statute making the thing done void if not done in accordance with the requirements of the statute.

4. In the context of sub-regulation 34(2), it is accepted that the word "shall" ought to be regarded as directory. The essential requirement is to be found in section 185 i.e. an objection has to be posted to, or lodged with, the Commissioner within the relevant 60 day period. The place to which it is to be posted, or where it is to be lodged, is not of the essence of the requirement in section 185 but a formality in meeting it. Thus, sub-regulation 34(2) requires that objections should be posted to, or lodged with, the Commissioner at the address from which the relevant notice of assessment was issued. However, an objection that is not posted to, or lodged with, the Commissioner at that particular address is not to be treated, for that reason alone, as an invalid objection.

5. If an objection is lodged within the statutory 60 day period at the address of the Commissioner or that of any one of the Deputy Commissioners it is to be accepted as validly complying with the requirements, in that regard, of section 185 of the Act even though that address may not be the same as that from which the notice of assessment objected to issued.

6. Taxpayers and tax agents are nevertheless encouraged to post to or lodge with Deputy Commissioners objections against income tax assessments in all cases at the address of the Deputy Commissioner from which the notices of assessment being objected to issued.

COMMISSIONER OF TAXATION
7 May 1986

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