


# ***IT 2306 - Income Tax : content and form of statements forwarded to a board of review under regulation 35***

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TAXATION RULING NO. IT 2306

INCOME TAX : CONTENT AND FORM OF STATEMENTS FORWARDED  
TO A BOARD OF REVIEW UNDER REGULATION 35

F.O.I. EMBARGO: May be released

REF

H.O. REF: 85/16251-9                      DATE OF EFFECT: Immediate

B.O. REF:                                      DATE ORIG. MEMO ISSUED:11-4-1986

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1137381	REFERENCES TO BOARD OF REVIEW STATEMENTS UNDER SUB-REGULATION 35(1)	Reg. 35 Acts Interpretation Act S.25D

PREAMBLE

The Income Tax Assessment Act provides, in section 187, that a taxpayer who is dissatisfied with the Commissioner's decision on an objection, may, within 60 days after service of the written notice of that decision, in writing request the Commissioner either -

- (a) to refer the decision to a Board of Review for review, or
- (b) to treat the objection as an appeal and to forward it to a specified Supreme Court.

2. In the event that a taxpayer requests a reference to a Board of Review, regulation 35 of the Income Tax Regulations requires the Commissioner to furnish the Board with a statement containing, amongst other things, the Commissioner's reasons for disallowing the taxpayer's claim. The regulation also requires the Commissioner to furnish the taxpayer with a copy of the statement forwarded to the Board.

3. Section 25D of the Acts Interpretation Act provides that where a person making a decision is required to give reasons for that decision, the statement giving the reasons must set out the findings on material questions of fact, the evidence or other material on which those findings are based, and the reasons.

4. In Dalton v D.F.C. of T 86 ATC 4274; 17 ATR 483, a question arose whether section 25D applied to the statement provided to the Board of Review under regulation 35. On 11 April 1986, the Full High Court held that it did not, thereby confirming earlier decisions of the Federal Court of Australia, 16 ATR 292, 736; 85 ATC 4144, 4476.

5. The High Court examined the purpose of the regulation 35 statement and the scheme of the provisions in Part V of the

Income Tax Assessment Act, which provisions deal with objections and appeals. The Court held that section 25D applied where there is a requirement to give reasons for a decision which arises at the time of or as an incident of the making of the decision. It was clear that at the time of making the decision on the objection, there was no requirement on the Commissioner to give reasons (Robinson v D.F.C. of T 84 ATC 4277; 15 ATR 538). The requirement to give reasons under regulation 35 arose only if a taxpayer sought a reference to a Board of Review and at that time the Commissioner was not "making a decision" but referring to a tribunal details of a decision previously made.

6. It was held by the High Court in Sutton v F.C. of T (1959) 100 CLR 518; 7 AITR 386, and affirmed in R v Cain, ex parte Evatt (1975) 133 CLR 37; 5 ATR 691, that a statement of conclusions as to why claims were not allowable satisfied the requirements of regulation 35. The Court in Dalton again accepted this finding.

RULING

7. The effect of the Court's decision is that the present practice in relation to regulation 35 statements should continue. It should be noted that, subject to the Taxation Boards of Review (Transfer of Jurisdiction) Bill as enacted, the form of statement currently provided to the Board of Review under regulation 35 will, until 30 June 1988, be provided to the Administrative Appeals Tribunal, rather than the more detailed statement required by the Administrative Appeals Tribunal Act. Officers should, of course, continue to ensure that the statements accurately reflect the reasons for the disallowance of the taxpayer's objection. Furthermore, officers should continue the practice of assisting taxpayers seeking an explanation as to why particular claims have been disallowed.

COMMISSIONER OF TAXATION

14 May 1986

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